

WHY MARTIN'S COVE MATTERS

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INTRODUCTION

This paper will focus on a lease agreement, signed in October, 2004, between the Bureau of Land Management (BLM) and the Church of Jesus Christ of Latter-Day Saints (LDS Church) that allows the LDS Church control over a historical site known as Martin's Cove, located in Natrona County, Wyoming.¹ Martin's Cove is located adjacent to the Oregon, California, Pony Express, and Mormon Pioneer Trails, and it was, according to the LDS Church, the site of the deaths of a number of Utah-bound emigrants who perished as a result of fall blizzards in 1856.² In addition to the historical claim, the LDS Church has claimed that Martin's Cove is sacred to its followers, and the leased land is presently used for a number of religious observances as well as historical reenactments.³ The LDS Church has also claimed that since the BLM is under-funded and under-staffed, it is in essence doing the BLM a favor in running the site and helping to accommodate and manage the large number of Martin's Cove and historic trail pilgrims.⁴

As we will see, the entire process of H.R. 2754⁵ has been marked by misinformation (if not deception), unprecedented collaboration between the BLM and a private group, in this case a religious organization, and the lease raises a number of troubling questions for historical preservation groups, civil libertarians, descendants of pioneers, and ordinary citizens.

A few years ago, the LDS Church began to show a new interest in using and acquiring land along the historic trails to be used by church members for pilgrimages and faith-enhancing experiences. In 1996, the LDS Church purchased the Tom Sun Ranch, located near an imposing granite formation known as Devil's Gate, which was an important land-

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1. H.R. 2754, 108th Cong., Pub. L. No. 108-137, 117 Stat. 1827, 1863-64 (2003), authorized the Martin's Cove lease agreement. Previously, H.R. 4103 had been proposed to sell the land to the Church of Jesus Christ of Latter-Day Saints.

2. Becky Bohrer, Casper Hearing (May 5, 2002), http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/sale/casper_hearing.htm.

3. *Id.*

4. Wyoming Church Leaders Call for Passage of Martin's Cove Land Conveyance Legislation (Sept. 26, 2002), http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/sale/lds_lobbies_for_passage.htm.

5. *See id.*

mark along the historic trails. The LDS Church made a number of improvements to the Sun Ranch and changed its name to the Mormon Handcart Ranch. A visitor's center was constructed in an old ranch house, several outbuildings were turned into museums, and other visitor facilities were built.

Since 1996, increasing numbers of church members have made summertime reenactments of the handcart treks of the 1850s, featuring period costumes, assumed identities, and roughing it on the trailside (though most treks have been supported by automobiles—"sag wagons" that carried supplies). By 2005, it was estimated that 70,000 people annually were visiting the Mormon Handcart Ranch, with about 12,500 trekkers using nearby public land.⁶ The BLM had to implement a reservation and fee system to try to control the impacts on the landscape, and the agency instituted a system that limited the number of trekkers to 7,500 annually, with the maximum group size of 200, and a fee of \$4 per person.⁷

Today, the Mormon Handcart Ranch serves as a staging area for reenactment treks, a place for religious gatherings, seminars for church members, and as a site for curious tourists. The visitor center and other museums seek to interpret and explain history in a style similar to National Park Service visitor centers. The interpretive staff, however, are all LDS missionaries, often retired church members who are called by church authorities to serve as missionaries for a set period of time.

The history of H.R. 2754 requires some background information. Martin's Cove is an area of approximately 1000 acres, managed by the BLM, and located just to the west and north of the Mormon Handcart Ranch. Former Representative James V. Hansen of Utah first proposed the sale of Martin's Cove to the LDS Church in 2001.⁸ Hansen's proposal was met with a great deal of opposition within Wyoming.⁹ Opinion polls showed that a majority of Wyomingites did not favor a sale.¹⁰ Wyoming's two senators, Craig Thomas and Mike Enzi, publicly announced their opposition to the sale.¹¹ Wyoming's sole Representative,

6. Letter from Barbara Dobos, Alliance for Historic Wyoming to Editor, HIGH COUNTRY NEWS (undated), <http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove> (follow "Attempts to Buy Cove" hyperlink; then follow "LDS Environmental Ethic" hyperlink) (last visited Apr. 6, 2006).

7. BLM Signs Decision Record for Group Trekking on the Oregon-Mormon Pioneer National Historic Trails in Lander, http://www.sufpw.org/historicwyoming/EmigrantTrails/RockyRidge/Decision_Record_Issued.htm (last visited Apr. 6, 2006).

8. Bohrer, *supra* note 2.

9. See Public Testimony, http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/sale/public_testimony_HR4103.htm (last visited Apr. 6, 2006).

10. Martin's Cove Scoping Statement Released, <http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/lease/scoping/index.htm> (last visited Apr. 6, 2006).

11. Press Release, Senator Craig Thomas, Martin's Cove Statement (June 17, 2002), available at http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/Sale/thomas_statement_passage_4103.htm [hereinafter Thomas, June 2002 Release] (discussing Senator

Barbara Cubin, was officially undecided.¹² Senator Thomas released the following statement:

I firmly believe the sale of federal land to cultural or religious organizations would set a bad precedent, and I have seen no evidence that suggests the current management situation between the Mormon Church and the Bureau of Land Management is not working. Because of this, I would prefer to see this current relationship continue.

I will continue to oppose the Martin's Cove legislation when it moves to the Senate and the Energy and Natural Resources Committee. I have made my position on the sale quite clear to my colleagues here in the Senate, and will continue to stress that the arrangement is working for both the church and the public. The Martin's Cove area is public land in Wyoming, and I feel that decisions regarding our public lands ought to reflect the will of our people.¹³

The sale proposal reached an impasse.

