

## **Chapter 2**

### **Exploration and Gold Discovery**

**1700s- 1875**

**Introduction**

**The First Europeans**

**United States Exploration**

**The Lure of Gold**

**Gold Attracts Euro-Americans to Sioux Land**

**Creation of the Great Sioux Reservation**

**Pressure Mounts for Euro-American Entry**

**Economic Depression Heightens Clamor for Gold**

**Custer's 1874 Expedition**

**Gordon Party and Gold-Seekers Arrive in Black Hills**

## **Introduction**

The initial entry of Europeans into the area between the Missouri and Powder rivers, including the Black Hills, appears at first glance to have been culturally and environmentally benign. The first to arrive in the region were those trapping and trading for furs. Their presence and their interests served primarily to increase and intensify hunting and trapping activities that the first Black Hills residents had pursued for millennia. Although this is certainly true, two important facts are ignored: the devastating smallpox and other epidemics that periodically swept across the entire Mississippi and Missouri river drainages resulted from the pathogens that stowed away on those European trade goods; and the trade goods themselves (most notably firearms) permanently altered tribal relationships throughout the New World.

European exploration of the Black Hills was noticeably absent for a couple of decades after the central portion of North America was purchased by the young United States. Most American traffic followed the Platte River or the Missouri River hundreds of miles away. Only with the discovery of gold in Montana in the early 1860s was traffic diverted northward through the Powder River Basin, where game hunted by native residents was disturbed. The Indian-European clashes resulting from that northern shift in emigrant traffic, later followed by the severe economic needs of a depressed economy, focused the young republic's attention on the Black Hills. The reported discovery of gold in the Hills by the 1874 Custer expedition, soon followed by rumors of gold, brought a rush of gold-seekers to the Black Hills in the mid-1870s. Once displaced from more eastern drainages, the Sioux were once again soon pushed further west by the flood of early prospectors and, eventually, by the United States government.

## **The First Europeans**

The first Europeans known to visit the Black Hills came in the mid-eighteenth century. French trappers traveled south from the Great Lakes area of present-day Canada, traveled up the Red River, continued into the Missouri River drainage, and entered the Black Hills area in search of fur. The pursuit of fur-bearing animals living along riverbanks also drew the French trappers and traders up the Mississippi River, then up the Missouri River, and finally westward up tributaries toward the Black Hills.

These first European fur-seeking explorers caused minimal environmental changes in the Black Hills. Their presence was manifested by little more than traps strung along stream banks. Frequently, the

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

European fur seekers were merely continuing a use of the land that Native American groups had pursued for millennia. Often, these Europeans would not even enter the trapping areas, but would purchase pelts from local residents. In those instances, European presence was principally by proxy.

Historians disagree about who was the first European to enter the Black Hills, and when that event took place. Some accounts assert that brothers Francois and Joseph de la Verendrye were the first Europeans in the Black Hills. Proponents of the de la Verendrye discovery assign August 11, 1742, as the date they entered the Hills. The evidence supporting this story is limited to the brothers' reference to a mountain they called "Mountain of the Horse Indians," which later readers have identified, for reasons they don't disclose, as present-day Bear Butte on the northeastern edge of the Black Hills. The de la Verendrye supporters also point to a lead plate purportedly inscribed by the brothers as further evidence that the de la Verendrye brothers were the first Europeans to enter the Black Hills. Unfortunately, the plate was found near Fort Pierre, South Dakota, approximately 140 miles east of the Hills. Not only is this limited evidence both vague and ambiguous, the reason for the brothers' journey argues strongly against their entering the Black Hills. They left Fort de la Reine, south of Lake Manitoba, to find a route to the Pacific Ocean. It can be assumed that they traveled by rivers, as most of their contemporaries did. (See Table 2-1 for a list of all European explorers, both speculated and confirmed, who approached or entered the Black Hills.<sup>1</sup>)

Evidence supporting other "first" European visits to the Black Hills is equally unpersuasive. For example, one bit of evidence is based upon a report of seeing "shining mountains" (Jonathan Carver, 1766-1768), which later historians concluded was a reference to the Black Hills since its shale rock appears at times to shimmer.

In the final analysis, we simply don't know the identity of the first European to physically enter the Black Hills, nor do we know the precise date of that entry. We do know that Europeans were first drawn into the Hills in search of fur sometime in the early 1800s, and we know that later, during the third and fourth decades of the 1800s, a few Euro-Americans

---

<sup>1</sup> G. Hubert Smith, *The Explorations of the La Verendryes in the Northern Plains, 1738-43*, edited by W. Raymond Wood (Lincoln: University of Nebraska Press, 1980). Also see Hyman Palais, "A Survey of Early Black Hills History," *Black Hills Engineer* 27: 1 (April 1949): 3-4; Francois Verendrye and Joseph Verendrye, "Journals," *South Dakota Historical Collections* 7 (1914): 349-58. A detailed account of fur trading explorations in the Black Hills can be found in Donald D. Parker, "Early Explorations of Fur Trading in South Dakota," *South Dakota Historical Collections* 25 (1951): 1-211.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

entered the Hills in search of gold. Euro-Americans did not enter the Black Hills in large numbers, however, until the 1870s.

## **United States Exploration**

The United States' purchase of the Louisiana Territory in 1803 legitimized a preexisting curiosity on the part of the government about the enormous area separating the Mississippi River and the Pacific Ocean. In 1804, President Thomas Jefferson launched a scientific mission led by Meriwether Lewis and William Clark to map a route connecting the Atlantic and Pacific oceans, inventory flora and fauna along the route, and make demographic observations along the way. Although the so-called "Corps of Discovery" carried a map that accurately depicted the existence and location of the Black Hills, they didn't enter the Hills—they were simply not on the way to the Pacific Ocean. The explorers did happen to meet and interview a French trapper named Jean Valle, who had worked in the Black Hills during the winter of 1803-1804.

Reports of the Lewis and Clark exploration were received with interest, but didn't motivate a popular movement west from the United States. For a couple of decades after the return of Lewis and Clark, sojourns west of the Missouri River toward the Black Hills continued to be limited to persons in search of fur. Trappers employed by John Jacob Astor, including a party led by Wilson Hunt in 1811, probed the Black Hills. Jedediah Smith reportedly traveled through the Hills in 1823; and a stone inscribed with a message dated 1834 in the vicinity of the Hills suggested the presence of an unnamed European.<sup>2</sup> It wasn't until the 1840s that the western movement of emigrants from the United States became sufficiently popular to become noticeable. But even this western movement had little if any influence on the Black Hills. Most of these people were headed for Oregon Territory or California, and they chose a course up the Platte River where there was grass and water for their livestock and draught animals. Their route took them 120 miles south of the Black Hills.

Euro-Americans traveling through the Missouri and Platte river valleys in the 1830s and 1840s often viewed the Black Hills from a distance. This was true for trappers and traders making their way, in the early 1830s, to a trading post near the junction of the North and South Fork of the Cheyenne River. In 1849, and again in 1853, John Evans, representing the

---

<sup>2</sup> Palais, "Survey of Early Black Hills History," 4.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

David Owen Geological Survey, produced the first map of the Black Hills, based on distant views of the Hills.<sup>3</sup>

The 1850s ushered in a period of federal exploration of the Black Hills (and the West generally). In 1855, W. S. Harney and Gouverneur K. Warren led the "Sioux Expedition" into the Black Hills, where they made preliminary measurements of geological features. The first exploration of the Black Hills organized by the United States government occurred in 1857. A government-sponsored exploration led by Lieutenant Gouverneur Warren and accompanied by Ferdinand Hayden, along with a large U.S. Army detachment, skirted the Black Hills. After passing the southern foothills, the party then turned north to follow the eastern edge of the Hills. Smaller groups were detached from the Warren party to enter and explore the farther reaches of the Black Hills.<sup>4</sup> The future of the Black Hills was foreshadowed when the Warren group reported finding gold.<sup>5</sup>

Two years later, in 1859, a group of scientists led by Captain William Reynolds and Ferdinand Hayden, accompanied by a military escort, explored the Yellowstone River and its tributaries, a trip which took them along the northern edge of the Hills. They too reported finding gold.<sup>6</sup>

### **The Lure of Gold**

The rumors of gold in the Black Hills had been quietly echoing within the United States since the early 1800s. It is speculated that Euro-Americans may have come to the Black Hills as early as 1833 in search of the precious gold mineral. This unsubstantiated story is based on the discovery of a message etched into a stone, discovered by a stonemason named Thoen in 1887, noting the discovery of gold by DeLacompt, Ezra Kind, G. W. Wood, T. Brown, Wm. King, and a so-called "Crow guide." A grave marked "J.M. 1846," sluice boxes, and an old cabin were found near

---

<sup>3</sup> Cleophas O'Harra, "A History of Early Explorations and the Progress of Geological Investigations in the Black Hills Region," *Bulletin No. 4 of the South Dakota School of Mines* (April 1900), 13.

<sup>4</sup> For in-depth histories of army exploration in the West, see William H. Goetzmann, *Amy Exploration in the American West* (Norman, OK: University of Oklahoma Press, 1962); Richard A. Bartlett, *Great Surveys of the American West* (Norman, OK: University of Oklahoma Press, 1962); and Carl Irving Wheat, *Mapping the Transmississippi West, Volume 14* (San Francisco: Institute of Historical Cartography, 1960).

<sup>5</sup> G. K. Warren, "A Preliminary Report of Exploration in Nebraska and Dakota in 1855-57," *South Dakota Historical Collections* 11 (1922): 158-59.

<sup>6</sup> United States War Department, "Report of Brevet Brigadier General W. F. Reynolds on the Exploration of the Yellowstone and Country Drained by that River," 40 Cong., 1 Sess. Senate Executive Doc. No. 77. .

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

French Creek in 1875. In 1852, rumors of gold in the Black Hills attracted a small group of sixteen miners traveling to the California gold fields. Lakota Indians reportedly killed all in this party except its leader Thomas Renshaw, who was away from camp at the time. That same year, a group of twenty-two California gold seekers traveling from Iowa with a much larger party changed their course to the Black Hills once they heard rumors of the precious metal while at Fort Laramie. These men vanished, never to be heard from again. In 1854, the party of Irishman Sir St. George Gore, led by guide Jeremiah Proteau, diverted their exploration of reported gold in the Black Hills after it encountered the Lakotas, who took their clothes and possessions. In 1863, heavy snowfall forced a party of prospectors to leave the Black Hills before they could complete their prospecting mission. Thirteen years later, one member of this party, G. T. Lee, returned to the Black Hills but could not locate the site of his party's original gold discovery. Gold reportedly discovered in 1864 on French Creek or Amphibious Creek in Custer County by Tousaint Kensler also remained a mystery. In 1866, a fantastic rumor circulated about the discovery of \$70,000 worth of gold in the Bear Lodge range in the Black Hills of present-day Wyoming by a Nebraska party led by Hank Joplin.<sup>7</sup>

These and other rumors resonated loudly amid lingering, poignant memories of earlier gold strikes in California, Colorado, Nevada, and Montana. During America's gold rush era, from the 1848-1849 California gold strike to the 1897-1898 discovery of gold in Alaska's and Canada's Yukon Territory's Yukon River region, the West's mineral regions provided many opportunities for restless, romantic individuals to take a gamble on immediate wealth. Economic depressions that occurred during this fifty-year period (in 1857, 1872-1875, and 1893-95) fueled many Euro-Americans' hopes that relief could be found and riches could be made in newly opened mining regions. Beyond the magnetic lure of mineral prospects, gold and silver rushes thrived on hopes as much as they did on reality. The peak of rushes instigated by either true reports or rumors of mineral finds typically lasted for only a brief period—sometimes only a few months. Nonetheless, great expectations and speculation about striking it rich continued for half a century.<sup>8</sup>

---

<sup>7</sup> Jessie Sundstrom and Linea Sundstrom, "Exploration and Settlement," *Black Hills National Forest: Cultural Resources Overview* (Custer, SD: US Forest Service, 1996), 4a-5.

<sup>8</sup> This and the following few paragraphs are based on the excellent, authoritative summary of "gold and silver rush" history in the American West presented in Howard R. Lamar, editor, *The New Encyclopedia of the American West* (New Haven, CT: Yale University Press, 1998), 433-37. Also see Rodman W. Paul, *Mining Frontiers of the Far West, 1848-1880* (1963); and Paula Mitchell Marks, *Precious Dust: The American Gold Rush Era, 1848-1900* (1994).

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

In California gold placer deposits (fragments of gold in rock debris, often lining stream banks and bottoms) were first discovered in 1849 on land owned by John A. Sutter near his mill at Coloma on the south fork of the American River. Newspapers, letters, and ocean-going vessels quickly spread the word of gold discovery and instigated a stampede of young, male prospectors from all over the world to the new El Dorado. "California fever" afflicted hundreds of thousands of adventurers who crossed North America on the California Trail or arrived by ship in the early 1850s. This rush was soon followed by other reported or rumored discoveries of placer and vein-embedded gold and silver. In 1858, gold discovered on British Columbia's Fraser River ignited a stampede of prospectors there. Just one year later, there was another rush, largely made up of disillusioned California prospectors, to the silver-veined Comstock Lode and areas in Nevada.

Also in 1859, a mineral rush began to the Pikes Peak region of Colorado's Rocky Mountains. Located only 700 miles from the Missouri River and farming communities just east of the Great Plains (between the Missouri and Mississippi rivers), the Pikes Peak rush attracted many people from the then economically depressed Mississippi River Valley and eastern North America who were ready for a speculative opportunity farther west. Roughly 100,000 gold-seekers took part in this stampede, making it second in size only to the California gold rush. The Pikes Peak boom continued into the mid-1860s. By that time, Euro-American travelers had found abundant placer deposits in Idaho (1860-1862) and Montana (1862-1864), which prompted yet another rush of gold-seekers.

Prospectors with little capital or training mining and processing mineral ore in veins (as opposed to loose, collectable placer deposits) had many opportunities to speculate in shares of claims, while making a minimum effort to actually extract ore. The majority of the gold and silver rush crowd limited its activities to speculation, to serving or fleecing those caught up in the hysteria of instant wealth.

The gold and silver rushes in North America also drew thousands of foreign-born gold-seekers to the West. As many as 25,000 came from distant China through the port of San Francisco in 1852 alone; others arrived from nearby Latin America. The Pikes Peak gold rush, which began only one year after the boom and bust of mines on British Columbia's Fraser River, drew many people from Canada. Although some prospectors returned to their native country or earlier residences, many remained in the West, moving from one mineral rush to the next for several years. Eventually some married, had families, and set down roots as farmers, ranchers, freighters, or business owners who served the needs of prospectors.