The BLM then proposed to lease the land to the church. Initially the LDS Church rejected the lease option for a variety of reasons. The BLM continued to press forward with the lease option. The Executive Director of the BLM, Kathleen Clark, was a former Utahan who once worked for Representative Hansen. Clark showed interest in assisting the church in its attempts to purchase or lease the land.

Pressure and a visit to the Cove seemed to alter Senator Thomas's opposition:

While I led the fight to prevent an outright land transfer of Martin's Cove, I have said all along that the BLM and the church should work together to reach a reasonable agreement and I am pleased that this proposal has come forward. Having visited the site, I am impressed with the facilities that have been developed on the adjacent private lands. The facilities help inform and educate the public to the important events that happened there, and it blends well with maintaining access to this public resource.¹⁴

In the spring of 2003, closed-door meetings were held in Cheyenne with representatives of the BLM and the LDS Church in attendance. Church representatives included a Riverton, Wyoming church leader, Lloyd Larsen, a Cheyenne lawyer, Brent Kunz, as well as Clint Ensign, the Vice President for Government Relations of Sinclair Oil, a company

Thomas' opposition). The author deduces Senator Enzi's often-stated position from the author's own observation of various news stories on the matter.

12. Bohrer, *supra* note 2.

13. Thomas, June 2002 Release, *supra* note 11.

14. Press Release, Senator Craig Thomas, BLM Offers Lease Agreement for Martin's Cove, Thomas Says (Jan. 16, 2003), available at, <http://www.sufpw.org/historicwyoming/EmigrantTrails/MartinsCove/lease/LeaseOffered.htm> [hereinafter, Thomas, Jan. 2003 Release].

with significant Wyoming holdings, owned by billionaire Earl Holding.¹⁵ Earl Holding's other Wyoming businesses included the Little America resorts located west of Green River and in Cheyenne.¹⁶ The result of the closed-door meetings was a proposal to lease 933 acres of Martin's Cove to the LDS Church for a period of twenty-five years for an annual fee of \$17,000.¹⁷ Scoping documents were prepared, and following continued public pressure, the relevant Congressional Subcommittee held one public meeting in Casper, Wyoming. The BLM prepared an Environmental Assessment in near-record time, complete with the required (and nowadays virtually obligatory) Finding of No Significant Impact.¹⁸ H.R. 2754 was attached to an omnibus spending bill and passed Congress in December, 2003. It was signed into law in October, 2004.¹⁹

The Martin's Cove lease surely demonstrates a new spirit of cooperation between the federal government, in this case the BLM, and the LDS Church. (In the past, particularly in the nineteenth century, the LDS Church did not have peaceful relations with the federal government.) The lease agreement may have set a precedent of national significance: the leasing of public land of historical significance to a private entity, in this case a religious organization. The lease agreement also begs the following questions: Who should interpret publicly-held or publicly-important historic sites? How accurate does historical information about a disaster have to be? What constitutes hallowed ground or a sacred place? Does the Martin's Cove lease violate the First Amendment's Establishment Clause? Did the BLM grant the lease to the LDS Church based on the uniqueness of the LDS claim: that the emigrant deaths that may have occurred there warranted such an extraordinary measure? Are the BLM and the federal government setting a new precedent by which other groups may make claims for sacred ground?

Before we can examine these questions, it's important to have some historical background.

I. HISTORICAL BACKGROUND

The year in question was 1856. Because of the success of overseas missionary work, as well as the promise of a new start in the New World, large numbers of European Mormon converts wanted to make the journey to the Territory of Deseret (Utah), to join in building Salt Lake City

15. Brodie Farquhar, *Setting the Stage for a Giveaway?*, CASPER STAR-TRIB., May 14, 2003, available at http://www.historicwyoming.org/EmigrantTrails/MartinsCove/lease/setting_stage_giveaway_cst.htm.

16. *Id.*

17. John Morgan, *Church Attempts Religious Balance at Martin's Cove*, CASPER STAR-TRIB., May 31, 2005, available at http://www.historicwyoming.org/EmigrantTrails/MartinsCove/seeking_balance.htm.

18. Press Release, Alliance for Historic Wyoming, AHW Reacts to FONSI (Oct. 1, 2004), http://www.historicwyoming.org/EmigrantTrails/MartinsCove/press_release_to_FONSI.htm.

19. Energy and Water Development Appropriations Act of 2004, Pub. L. No. 108-137.

and settling outlying areas. Brigham Young, territorial governor and church president, came up with a system to move Saints cheaply and quickly across the plains.²⁰ The first part of the plan was to use church money to set up the Perpetual Emigration Fund to be used to pay for ship passage across the Atlantic, train fare from the Eastern seaboard or New Orleans to Iowa City, and then overland travel across the Great Plains to Utah.²¹ Young was duly installed as president of the Perpetual Emigration Fund.²² The second part of the system came in the form of hand-carts, which were easier to make and move, as well as cheaper, than wagons with ox teams.²³

Church agents made all the arrangements for the Atlantic crossing, including chartering ships.²⁴ For a variety of reasons, during the winter of 1855-56 it was difficult to obtain shipping for the converts, and the ships were delayed in embarking from Liverpool.²⁵ Passengers in the ship *Thornton* didn't leave Liverpool until May 4, and passengers on the *Horizon* didn't leave until May 25.²⁶ These emigrants didn't reach Iowa City until July, where further delays ensued.²⁷ (Normally, west-bound emigrants would leave in March or April.) The two groups of emigrants from these two ships would be known by their captain's names: the Willie Company, which left Iowa City on July 15, and the Martin Company, which left on July 26.²⁸ Such a late start ensured that these emigrants would probably not reach the Salt Lake Valley before November—a very risky proposition given the weather of the high steppes and Rocky Mountains they would have to cross, as well as the likelihood of slow progress because of the presence of a number of very young and very old emigrants.