## **Gold Attracts Euro-Americans to Sioux Land**

In August 1866, Ferdinand Hayden led a second expedition into the Black Hills. Although this was a private venture, Hayden was escorted by a detachment of army troops from Fort Randall. Hayden also reportedly found gold while exploring near Bear Butte. During Hayden's address to the Dakota Historical Society on October 6, 1866, he reported:

Intermingled with these rocks and in the layers above, are found the gold bearing formations which are developed in the Black Hills. Little particles or grains of gold can be found in almost any little stream in the vicinity of these hills. But gold is not always found in paying quantities where "color" is raised. While there is every indication of rich gold deposits in these hills, my explorations have been more for the purpose of collecting old fossil remains than glittering dust.<sup>9</sup>

These repeated government reports of gold in the Black Hills increased the interest in Black Hills exploration by larger civilian groups. When Hayden's report of gold, for example, reached the town of Yankton, Dakota Territory, it attracted the attention of a recently formed group called the "Black Hills Exploring and Mining Association." The group immediately prepared to enter the Black Hills and prospect for gold. In addition to their own rifles and pistols, they were armed with two howitzers provided by Brevet Major General Dyer, U.S. Army.<sup>10</sup>

Like many others who came before and after, they apparently decided to ignore the fact that their entry into the Black Hills violated the provisions of the 1851 Laramie Treaty, prohibiting non-Indians from entering the Hills except on government business. The group never made it to the Black Hills, however. General William Sherman, the newly appointed commander of the Military Department of the Missouri (which included the Black Hills), learned of the association's plans, and ordered them to stay out of the Hills.<sup>11</sup> On several occasions, the army intercepted other groups headed for the Black Hills and turned them back, or persuaded them not to go. Three hundred residents of Yankton, Dakota Territory, led by P. B. Davy of Minnesota in 1867, decided not to go, after

---

<sup>9</sup> George W. Kingsbury, *History of Dakota Territory, Volume I* (Chicago: S. J. Clarke Co., 1915), 983.

<sup>10</sup> O'Harra, "A History," 18-22.

<sup>11</sup> Kingsbury, *History of Dakota Territory*, 864.

the army threatened them with force. Just one year later, the federal government and the Sioux nation agreed in a treaty signed that year that the Black Hills belonged to the Indians as part of the Great Sioux Reservation.

### **Creation of the Great Sioux Reservation**

The road leading to the 1868 treaty between the Sioux Nation and the U.S. government had been long and circuitous. Beginning in the early 1800s, when the first treaty between the two entities was signed in 1805, the diplomatic relationship between the Sioux and the federal government had been marked by contradictions and of repeated cycles of treaty creations and breaches. In the summer of 1815, for example, members of the Sioux Nation and the United States government signed a treaty acknowledging that the Sioux Nation was subject to the jurisdiction of the federal government. On one hand the United States recognized, on paper, Native Americans as sovereign entities. In those same papers, however, the U.S. government appeared to consider members of those Indian Nations child-like individuals.<sup>12</sup>

In 1825, General Henry Atkinson and Indian Agent Benjamin O'Fallon journeyed up the Missouri River and prevailed upon members of the Sioux Nation to sign another treaty in which the Sioux purportedly acknowledged living within the sovereign boundaries of the United States. This treaty not only included a recitation that the United States had jurisdiction over the Sioux Nation; it also appears to have intended to grant the federal government the right to regulate Sioux commerce. In 1830, yet another treaty was signed. This one conveyed two, twenty-mile-wide strips of land to the federal government in exchange for annuities to the Sioux for ten years in money or goods. This was the first in a long line of treaties promising annuities. The federal government continued to deal with the Sioux and other Native American nations in this duplicitous way for several decades.<sup>13</sup>

The treaties between the Sioux and the United States were destined for failure. To begin with, the United States negotiators had little knowledge of Sioux culture. The negotiators assumed that the Sioux Nation was a unified nation-state functioning in a manner similar to the nation states of Western Europe of the time. The United States negotiators failed to appreciate the essential autonomy of the individual in Sioux culture. A group leader ("chief") was a respected person whose counsel was sought, but who had no authority to issue orders. Treaty formation procedures required within the federal government also frustrated hopes of

---

<sup>12</sup> DeMallie, "Sioux Until 1850," 733.

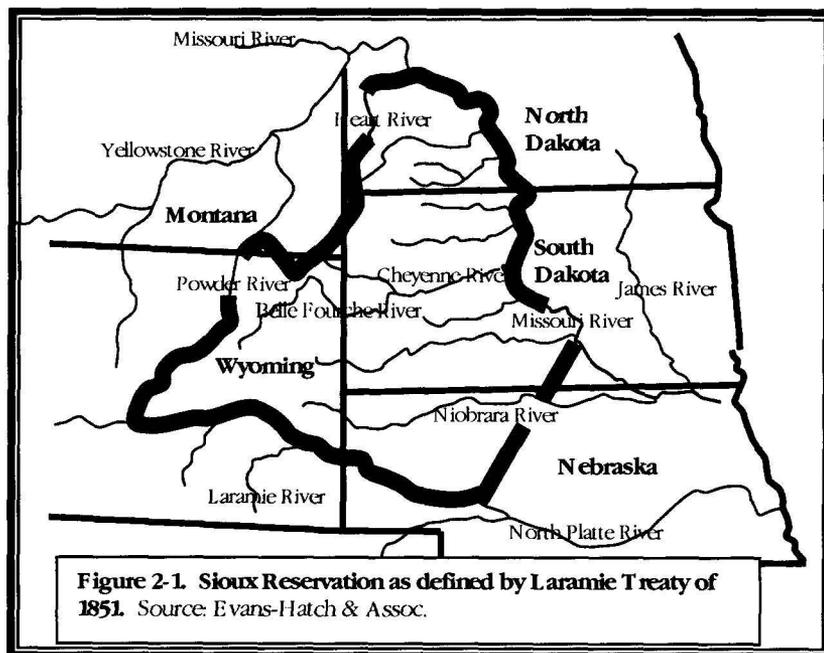
<sup>13</sup> DeMallie, "Sioux Until 1850," 733-34.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

a negotiated resolution of future cultural conflicts. After U.S. negotiators and members of an Indian nation agreed to treaty provisions, they would often be changed by Congress during the senate ratification procedures.<sup>14</sup>

This happened to the 1851 treaty with the Sioux. The treaty, as presented to the Sioux at Fort Laramie in 1851 and signed by some of its leaders, was not the same treaty later ratified by the senate. Thousands of Indians responded to invitations to gather at Fort Laramie; Sioux, Cheyenne, Crow, Arikara, and Shoshone were among the attendees. Some characterized the gathering as the largest group of Native Americans ever assembled to meet with representatives of the United States government.<sup>15</sup>



They spent eighteen days conferring with Thomas Fitzpatrick and Davis Dawson Mitchell, former traders hired by the federal government to represent federal interests. The treaty provided for the United States to pay \$50,000 each year to Indian groups represented at Fort Laramie for a period of fifty years. These payments could be made in the form of livestock, agricultural implements, and/or seed. The treaty also delineated the boundaries of "Indian Country"—all of the western portion of what would become South Dakota, and a large portion of the northwest corner of what would become Nebraska, northeast Wyoming, and a piece of southwestern

---

<sup>14</sup> Edward Lazarus, *Black Hills/ White Justice: The Sioux Nation Versus the United States, 1775 to the Present* (New York: Harper Collins, 1991), 18.