II. DIFFERENCES IN HISTORICAL INTERPRETATION

There have arisen several distinct versions of the subsequent events of 1856: (1) The official LDS Church version exists in church-sponsored displays at the Mormon Handcart Ranch visitor's center (adjacent to Martin's Cove and on private land.) This information is generally accurate and well-illustrated. It does leave out the idea of responsibility, that is, who made the decisions in question, but it does present selected information in an accurate way. In other words, it explains what happens but not necessarily why. It sticks to bald facts and tries not to embellish

20. LEROY R. HAFEN & ANN W. HAFEN, *HANDCARTS TO ZION* 23 (Bison Books 1992) (1960).

21. *Id.* at 23-24.

22. *Id.* at 23.

23. *Id.* at 29-30.

24. *Id.* at 38.

25. *Id.* at 47-48.

26. *Id.* at 46.

27. *Id.* at 91-92.

28. See WALLACE STEGNER, *THE GATHERING OF ZION* 239 (1964).

or explain; (2) The traditional version is the more informal or colloquial version of events taught to young Mormons and mythologized in the culture. This version relies primarily on faith and faith-enhancement. This version tends to ground such abstractions as sacrifice, faith, and obedience in the story of the handcart pioneers. This is the version that is often presented by the LDS missionaries who work as tour guides at Martin's Cove; and (3) The other version is more scholarly and based on research with primary (mainly personal journal) sources, as well as Perpetual Emigration Fund records, in LDS Church possession. The two most useful books about the handcart pioneers are now quite old, *Handcarts to Zion* by LeRoy and Ann Hafen (1960), and *The Gathering of Zion* by Wallace Stegner (1964). A new book about the disasters is expected soon from the University of Utah Press written by an independent historian Lyndia Carter.

Interestingly, the importance and focus of the tale of the handcart emigrants has changed over the years.²⁹ According to historian Lyndia Carter, "At the time it happened, these handcart company deaths made the church look bad, they made Brigham Young look bad and, as a result, a shroud of silence came down for many years and the event was never discussed."³⁰

At the Sun Ranch visitor's center and elsewhere, for example on the official LDS website,³¹ interpretive material attempts to put a positive spin on historical events. Another example is, "Presiding Bishop David H. Burton told a house subcommittee last month [May, 2002] that church ownership [of Martin's Cove] would preserve the site and educate visitors about what he called 'the most heroic single event in the Mormon pioneer experience of the nineteenth century.'"³² The heroism in question is probably the heroism of the rescuers, who came from Salt Lake City and met the then-stranded emigrants in late October, 1856.

Two areas of potential embarrassment are the Perpetual Emigration Fund, a church-sponsored system to pay for the emigrants' trans-Atlantic and Great Plains crossing, as well as the ultimate responsibility for the delays of the Willie and Martin Companies—and who actually made the decisions to allow them to leave so late in the year.

In the official LDS church version, the Perpetual Emigration Fund is presented as a benevolent method by which poor converts could make the crossing to Utah. The fact is that the Perpetual Emigration Fund was

29. Christopher Smith, *Tragic Handcart Account Evolved over the Years*, SALT LAKE TRIB., June 30, 2002, at B1.

30. *Id.*

31. The Church of Jesus Christ of Latter-Day Saints, Martin's Cove, http://www.lds.org/gospellibrary/pioneer/28_Martins_Cove.html (last visited Apr. 9, 2006) [hereinafter LDS Web].

32. *Smith, supra* note 29.

by no means free, and it resembled a system of partial indenturement. According to the official LDS church European publication, *The Millennial Star*, in order to repay the cost of the Atlantic and Great Plains crossing, emigrants understood, agreed to, and would be subject to this clause: "and that on our arrival in Utah, we will hold ourselves, our time, and our labour subject to the appropriation of the Perpetual Emigrating Fund Company, until the full cost of our emigration is paid, with interest if required."³³

In the traditional version of these events, delays are explained away as unfortunate matters for which no one had actual responsibility, and in the official version Brigham Young points the finger at someone else, when in fact the distant leaders should have known better and probably did.³⁴ Mormons had been living in the Rocky Mountain West for nearly ten years and would have known how quickly the weather could turn at seven or eight thousand feet in elevation. To put the blame simply on the weather leaves out half the story and absolves some of their responsibility. Wallace Stegner suggests at the very least the delays were "criminally careless."³⁵ The finger should be pointed directly at those who oversaw the emigrant's progress and the Perpetual Emigration Fund, as well as church agents in Liverpool and in the States. The emigrants were under the control of the church authorities; their decisions were not their own. According to Lyndia Carter, "I believe that if you're going to tell the history objectively, tell the complete history, not just the traditional version. And the side of the story that people never hear is that some guys really goofed up."³⁶

October and early November 1856 featured dreadful weather: intense cold, constant wind, and near-daily storms. Members of the Willie and Martin companies suffered greatly. Any Wyomingite knows how savage fall blizzards can be, and this was a worst case scenario come to life. Imagine pulling handcarts through days of blizzards without proper rations, gear, or clothing. Rations, which had already been reduced, were reduced further still. The emigrants had been told to take no more than seventeen total pounds of clothing and bedding and had received insufficient provisions in the first place.³⁷ Truly faithful, they hoped that a miracle would provide them with more. The miracle did not come and the emigrants began to die. They died from exposure, frostbite, malnutrition, starvation, disease, injuries, and exhaustion.