<sup>15</sup> Lazarus, *Black Hills/ White Justice*, 16.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

North Dakota. The federal government agreed to protect Native Americans from trespass by Euro-Americans. In exchange, the Indians agreed to:

1. Provide safe passage to United States emigrants moving across their land to Oregon and California;
2. Respect the separate geographical domains presented in the treaty for each Native American and to recognize the sovereignty of other Native American over their identified separate, individual domains;
3. Grant the United States government a license (right-of-way) to construct roads across "Indian Country," and establish military forts to protect travelers using those roads;<sup>16</sup> and
4. Make restitution to the United States government for all wrongs committed against citizens of the United States by Native Americans members.<sup>17</sup>

Many of these treaty provisions, however, changed substantially soon after the Fort Laramie gathering. Upon reaching the senate, the annuity provision was changed from fifty years to ten years, plus an additional five years at the discretion of the president. The Sioux were not advised of the pre-ratification change the senate made to the treaty, nor did they transform themselves into docile farmers as was hoped. They continued hunting and raiding, and they discarded the annual shipments of farm tools unless they could serve a purpose perceived as important to the members of a hunting and raiding culture. In short, the 1851 Laramie Treaty was unilaterally changed by one party and ignored by the other. It did provide two benefits: first, American emigrants enjoyed relatively safe transit for a time through Sioux territory. Second, it would strongly bolster the legal arguments made by the Sioux to the United States Supreme Court 125 years later.<sup>18</sup>

The intermittent peace created by the treaty lasted for three years. In August 1854, a wagon train moving west along the Platte River was approached by a group of Sioux. During negotiations for coffee, sugar, and other amenities, one of the Sioux noticed a lame ox trailing behind the wagons. He shot it for dinner. Members of the wagon train, including the

---

<sup>16</sup> The United States Supreme Court, in 1830, in an opinion written by Chief Justice John Marshall, concluded that these treaty provisions constituted an acknowledgement by the federal government that Indians possessed limited sovereignty rights as well as property rights in both real property and personal property. This particular provision was one of the more important provisions focused on by the court. *Worcester v. Georgia*, 18 US 334, 1830.

<sup>17</sup> It is important to note that the treaty obligated the Native Americans to pay damages for wrongs committed by members of their communities. The treaty did not permit the United States government to enter Indian sovereign territory and arrest and punish perpetrators.

<sup>18</sup> Lazarus, *Black Hills/ White Justice*, 18-20.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

owner of the dead ox, proceeded to Fort Laramie, where they demanded the wrong be righted. While members of the wagon train were arguing for equity, the leader of the Sioux group that claimed the ox-shooter as a member, rode into the fort and offered the aggrieved traveler \$10 or a horse of the ox-owner's choice from the Sioux stables. The owner counter-offered, asking for \$25. The Sioux considered \$25 an unreasonably inflated price since the ox would probably not have survived the journey west. Negotiations broke down and the Sioux returned home. Army Lieutenant John Gratton headed for the ox-eater's camp, supported by twenty-nine mounted soldiers. Lieutenant Gratton demanded that the ox-slayer be surrendered. Since the 1851 treaty provided only for compensation for wrongs and did not establish army criminal jurisdiction over Native Americans wrongdoers, the Sioux refused to turn the man over. At day's end, the bodies of twenty-nine U.S. Army enlisted men and one West Point graduate were strewn among cannon-ball-perforated tepees.<sup>19</sup>

In August 1855, Colonel William Harney led 1300 troops west to re-secure the Platte Road, and to "discipline" the Sioux. Harney found a group of Sioux, primarily women and children, residing in Ash Hollow in what is now Nebraska. Apparently misconstruing the Sioux surrender as a threatening act, Harney's men killed them. Harney would later report sixty-eight Sioux bodies. "Some were warriors, most were not."<sup>20</sup>

An uneasy, unofficial truce accented by sporadic violence prevailed between the Sioux and the United States for a number of months. In the summer of 1857, the largest gathering of Sioux groups ever recorded occurred on the Belle Fourche River at the base of Bear Butte in the northeast end of the Black Hills. Some estimated that as many as 7000 Sioux attended the conference. Those gathered pledged to stop permitting the encroachment of others onto Sioux land. Unfortunately, two years later, gold was discovered in Colorado, and the flow of emigrants across Sioux land became a torrential flood.<sup>21</sup>

To fully appreciate the profound adverse effects caused by this flood of migrating farmers, gold-seekers, and merchants, one must recall that much of the Sioux economy was based upon buffalo. During summers, the Sioux pursued, surrounded, and harvested herds of buffalo. Needing water, these herds frequented areas adjacent to the Platte River. This was the exact terrain through which the emigrant wagon trains traveled to ensure their livestock had access to the water of the Platte and the nearby grasses. Wagon traffic occurred precisely during the Sioux buffalo-hunting season—the summer months. The massive wagon traffic caused severe damage to the buffalo's grazing grounds. The westward-bound emigrants

---

<sup>19</sup> *Ibid.*, 21-23.

<sup>20</sup> *Ibid.*, 101.

<sup>21</sup> Lazarus, *Black Hills/ White Justice*, 23-25.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

encountered no fences or evidence of crop cultivation, and therefore had no appreciation for the fact that they were threatening numerous Indian communities.

As the mid-1800s wore on, the federal government purchased much of the land originally designated as permanent Indian Country from various Indian groups. The larger Sioux population, however, failed to recognize these sales as lawful transactions. The Sioux believed that the various small, isolated groups who sold the land lacked the right or authority to convey it since they didn't own it. All members of the nation owned it in common, the broader Sioux community argued. The various land acquisitions were a perpetuation of the tendency by Euro-Americans to apply models of their social-political culture upon a very different culture based much more on individual autonomy. Late in 1858, the federal government acquired fifteen million acres of permanent Indian Country. In 1861, gold was discovered in Montana, drawing much of the Platte River traffic north through the Powder River area, along a route that became known as the "Bozeman Trail."<sup>22</sup>

Native Americans of the Great Plains, including the Sioux, were initially affected only by Euro-American migrants moving across the plains bound for Oregon or California. At first, these Euro-Americans did not settle the plains; most were merely passing through. However, with gold discoveries in Montana, then Colorado, along with rumors of gold in the Black Hills and railroad construction, traffic increased. Growing numbers of Euro-Americans arrived on the Great Plains to stay.

Violence between Euro-Americans and Native Americans escalated through the 1860s. In December 1866, Colonel William Fetterman, stationed at Fort Phillip Kearny assigned to protect the Bozeman Trail to Montana, pursued a group of Sioux horsemen. Fetterman and the eighty men under his command were killed. When news of the death of Fetterman and his men reached Fort Laramie, then commanded by General William Sherman, of Civil War fame, the reaction was immediate and harsh. "We must act with vindictive earnestness against the Sioux even to their extermination, men, women, and children," Sherman wrote in his report of the incident.<sup>23</sup> Other non-Indians shared his sentiments. The *Kansas Daily Tribune* editorialized: "There can be no permanent lasting peace on the frontier till these devils are exterminated."<sup>24</sup>

A different sentiment predominated on the Eastern Seaboard. Humanitarianism had bloomed in response to the horrors of the Civil War, and a widespread distrust of the military resulted in strong political pressure

---

<sup>22</sup> Lazarus, *Black Hills/ White Justice*, 25-27.

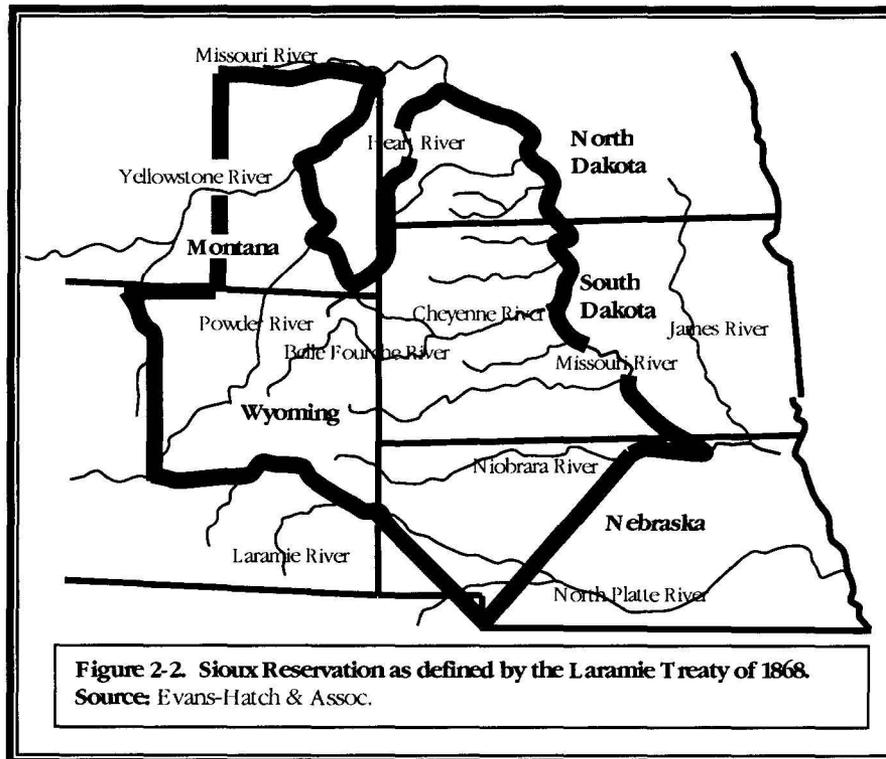
<sup>23</sup> As quoted in Lazarus, *Black Hills/ White Justice*, 39.

<sup>24</sup> *Kansas Daily Tribune*, January 12, 1867, as quoted in Lazarus, *Black Hills/ White Justice*, 39 and 41-42.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

to minimize its size. Additionally, a political struggle between the army and the Department of the Interior regarding jurisdiction over Native Americans was escalating. Lewis Bogy, Commissioner of Indian Affairs, argued that the death of Fetterman and his men was at least in part caused by conduct of Euro-Americans, including the United States Army. In opposition to the army's advocacy of an armed response, the Department of the Interior argued for protective custody. The department wanted the Indians confined to clearly defined reservations that would be off-limits to all but Native Americans and government employees conducting official business.<sup>25</sup>



The United States Congress argued the issue through the winter of 1866-67. The political lines were drawn between the West and the East. Western senators and representatives argued for Sherman's advocacy of "disciplining" the Indian. Eastern members of Congress argued for confinement on reservations.

In July 1867, Congress dispatched negotiators to enter into a treaty with the Native Americans on the Great Plains. The negotiators were to reach an agreement that would safeguard settlers as well as emigrants and

---

<sup>25</sup> Lazarus, *Black Hills/ White Justice*, 40-43.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

railroads. Congress directed the commission to establish reservations on land arable enough to enable the Indians to become self-sufficient farmers. Negotiators representing the Native Americans accepted nothing less than being left alone to live their lives, which included the United States abandoning the Bozeman Road and other encroachments on Indian Country that violated the 1851 treaty. Negotiations broke down, and the commission steamed east on its new railroad.<sup>26</sup>

A year later in April 1868, United States negotiators were back. This time, however, they arrived with a proposed draft treaty that met the earlier demands of the Indian negotiators. These 1868 treaty provisions closely paralleled the provisions of the 1851 treaty. The 1868 treaty set aside all of the land in the future state of South Dakota west of the Missouri River (including the Black Hills) for the absolute and undisturbed use and occupancy of the Sioux (Article 2). Land northwest of this permanent reservation was identified in Article 16 of the treaty as being “unceded” Indian land, and all persons were barred from entering unless they were members of an Indian nation or had permission from an Indian nation to enter. This included the Powder River region. The treaty also recognized Native American hunting rights along both the Republican and Platte rivers in Nebraska and Wyoming, areas that had already been settled by Euro-Americans when the treaty was signed.<sup>27</sup>

The 1868 treaty was one of 370 Indian treaties formally ratified by the United States Senate up to 1871, when treaty-making with Indians ceased. Ninety-six of the treaties dealt at least in part with the establishment or reaffirmation of peace and a recital of the supremacy of the United States government; 230 of the treaties concerned land conveyances; seventy-six dealt with Indian relocations; fifteen established “perpetual annuities,” and nineteen required the payment of debt.<sup>28</sup> The 1868 treaty with the Sioux and its ratification in 1871 provided the basis for the federal government’s opposition to Euro-American entry into the Black Hills

---

<sup>26</sup> Lazarus, *Black Hills/ White Justice*, 48-49.

<sup>27</sup> *Papers Relating to Talks and Councils Held with Indians in Dakota and Montana Territories in the Years 1866-1869* (Washington, DC: US Government Printing Office, 1910).

<sup>28</sup> William C. Sturtevant, editor. *Handbook of North American Indians*, Vd. 4 (Washington, DC: Smithsonian Institution, 1988).

## **Pressure Mounts for Euro-American Entry**

Despite mounting political pressure to allow Euro-American entry onto the Great Sioux Reservation, the U.S. Army opposed it into the early 1870s. On March 16, 1872, Moses K. Armstrong, the territorial delegate to Congress, reported a conversation he had had with the Secretary of the Interior and the Commissioner of Indian Affairs:

The secretary of [the] interior and commissioner of Indian Affairs do not take so favorable a view of the matter, but declare that the government must stand by its faith with the Indians, for whom that region has been set apart as a reserve, and that no formidable expedition of white men will be sustained by the United States government in any invasion of this home of the red men, for the purposes of mining operations or the manufacture of lumber, unless the Indians will first consent to alienate their claim or remove to some other locality.<sup>29</sup>

The federal government's continuing opposition to Euro-American entry into the Black Hills also manifested itself in a press release to local newspapers published in areas around the Black Hills. In a March 26, 1872, release, Major General W. S. Hancock, United States Army, said

Letters are being received at these headquarters from various parts of the United States, making inquiries in regard to the reputed gold discoveries in the section of the country west of the Missouri River known as the Black Hills of Dakota, and asking if expeditions, presumed to be now in process of organization, will be permitted to penetrate that region.