Actually, all along the trail the old, the infirm, the young, and the weak died. John Chislett, a member of the Willie Company, remarked

33. HAFEN & HAFEN, *supra* note 20, at 39–40.

34. STEGNER, *supra* note 28, at 238.

35. *Id.*

36. Smith, *supra* note 29, at B1.

37. HAFEN & HAFEN, *supra* note 20, at 102.

that it would seem odd to leave a campground without having to bury one or more persons.³⁸ These October blizzards, however, certainly increased the number of deaths. How many of these pitiful emigrants died is not subject to documentary rigor at the LDS Church-operated facilities. The missionaries at Martin's Cove routinely claim that 200 emigrants died there. This is patently and demonstrably false.

The handcart companies kept good records. Between 135 and 150 members of Martin's Company died between Iowa City and Great Salt Lake City.³⁹ Some died when still in the States, some died between modern-day Casper and a place called Greasebrush Creek, some died along the endless run of the Sweetwater River, some died while holed up near Martin's Cove, and still others died after the Martin's Company was rescued and was on its way to Great Salt Lake City.

The Willie Company lost sixty-seven of its members along the trail,⁴⁰ but none of them died at Martin's Cove. The Willie Company was about two weeks ahead of the Martin Company and had already passed by the Cove when they were overtaken by the snowstorms in question. To reiterate: these tragic deaths may have been avoided had the emigrants left Iowa City earlier. They did not leave earlier because of delays caused by mismanagement, lack of funds, bad luck, ignorance, and hubris. When they left was by no means the individual responsibility of poor emigrants. But rather than accepting what should be official responsibility, modern church spokesmen equivocate, seeking to praise and celebrate the emigrants' courage—which was formidable and which no one questions—and also praise the fortitude and heroism of the rescuers, rather than telling the entire story of the disaster. Brigham Young is let off the hook because he, having been informed of the plight of the handcart companies by Franklin D. Richards, organized the rescue attempts in October.⁴¹ The most we ever hear is “mistakes were made.”

This brings us to the exact location of Martin's Cove and its alleged historical significance. Kit Kimball is an Idaho native who serves as Director of the Office of External and Intergovernmental Affairs within the Department of the Interior. In her prepared remarks before the House Resources Committee, Subcommittee on National Parks, Recreation and Public Lands, public hearing held in Casper, Wyoming on May 4, 2002, she stated:

Martin's Cove was listed on the National Register of Historic Sites in 1977. It is significant because in 1856, Mormon pioneers traveling west pushing handcarts were trapped by a severe early winter snowstorm at Martin's Cove and it is estimated that between 135 and 150

38. STEGNER, *supra* note 28, at 245.

39. HAFEN & HAFEN, *supra* note 20, at 193.

40. *Id.*

41. *See id.* at 119–21.

of the pioneers perished The Department [of Interior] recognizes the unique significance of Martin's Cove to the [LDS] Church and understands and supports the intent of this proposed legislation [H.R. 4103] to enable the Church to manage the site's historic resources through educational and recreational opportunities for all members of the public.⁴²

Notice that Ms. Kimball is making the claim that between 135 and 150 pioneers perished *at* Martin's Cove.

Officially, the LDS Church is not able to go this far. The LDS Church website explains the significance of Martin's Cove this way:

Having started late from Iowa and suffered innumerable mishaps and miscalculations along the way, two handcart companies under the leadership of Captains Edward Martin and James G. Willie were caught in early snows near the Continental Divide in 1856. In one of the greatest tragedies in overland trail history, hundreds died of exposure and starvation before rescuers from the Salt Lake Valley brought them to this location a few miles west of Devil's Gate in early November.⁴³

Note here the carefully parsed language. The Martin and Willie Companies were separated and, again, the Willie Company had already passed the Cove. It is true that several dozen members of the Martin Company had died of exposure and starvation *before* rescuers brought them to this location (Martin's Cove—if they in fact did) a few (four) miles west of Devil's Gate in early November.

The only problem with both the traditional version of events, as related by Ms. Kimball, and the more official and careful version represented by lds.org, as well as the statement by Senator Thomas regarding "important events that happened here" is that all of the claims are erroneous.

Hafen and Hafen cite documentary evidence of eyewitnesses and rescue-party members. S.F. Kimball relates that the Martin Company lost over fifty-six people in the nine days since crossing the North Platte and their meeting with rescuers, sixteen miles east of Devil's Gate (nineteen miles east of Martin's Cove) at a place called Greasebrush Creek.⁴⁴ Rescuer Joseph A. Young agrees that the Martin Company was found

42. Martin's Cove Land Transfer Act: Hearing on H.R. 4103 before the Subcomm. on Nat'l Parks, Rec. and Pub. Lands of the H. Resource Comm., 107th Cong. (2002) (statement of Kit Kimball, Dir. of External and Intergovernmental Affairs, Dep't of the Interior), available at <http://www.blm.gov/nhp/news/legislative/pages/2002/te020504.htm>.

43. See LDS Web, *supra* note 31.

44. HAFEN & HAFEN, *supra* note 20, at 114–16.

sixteen miles east of Devil's Gate.⁴⁵ Rescuer George D. Grant also confirms these facts.⁴⁶

Apparently, the Martin Company members were brought by the rescuers to Devil's Gate, where there was a fort (now called Fort Seminoe) and some sheltering buildings. They waited out the worst of the storms there.

Barbara Dobos, a former Wyoming state legislator and co-founder of Alliance for Historic Wyoming, has repeatedly stated that there is no evidence that the Martin Company was ever even at Martin's Cove. She stated, "Archeological surveys done by the BLM at the time the trails were put in found no archeological evidence related to the Martin Company having been in the area. Nothing. There is evidence of Amerindian use of the site—mainly lithic indications of hunting."⁴⁷ Dobos goes on to cite Lyndia Carter "who can account for 20-25 deaths at the time the party camped at Devil's Gate—from her journal research" but none at the spot the Church claims as sacred.⁴⁸

A visit to the site confirms these facts. Devil's Gate is a natural rock formation that would have provided some shelter from the prevailing westerly winds. Moreover, there was a fort and some buildings at Devil's Gate in 1856. (Though it is clear that there would not have been enough room for all the emigrants and rescuers at the tiny fort.) The site the Church claims as hallowed and where 135-150 allegedly died would be the last place a person would pick to seek shelter. It is several hundred feet above the river and away from the trail on an open slope that faces directly west, into the prevailing winds, and about two and one-half miles from the fort. A person would pick such a place in a blizzard only in order to die quickly.

The late historian Aubrey Haines spent many years studying the Mormon Trail. Haines believed that the actual site of the Martin encampment was located east of the Church's sacred place, much closer to the river, closer to the fort, and more sheltered from the wind. As Barbara Dubos states, "The unlikely exposure/altitude factors led [Haines] to believe that the Martin Company huddled nearer the river and on the eastern face of the basin."⁴⁹ Again, a visit to the site supports Haines' hypothesis.

45. *Id.* at 230–31.

46. *Id.* at 227–29.

47. E-mail from Barbara Dobos, Board of Directors, Alliance for Historic Wyoming, to Kevin Holdsworth, Professor, Western Wyoming Community College (Oct. 12, 2005) (on file with author).

48. *Id.*

49. *Id.*

III. INTERPRETING MARTIN'S COVE

To review the salient facts: Deaths occurred all along the trail. The Martin and Willie companies were separated, with the Willie Company being several miles west of Martin's Cove when the worst snowstorms hit. Members of the Martin Company report fifty-six deaths between the crossing of the North Platte (modern-day Casper) and where the rescuers first reached the Martin Company, at a place now called Greasebrush Creek, nineteen miles east of Martin's Cove. There is no archaeological evidence that the Martin Company camped at the spot the LDS Church claims as sacred. What is probable is that the Martin Company holed up at the Devil's Gate fort and also another location less than a half mile away on the eastern side of the Cove. It is likely, then, that no one actually died in the location the LDS Church claims as sacred, although some members of the Martin Company perished on the eastern (rather than the western, "sacred") side of Martin's Cove, close to the Sweetwater River.

If the historical basis for the sacred claim is discounted or eliminated, and it should be, then we move into a more subjective area. It is clear that the LDS Church-sponsored interpretation would proffer Martin's Cove to represent the suffering of the emigrants in aggregate, to provide one single place to celebrate, as it were, and re-enact the horrors. This is fine, but the question remains: should public land be leased and used by a private group to form a kind of memorial for sacrifice and suffering that did not occur at that exact place?

When we go to Gettysburg, we want to believe that Pickett's Charge took place exactly where it is presented. We are able to see actual landmarks such as the Cornfield, Cemetery Ridge, Spangler's Wood, the Peach Orchard and so on. There is a general understanding that in cases where public land is used, there needs to a certain measure of historical accuracy.

Imagine if at Yellowstone Park there were no Park Service interpretive rangers or Park Service official publications. What if interpretation at the park were done by concessionaries—that a visitor might get slanted historical information along with a grilled cheese and Diet Pepsi at Old Faithful? More directly analogous, of course, would be interpretation done by a religious group, whether Catholic, Protestant or Jewish. Some people would be uncomfortable with this.

On site, some visitors to the Mormon Handcart Ranch and Martin's Cove might be highly uncomfortable with the proselytizing that goes on there. Under the present lease arrangement, LDS missionaries act as guides and interpreters on public land.

ElDean Holiday, caretaker for Martin's Cove and a LDS missionary, is quoted in an article in the May 31, 2005 *Casper Star Tribune*,

“We are the only LDS site in the world that doesn’t proselytize.”⁵⁰ Nevertheless, the same article mentions that forty-three missionary couples currently work at the Mormon Handcart Ranch and Martin’s Cove. Given the emphasis the LDS Church places on proselytizing, the presence of these forty-three couples, and it seems unlikely that these eighty-six people are merely there to answer questions and would have nothing to say about their belief in the teachings of the LDS Church.

It may well be that Martin’s Cove does have some extra-historical significance to members of the LDS Church. It may be that some type of revelatory event has occurred. This is supported by a plaque installed at the Mormon Handcart Ranch in 1997 wherein current Church president Gordon B. Hinckley makes the claim that this place [Martin’s Cove] is hallowed ground. Martin’s Cove has a number of special sites that are used as places of pilgrimage and devotion. It’s not really possible to argue one way or the other on this. If something is claimed to be sacred, and if that claim is based on revelation, then that’s fine, but it is absolutely not something the government ought to endorse. For the BLM to endorse this extra-historical version of events, and to promote it by agreeing to a lease and giving all control over the area to the LDS Church and its representatives, is deeply troubling.