The section of country referred to is set apart as an Indian reservation, by treaty with the Sioux, and the faith of the Government is understood to be pledged to protect it from the encroachments of, or occupation by, the whites. Accordingly any parties or expeditions which may organize for the purpose of visiting or

---

<sup>29</sup> Moses K. Armstrong, *The Early Empire Builders of the Great West*, St Paul: E. W. Porter, 1901. 235.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

“prospecting” the region in question, will be engaging in an unlawful enterprise, the consummation of which it will be my duty, under the law and my instructions, to prevent, by the use, if necessary, of the troops at my disposal. In this connection I may mention that I am just in receipt of an official letter from General Stanley, in command, subordinate to me, on the Missouri River, in which he refers incidentally to the Black Hills gold reports, in which he says no gold has been found there.

If you will give publicity in your columns to the statements herein contained, I do not doubt it will be the means of saving many worthy people from incurring useless expense.<sup>30</sup>

Pressure to open the Black Hills to general resource exploration by Euro-Americans continued to mount. Miners wanted to explore for gold, lumbermen wanted to look for timber resources, and ranchers were interested in grazing land. Freighters, merchants, outfitters, and assorted other local businesses in areas proximate to the Hills also lobbied in support of the miners, lumbermen, and ranchers.

Slowly, the federal government’s position began to shift. The changing policy was foreshadowed in a March 28, 1872, letter written by the Secretary of the Interior to Charles Collins, owner and publisher of the *Siox City Times*, who had been actively lobbying in Washington, D.C., for Euro-American mining in the Black Hills:

I am unable to express an intelligent opinion, now as to the propriety of immediate efforts to extinguish the Indian title in the pine forests of the Black Hills. I am inclined to think that the occupation of this region of country is not necessary to the happiness and prosperity of the Indians, and as it is supposed to be rich in minerals and lumber it is deemed important to have it freed as early as possible from Indian occupancy.

I shall, therefore, not oppose any policy, which looks, first, to a careful examination of the subject upon the basis indicated in this letter. If such examination leads to the conclusion that

---

<sup>30</sup> Quoted in Kingsbury, *History of Dakota Territory*, 874.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

the country is not necessary or useful to the Indians, I should then deem it advisable that steps be taken to extinguish the claim of the Indians and open the territory to the occupation of the whites.<sup>31</sup>

On several occasions, the army had to remove groups of armed Euro-American gold explorers who had managed to avoid army patrols and enter the Hills. In those instances when the army apprehended Euro-American trespassers in the Black Hills and turned them over to civilian law enforcement authorities, the trespassers would simply be released. Euro-Americans residing near the Black Hills in communities like Cheyenne, Laramie, and Yankton, simply believed they had a right to be in the Black Hills and that their rights superceded the rights of the Sioux. And their local governments supported them. In 1873, the legislature of the Territory of Dakota petitioned Congress to open the Black Hills to Euro-American exploration and mining. The territorial legislature fallaciously argued that the only use made of the Hills by the Sioux was as a refuge after attacking and robbing Euro-American travelers headed west along the Platte River.<sup>32</sup>

### **Economic Depression Heightens Clamor for Gold**

The skepticism expressed in the Hinman, Winchell, and Jenney reports went unheard over the clamor of gold frenzy. Importantly, the public wanted to believe in abundant Black Hills gold; the public needed some good news, some hope. A nationwide economic depression had severely gripped the United States, creating an environment where any dangling thread of hope would be grasped. In late 1873, the eastern benevolence toward Indians began to be eroded by the initial waves of this economic depression emanating from Western Europe and making inroads on the United States economy. In September 1873, the Philadelphia investment house of Jay Cook failed. The investment house had been financing railroad construction, including the Northern Pacific Railroad, and had played a substantial role in financing the Union Army during the Civil War. Since the railroads had become the nation's single largest employer, their failure resulted in the collapse of the entire economic structure. Banks demanded immediate repayment of loans, investors rushed to sell stock before business failures caused a sudden reduction in stock value, and businessmen and farmers who had borrowed heavily to

---

<sup>31</sup> As quoted in Armstrong, *The Early Empire Builders of the Great West*, 239.

<sup>32</sup> Legislative Assembly of Dakota Territory, "Memorial asking for a Scientific Exploration of that Territory," 42 Cong., 3 Sess., Senate Misc. Doc. No. 45 and 65.

finance expansion after the Civil War were unable to pay their notes. The New York Stock Exchange closed for ten days. Foreclosures became common, banks failed, factories went out of business, and most major railroads failed. Unemployment across the country may have reached 25 percent; suffering was widespread. In the Midwest a four-year infestation of grasshoppers had caused enormous damage to crops. According to one report, grasshoppers hung over Fort Sully, Dakota, "like coal smoke from a steamer."<sup>33</sup> Governors from six Midwestern states and Dakota appealed to Congress to provide aid to suppress this scourge and to offer relief to settlers who had abandoned their claims. All this contributed to a heightened sensitivity to reports of gold in the Black Hills.

### **Custer's 1874 Expedition**

In response to the federal government's shifting position on Euro-Americans' illegal entry in the Black Hills, an army expedition comprised of more than 1000 soldiers and assorted scientists and civilians conducted a survey of the Black Hills in July and August 1874. This expedition was not tasked with merely circumventing the foothills, or making short sorties into peripheral canyons, but was ordered to enter the heart of the Black Hills and investigate the area from south to north. The group was led by Lieutenant Colonel George Custer who was later killed by Indians in a battle along the banks of the Little Big Horn River. The lieutenant colonel added to the public clamor by reporting that he'd "discovered" gold during his ride through the Hills.<sup>34</sup> On August 2, 1874, Custer dispatched his news of gold discovery:

Gold has been found at several places [along French Creek] and it is the belief of those who are giving their attention to this subject that it will be found in paying quantities. I have upon my table 40 or 50 small particles of pure gold, in

---

<sup>33</sup> Quote from Watson Parker, *Gold in the Black Hills* (Pierre: South Dakota State Historical Society, 2003), 39.

<sup>34</sup> Literature on Custer's 1874 expedition into the Black Hills is voluminous. Among the more authoritative and interesting sources are: Donald Jackson, *Custer's Gold: The United States Cavalry Expedition of 1874* (New Haven: Yale University Press, 1966); Cleophas O'Harra, "Custer's Black Hills Expedition of 1874," *Black Hills Engineer* 17: 4 (November 1929), 221-87; Ernest Grafe and Paul Horsted, *Exploring with Custer* (Custer, SD: Golden Valley Press, 2002). Also see several published journals of the men traveling with the expedition, including Fred Power, James Calhoun, and Theodore Ewert.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

size averaging that of a small pin head, and most of it obtained today (August 2<sup>nd</sup>) from one panful of earth. As we have never remained longer at our camp than one day, it will be readily understood that there is no opportunity to make a satisfactory examination in regard to deposits. . . . Veins of what the geologists term gold-bearing quartz crop out on almost every hillside.<sup>35</sup>

Again, on August 15, Custer reported:

[I]n one place, and the only one within my knowledge where so great a depth was reached, a hole was dug 8 feet in depth. The miners report that they found gold among the roots of the grass, and from that point to the lowest point reached, gold was found in paying quantities. It has not required an expert to find gold in the Black Hills, as men without former experience in mining have discovered it at an expense of but little time or labor.<sup>36</sup>

The reported “discovery” was repeated in a number of newspapers and periodicals and with each telling the probable magnitude of gold to be found in the Black Hills was exaggerated.<sup>37</sup> A reporter from a Chicago newspaper, who accompanied the expedition, wrote an article that was published on August 27, 1874:

In previous dispatches and letters I have told of the discovery, but the place then hadn't reached the dignified name of a “diggin's,” and only a few little yellow particles had been washed out of a panful of sand. This is the first opportunity our miners have had to make a really fair test of the “color,” and it has yielded them abundantly. .

---

<sup>35</sup> “Report of General Custer to the Department of Dakota, St. Paul, Minnesota, August 2, 1874, via Fort Laramie.” Senate Exec Doc. No. 32, 43<sup>rd</sup> Cong. 2<sup>nd</sup> Sess (1875).

<sup>36</sup> *Ibid.*

<sup>37</sup> *New York Daily Tribune*, August 11, 1874; Bismarck, *Dakota Territory Tribune*, August 12, 1874; *Chicago Daily Tribune*, August 26, 1874; *Harper's Weekly*, September 12, 1874.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

. . . From the grass roots down it was “pay dirt,” and after a dozen pans or more had been washed out, the two persevering men who will be the pioneers of a new golden State came into camp with a little yellow dust wrapped carefully up in the leaf of an old account book. . . . At daybreak there was a crowd around the “diggings,” with every conceivable accoutrement. Shovels and spades, picks, axes, tent-pins, pot hooks, bowie knives, mess pans, kettle, plates, platters, tin cups, and everything within reach that could either lift dirt or hold it was put into service by the worshippers of That God, Gold.<sup>38</sup>

*Harper's Weekly* added to the popularity of the Black Hills when it published an article on September 12, 1874, reporting Custer's expedition: “On the 31<sup>st</sup> of July, gold was discovered along the banks of a creek on which the expedition was encamped, the best pan yielding from five to ten cents worth of gold, equivalent to fifty dollars a day to the man.”<sup>39</sup>

Not all reports from the Hills about extravagant gold discoveries were so grandiose. There was skepticism regarding rich gold fields in the Black Hills within Custer's rank. Newton Winchell, Custer's chief geologist, testified before a congressional committee that he had no personal knowledge of the alleged gold discovery. Frederic Grant, the son of the current president, had also traveled with the expedition and echoed the geologist's doubts. Additionally, others with personal knowledge of the geology of the Black Hills questioned Custer's reports before Congress.<sup>40</sup>

Just a few weeks after the Custer group had departed for the Black Hills, a Methodist-Episcopal missionary, Samuel D. Hinman, who had lived in the Black Hills and had publicly opposed Euro-American entry, departed for the Hills in search of an appropriate location for the Spotted Tail Indian Agency. The army provided his group with an escort of two cavalry companies and several miners who had gold mining experience in California also accompanied the group. Hinman's group reported that they found no gold.<sup>41</sup>

Walter P. Jenney and Henry Newton, appointed by the secretary of war to explore the Hills and investigate the claims of gold, arrived with 15

---

<sup>38</sup> William E. Curtis, “Gold,” Chicago *Inter Ocean*, August 27, 1874, 1.

<sup>39</sup> “The Black Hills Expedition,” *Harper's Weekly*, September 12, 1874, 753.

<sup>40</sup> *Annual Report of the Commissioner of Indian Affairs, 1874*. November 10, 1874, 90-97.

<sup>41</sup> *Ibid.*, 90-97. Also see Watson Parker, “Report of the Reverend Samuel D. Hinman,” *Bits and Pieces* 5 (November 1969), 5-9.

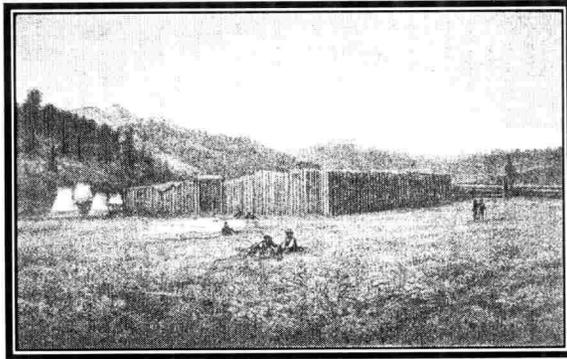
**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

assistants and an escort of 400 soldiers on French Creek in June 1875. Jenney found the placers on French Creek unpromising. Jenney also noted that the gentle slope of French Creek and the failing water supply made placer mining for gold more difficult and not profitable. Further north, along Rapid Creek and its tributaries, Jenney found increasing amounts of gold. Jenney's reports of meager gold finds failed to discourage hopeful and eager prospectors.<sup>42</sup>

### **Gordon Party & Gold-Seekers Arrive in Black Hills**

Despite conflicting reports of gold in the southern Black Hills, a



**Figure 2-3. Gordon stockade.** *Courtesy of Datavue Library, Archives, South Dakota School of Mines and Technology, Rapid City, SD (GLS-1190).*

frenzied rush, characteristic of the 1850s and 1860s mineral strikes elsewhere in the West, began in late 1874 and early 1875. On December 23, 1874, one small gold exploration group led by John Gordon, picked up Custer's trail into the center of the Hills and was able to successfully reach

French Creek, just three miles below present-day Custer (and about sixteen miles east of Jewel Cave). Gordon had been paid \$1000 by this group for his services as guide. After proving to be an inadequate leader, Gordon returned to Sioux City, leaving his group on French Creek. The Gordon party consisted of twenty-six men, one woman, and a nine-year-old child. Although they conducted limited explorations in the immediate area, they dedicated most of their time to the construction of six or seven cabins, spaced about six feet apart, inside an encircling vertical-log fortification wall. This square stockade measured some eighty feet across. By mid-January 1875, the Gordon party had dug a shallow well and laid in a huge supply of firewood for emergencies, eventually platting a townsite named Harney City near the stockade. The stockade structures and other landscape modifications along French Creek represented the earliest

---

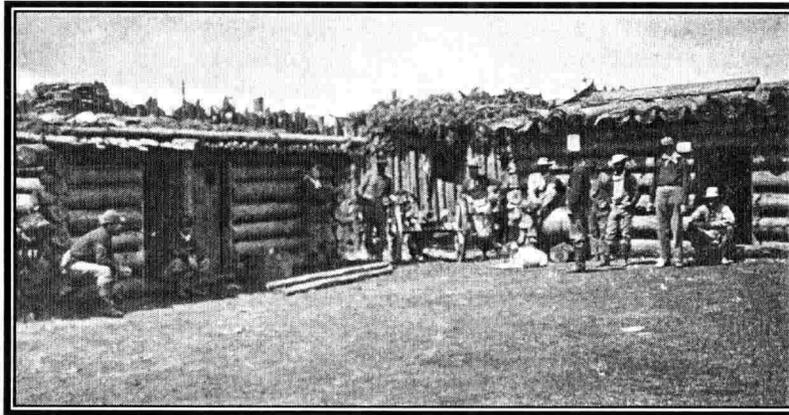
<sup>42</sup> Watson Parker, *Gold in the Black Hills* (Pierre, SD: South Dakota Historical Society Press, 2003), 63-65.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

harbingers of the more permanent presence of Euro-Americans in the southern Black Hills.<sup>43</sup>

After finding gold on French Creek, the Gordon party decided to adopt a Euro-American approach to protecting its mining rights by forming a so-called “mining district.” On March 6, 1875, Gordon party members organized the “Custar [sic] Mining District” and drafted articles, or rules, that established the size and dimensions of mining claims, prohibited the damming or other interferences with another person’s access to creek water abutting a claim, required a claim be worked no less than one day a week between May 15 and October 1 each year (except claims on ledges), required the posting and recording of claims, and provided for the election of a recorder who would keep accurate records of all claims.