Mormon authority Jan Shippo has pointed out that this looseness with the facts may be an example of “holy history,” that is, a not-exactly-accurate version of events designed to enhance faith.⁵¹ Others point to examples of the many dozens of hand bones of individual saints found in European cathedrals to various stories of miracles, healings, and the like.⁵² Given that possibility, government agencies should perhaps not be in the business of promoting “holy history.”

IV. MARTIN’S COVE TODAY

If you wish to visit Martin’s Cove today, as I did most recently on September 10, 2005, you will have some choices. There is an area designated for public parking, as well as signs which will allow a member of the general public to walk two and one-half miles to the Cove. Chances are a Mormon missionary will greet you, but the missionaries—probably as the result of the pending ACLU lawsuit⁵³—have been instructed not to

50. John Morgan, *Church Attempts Religious Balance at Martin’s Cove*, CASPER STAR TRIBUNE, May 31, 2005, available at http://www.historicwyoming.org/EmigrantTrails/MartinsCove/seeking_balance.htm.

51. Michael Riley, *Mormons, ACLU at Odds Over Future of Sacred Site*, DENVER POST, July 24, 2005, available at <http://www.rickross.com/reference/mormon/mormon249.html>.

52. *Id.*

53. Press Release, American Civil Liberties Union, Wyoming Residents, Including Decedents of Mormon Pioneers, Sue to Block LDS Church Control of National Historic Site, Mar. 9, 2005, <http://www.aclu.org/> (search for “Holdsworth”; then follow “Wyoming Residents, . . . Sue to Block” hyperlink) (discussing complaint, *W. Land Exch. Project v. Norton*, No. 05 CV 076 2005 WL 731986 (D. Wyo. Mar. 9, 2005)).

proselytize.⁵⁴ If you are a member of the LDS Church or would like to tour the LDS-owned facilities at the Mormon Handcart Ranch, you will encounter a number of friendly and helpful LDS missionaries. Most of the missionaries, who live in a trailer village a few miles away, will be dressed in period costumes. All will be wearing name tags.

Because of unclear signage, as a member of the public, you may wander into the Mormon Handcart Ranch without knowing what to expect. You may be confused what is LDS-owned and what is LDS-leased. A large sign in the parking lot will proclaim that the LDS Church owns Martin's Cove, which it does not. You may see a large number of cars in the parking lots and see a large number of people having some type of closed religious meetings at buildings on Church property (the former Sun Ranch). If you don't want to, or are unable to, walk the two and one-half miles to the actual sacred site, you can get a ride from one of the missionaries in a Kawasaki six-wheeler, via a back way that is not advertised to the public, and not made available to the public except by one of the missionary-led tours. This option, however, will include stops at mission stations where you will hear much "holy history." At Martin's Cove there are a number of various stations of pilgrimage—places where people meet, pray, reflect and celebrate, and because it is a site of pilgrimage, you may meet with hostile stares and secretive whispers from the faithful.

Around 70,000 LDS Church Members visit Martin's Cove annually.⁵⁵ My own experience is that outsiders, non-Mormons or perceived non-Mormons, are treated as second-class citizens at the site—glared at by pilgrims, greeted with indifference by missionary guides on the leased land, and unable to penetrate the secrecy and coding that seems to pervade the place.

Nevertheless, my recent visit was markedly different from the first time I visited the Martin's Cove area in July, 1997. My wife (who is also descended from Mormon pioneers) and I visited the Mormon Handcart Ranch Visitor's Center. Following our tour, our guide asked our religious affiliation and whether we were interested in learning more about the LDS Church. We declined to discuss this personal issue. When my wife wanted to walk over to the Cove, our guide barred her access, presumably because we had refused to answer his "golden" question. We have since learned that the LDS Church may have been making im-

54. Morgan, *supra* note 50.

55. See Michael Riley, *A Difficult Showdown Between Faith and History*, DENVER POST, July 17, 2005, at A1.

provements at the site at that time.⁵⁶ Other visitors have had similar experiences and encountered active proselytizing until the ACLU lawsuit.⁵⁷

It is also worth noting that unlike other historical sites, the Mormon Handcart Ranch does not maintain a bookstore where one might buy books of general or scholarly interest related to the topic. It also does not feature a pamphlet specifically about Martin's Cove.

V. CRITICISM OF BLM'S LEASE TO THE LDS CHURCH

Although an LDS Church spokesman claims 50,000 church members in Wyoming,⁵⁸ the lease has not been without critics. One group that has continually opposed the lease is the Alliance for Historic Wyoming (AHW), a non-profit citizen's advocacy group that maintains a useful website.⁵⁹ Objections include: the close union of church and state, widespread proselytizing, legal and political precedent, the extra-historical justification for the site, and the argument of utility—that the church is doing the chronically understaffed BLM a favor in handling the visitor pressure.

In March, 2005 the American Civil Liberties Union (ACLU) filed a lawsuit against the BLM,⁶⁰ claiming that by agreeing to lease land to the LDS Church and cooperating in interpretive endeavors, the BLM, a public agency, has endorsed a particular and private entity, in this case a religious organization.⁶¹ In doing so, the BLM has collapsed the wall of separation between church and state envisioned by the Framers and contemplated in the First Amendment.⁶² In addition, the ACLU complaint alleges that visitors to Martin's Cove are subject to pervasive proselytizing.⁶³

One example of the cooperation between the BLM and the LDS Church was found on the actual interpretive signs located at the Handcart Ranch *and* at the Cove. All these signs boasted the twin logos of the

56. *Martin's Cove Tough to Resolve*, CASPER STAR-TRIBUNE.NET, Oct. 27, 2002, available at <http://www.casperstartribune.net/articles/2002/10/27/news/casper/0673221e9d020a4f87256c5e006a569b.txt>.