**Figure 2-4. A photographer with the Newton Jenney Survey of 1875 captured the interior of the Gordon Stockade, near present-day Custer, just as miners began to flood to the reported site of gold on French Creek.**  
*Courtesy of the DeWitt Library Archives, South Dakota School of Mines and Technology, Rapid City (GLS-1171).*

The Custer Mining District focused exclusively on land adjacent to or within the drainage of French Creek. On March 15, 1875, Angus McDonald filed the first claim under these articles. No sooner had Gordon party members attempted to create Euro-American rules representing the permanency of their venture than the group was ushered out of the Black Hills, in April 1875, by a military unit commanded by Captain John Mix.<sup>44</sup>

---

<sup>43</sup> Parker, *Gold in the Black Hills*, 30-33. Also see John S. McClintock, *Pioneer Days in the Black Hills: A Concise History and Facts Related by One of the Early Day Pioneers* (Deadwood, SD: John S. McClintock, no date), 23-34; Sundstrom and Sundstrom, “Exploration and Settlement,” 4a-7.

<sup>44</sup> Hyman Palais, “A Survey of Black Hills History,” *Black Hills Engineer* 27: 1, 25-31. C. C. O’Harra, “Early Placer Gold Mining in the Black Hills,” *The Black Hills Engineer*, 19: 4, 348. It is worth noting that Jenney’s group encountered miners at

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

In June 1875, however, about fifteen miners had returned and were working prospects claimed in the French Creek area. This group of miners had organized the "Cheyenne Mining District" that month at Bear Rock, about one mile from the future site of Custer. This mining district began at the Gordon party stockade and extended to the headwaters of French Creek. According to the laws of this mining district, the mining season remained open from May 1 to November 15, the end of the claims were to be marked with stakes four feet tall, and a claim needed to be recorded no more than five days after prospecting began or it would be considered vacant ground.

In an effort to evict these miners from the area, General George Crook stationed Captain Edwin Pollock on French Creek at a post known as Camp Collins (near the future site of Custer). Pollock's small fort, along with the miners' activities, provided more very visible evidence on the land of Euro-American presence in the southern Black Hills.<sup>45</sup>

When Captain Pollock was unable to remove all the trespassing miners, General Crook traveled to French Creek in the summer of 1875. Attempting to cajole these French Creek miners into submission, General Crook composed the following notice:

The undersigned [General Crook] hereby requires every miner or unauthorized citizen to leave the territory known as the Black Hills, the Powder River, and the Big Horn country by or before the 15<sup>th</sup> day of August, next [1875].

He [Crook] hopes that the good sense and law abiding disposition of the miners will prompt them to obey this order without compelling a resort to force. It is suggested that the miners now in the hills assemble at the military post about to be established at Camp Harney, near the stockade on French Creek, on or about the 10<sup>th</sup> day of August.<sup>46</sup>

Many miners in the southern Black Hills obediently assembled near the Gordon stockade and left the Hills on August 15, 1875. Army soldiers escorted the trespassers to Camp Robinson, Camp Sheridan, and Fort

---

French Creek on June 16, 1875, and observed that even at this early date the miners had been working on their various "claims" for several weeks.

<sup>45</sup> Palais, "Survey of Early Black Hills History," 36-38; Parker, *Gold in the Black Hills*, 70.

<sup>46</sup> George Crook, "Proclamation," handwritten and signed. Special Collections, South Dakota School of Mines and Technology.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

Laramie. Captain Pollock, however, was unable to find and remove all prospectors. General Crook allowed a handful of miners to stay behind and guard existing mining claims until, he promised, the Black Hills could be officially opened for Euro-American settlement. Additionally, numerous gold seekers evaded army patrols and continued to enter the Black Hills in search of rich placer deposits.<sup>47</sup>

Even when the army succeeded in removing miners from the Hills, the government's legal authority to keep Euro-Americans out of the Black Hills treaty lands became increasingly ambiguous and tenuous during 1875. That summer, an army lieutenant apprehended a group of more than one hundred individuals who had illegally entered the Black Hills. After being transported to Fort Randall, the miners were released only if they signed an agreement stating they would not reenter the Black Hills.

One arrested miner, Charles E. Solis, refused to sign the agreement. He argued that the United States government had no legal right to exclude him from the Black Hills. The local federal prosecutor requested a formal legal opinion from Attorney General Edward Pierrepont, who examined the statute carefully. According to this statute:

Section 2134. Every foreigner who shall go into the Indian country without a passport from the Department of the Interior, superintendent, agent, or subagent of Indian affairs, or officer commanding the nearest military post on the frontiers or who shall remain intentionally thereon after the expiration of such passport, shall be liable to a penalty of \$1,000.

Section 5440. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of such conspiracy, all parties to such conspiracy shall be liable to a penalty of not less than \$1,000, and not more than \$10,000, and to imprisonment not more than two years.<sup>48</sup>

---

<sup>47</sup> Palais, "Survey of Black Hills History," 39-41; Sundstrom and Sundstrom, "Exploration and Settlement," 4a-8.

<sup>48</sup> Revised Statutes, Sec. 2134 and 5440. These provisions were later codified at Title 18, United States Code, and substantially changed; however, subsequent developments of these particular statutory sections are not relevant to this inquiry.

**Chapter 2 - Exploration and Gold Discovery**  
**Historic Resource Study**  
**Jewel Cave National Monument**

---

Surprisingly, Pierrepont's interpretation of the statute favored Solis's position. The attorney general opined that Section 2134 applied only to "foreigners" and not to citizens of the United States; therefore, citizens of the United States were not prohibited from entering the Black Hills. Additionally, since Section 2134 did not apply to U.S. citizens, U.S. citizens could not be prosecuted for a violation of section 5440 when the alleged violation was premised upon a violation of Section 2134. Following Pierrepont's formal opinion, Chief Justice Shannon dismissed the criminal case against miner Charles Solis.<sup>49</sup>

This legal opinion had a profound effect on the army's vigilance in barring Euro-American entry to the Black Hills. It removed any justification behind the army's insistence that civilian authorities prosecute individuals they apprehended trespassing in the Black Hills. The opinion also diminished the president's determination to keep out trespassers on Indian treaty land.

On November 3, 1875, President Ulysses S. Grant met with generals Crook and Sheridan along with advisors from the Indian Bureau and directed the army to disregard Euro-American trespasses into the Black Hills. General Sherman reportedly wrote to one of his subordinate officers that if miners wanted to invade the Black Hills, "I understand that the President and the Interior Department will wink at it."<sup>50</sup> The occupation and possession of the Black Hills by Euro-Americans now seemed inevitable.

---

<sup>49</sup> Procedurally, Charles Solis filed a petition of *habeas corpus* against the United States, arguing that the government had no right to keep him from entering the Black Hills. Later, the Pierrepont opinion was criticized as being based on unsound jurisprudential reasoning. Traditionally, a person was (and still is) a "foreigner" if they are a resident of some state in the United States other than the state in which they are present. For example, a Missouri resident traveling through Ohio would be a "foreigner" in Ohio. A person who is a citizen of some other country, such as England, France, German, or Canada, is known as an "alien."

<sup>50</sup> Quoted in Lazarus, *Black Hills/White Justice*, 83.