57. Alliance for Historic Wyoming, Aug '05 Update, http://historicwyoming.org/EmigrantTrails/MartinsCove/august_2005_update.htm.

58. Letter from Lloyd Larsen, President of Riverton Wyoming Stake, Church of Jesus Christ of Latter-Day Saints, to Senator Thomas, Senator Enzi, and Representative Cubin (Sept. 8, 2002), <http://www.historicwyoming.org/EmigrantTrails/MartinsCove/> (follow "LDS Seeks to Buy Martin's Cove" hyperlink; then follow "LDS Lobbies for Sale" hyperlink).

59. See Alliance for Historic Wyoming, <http://www.HistoricWyoming.org>.

60. See Complaint, *W. Land Exch. Project v. Norton*, No. 05 CV 076, 2005 WL 731986 (D. Wyo. Mar. 9, 2005).

61. *Id.* at 60-61.

62. *Id.* at 62.

63. *Id.* at 6, 17, 21.

BLM and the LDS Church until small metal plaques appeared in the summer of 2005, covering the logo of the LDS Church.⁶⁴

We have already discussed the issue of proselytizing. The ACLU suit alleges that it was widespread.⁶⁵ Although proselytizing seems to have been curtailed at the Cove for the time being, most likely because of the lawsuit, there are concerns that once the case is adjudicated, particularly if the judgment is in the defendants' favor, there would be little incentive for a further cessation of missionary work. If past history is any indication, and given the importance of missionary work in LDS culture, proselytizing might resume as soon as the case is decided.

Senator Craig Thomas spoke of the issue of precedent in his 2002 press release in opposition to the first plan for the sale of Martin's Cove.⁶⁶ The question of precedent has been part of this controversy from the beginning. Originally the question had to do with the possibility that other groups with ancestral claims, in particular Native Americans, might claim—based on documentary evidence—that a certain place was sacred by virtue of it being the site of the deaths of ancestors of the current tribe or band.⁶⁷ The sites of various atrocities perpetrated by the U.S. military against native peoples, then, might be considered sacred. Insofar as they might have taken place on public land, the tribe or band or group might make a legitimate claim to try to lease or buy the land. In fact, the Native American claim, in this instance, may be stronger, since in many cases there is no doubt whatsoever that there was a battle, slaughter, skirmish, or atrocity at a given site and at a given time. In such cases there often exists copious documentary evidence, and there may be forensic as well as archaeological evidence as well.

If, on the other hand, the LDS Church believes Martin's Cove to be sacred ground for extra-historical—that is, revelatory—reasons, then it may well be impossible to adjudicate differences in future claims, and this could create a multitude of problems for the government. The BLM in particular may have a difficult time explaining why it is that they promoted this lease, for it does appear that special favors may have been done.

Opponents of the Martin's Cove lease point out a certain inconsistency regarding land acquisition which can only be described as political. Imagine if an Indian tribe or band wanted to acquire land that it considered sacred, or was the site of a battle or massacre where many dozens of

64. Alliance for Historic Wyoming, August '05 Update, http://www.historicwyoming.org/EmigrantTrails/MartinsCove/august_2005_update.htm (last visited Apr. 9, 2006).

65. Complaint, *supra* note 60, at 6, 40.

66. Thomas, June 2002 release, *supra* note 11.

67. Eryn Gable, *Mormons' Lease Deal Draws Criticism*, LAND LETTER, Dec. 4, 2003, available at http://www.historicwyoming.org/EmigrantTrails/MartinsCove/lease/land_letter_on_lease.htm.

its members had died or been killed. Does it seem likely that Native Americans would be successful in such an endeavor? Probably not; history does not suggest success. If such a "private" group did turn out to be successful, would the general public object if the tribe or band gave its own interpretation of events, which might include a slanted interpretation or inflammatory language, and one which might also be at odds with historical fact or generally accepted belief? It does seem likely that it would create a stir. Take the analogy further, however, and one difference emerges: Native Americans seem to lack the political influence and representatives in Congress as well as the government agencies that the LDS Church enjoys.

Other emigrant groups may well feel slighted by the special treatment the LDS Church has received at Martin's Cove. Keep in mind that Devil's Gate was a major landmark on the Oregon, California, Mormon Pioneer, and Pony Express historical trails.⁶⁸ The purchase of the Sun Ranch and the lease of Martin's Cove have resulted in a marked increase in the use of all the trails in the area.⁶⁹ As they pass through this part of Wyoming, the four historic trails generally share a common corridor. As a result, the registration and permit system which the BLM had to implement because of vastly increased numbers may well shut out other users. Certainly descendants of other emigrants would probably not feel welcomed, and perhaps even slighted at Martin's Cove, by the emphasis on one group and one story.

VI. POLITICS AND MARTIN'S COVE

Politics is also enmeshed in another interesting sidelight of the Martin's Cove controversy: the about-face of Wyoming's congressional delegation regarding the sponsoring legislation. As we've seen, in the early days of the proposal to sell the site to the LDS Church, Wyoming's Senators Mike Enzi, Craig Thomas, and Representative Barbara Cubin were opposed to any land sale.⁷⁰ Elected officials and citizens publicly opposed the sale.⁷¹ In the give and take typical of a real estate transaction, elected officials seemed to undergo a conversion. Or if they did not undergo a conversion, at least they can be said to have seen the light.

It may be that some members of the LDS Church with significant political clout, including Senators Harry Reid, Bob Bennett, and Orrin Hatch may have worked behind the scenes.

68. Michael Riley, *A Difficult Showdown Between Faith and History*, DENVER POST, July 17, 2005, at A-01.

69. See Associated Press, *Thousands to Re-enact Trek on Mormon Trail*, GRAND FORKS HERALD, Feb. 15, 1997, at C-07.

70. See *supra* notes 11, 13-14, and accompanying text.

71. Brodie Farquhar, *LDS Faces Leasing Hurdle*, CASPER STAR-TRIBUNE.NET, May 17, 2003, available at <http://www.casperstartribune.net/articles/2003/05/17/news/1c6d57b1b08dac31a132575cb71f5fe5.txt>.

It may well be that some of that light was shone by Kathleen Clark, Executive Director of the BLM. Clark has close ties to Representative James V. Hansen of Utah, the original sponsor of H.R. 2754, having served as the Executive Director of his Ogden office.⁷² Clark's career was further enhanced when she was named by then-Utah Governor Michael O. Leavitt (currently Secretary of Health and Human Services) to head the state Division of Natural Resources. Clark was unanimously confirmed in 2001 to head the BLM,⁷³ although she had no experience with the BLM, and no experience with national appointed office.

Not much has been revealed regarding possible reasons for the conversion. What is known is that Clint Ensign, Vice President for Government Relations of Sinclair Oil, assisted with closed-door negotiations between the BLM and the LDS Church. Ensign is an employee of businessman Robert Earl Holding, who owns Sinclair Oil, Sun Valley Corporation, and Little America.⁷⁴ The result of these negotiations was the proposal to lease the land for a period of twenty-five years.⁷⁵

Ensign had experience with federal land transfers, having worked out a beneficial land exchange deal for Holding's Sun Valley Corporation's operation at the Utah ski resort of Snowbasin to expand the resort in order to host events for the 2002 Winter Olympics and create a ski resort legacy.⁷⁶ It is well known that Holding also worked closely with Representative Jim Hansen, Senator Bob Bennett, and Senator Orrin Hatch in connection with transportation and environmental issues at Snowbasin.⁷⁷

Holding's own interest in Martin's Cove may well be religiously-motivated. It may also be owing to the convenient location of the Little America motel, gas station, restaurants, curio shop and convenience store to pilgrims traveling I-80 east from Salt Lake City toward Martin's Cove. (Little America also operates two well-known hotels in Salt Lake City.) The southwestern Wyoming Little America resort is about two hours' travel time from Salt Lake City.

Representative Barbara Cubin underwent perhaps the most noticeable conversion.

Cubin, who publicly opposed the sale, was conveniently absent on the day of a crucial vote on H.R. 2754. Cubin later told her constituents

72. U.S. Dep't. of Interior, Bureau of Land Mgmt., Biography: Kathleen Clark, Director, BLM (Jan. 24, 2005), http://www.blm.gov/nhp/info/director_bio.htm.

73. *Id.*

74. See Farquhar, *supra* note 71.

75. Riley, *supra* note 68.

76. Brodie Farquhar, *Martin's Cove Negotiations: Setting the Stage for a Giveaway?*, CASPER STAR-TRIBUNE.NET, May 14, 2003, available at <http://www.casperstartribune.net/articles/2003/05/14/news/d5179c3bf4b7d3df5dbcc8e2dcb5fa24.txt>.

77. Telephone Interview with Andy Howell, Managing Editor, Ogden Standard Examiner, in Ogden, Utah (Apr. 19, 2006).

she was “stuck in traffic”⁷⁸—allowing the bill to pass in the House without having her fingerprints on the action.

CONCLUSION

My own interest in Martin’s Cove and in the Mormon handcart emigration is more than passing. My maternal great great great grandparents, Thomas, 62, and Mary, 59, Girdlestone, emigrants from the English Midlands, perished in the snows of the early-wintered fall of 1856. They were members of the Willie Company. They were survived by a daughter, Emma, 21, who was left orphaned and penniless in a foreign land.

If fate decreed that Emma Girdlestone, my great great grandmother, would have to undergo this unimaginable trauma of the crossing, so too was the rest of her life shaped by her experience. In Salt Lake City she became the first plural wife of a musician Thomas Ridges, who was employed building the pipe organ in the Salt Lake Tabernacle. The marriage was not a happy one, though it did produce a daughter, Mary Ann. Emma was granted a church-sanctioned divorce. She then supported herself and daughter by working as a seamstress. A few years later she became the first plural wife of Ralph Smith, who had been a founder of Logan, Utah, and moved into his household there. Ralph and Emma’s first child was Frederick Girdlestone Smith, my great grandfather.

Because I have an ancestral connection to the handcart disasters of 1856, I am troubled by both the lack of historical accuracy in the portrayal of those events, as well as an appropriation of the events—and particularly the emigrant deaths—for narrow purposes. Contemporary reenactors are given names—identities—of actual historical personages in their summertime treks.⁷⁹ Obviously it’s impossible to ask whether those long-dead individuals if they would like their identities borrowed in this way.

The pervasive proselytizing at the Cove also ignores the tremendous irony that the emigrant-converts who perished were under the auspices of the church authorities. Five generations later other church authorities would use their deaths to attract more converts. While it is perhaps laudable that young Mormons wish to discover history through this reenacting process, it should be pointed out that a summertime march across the hot, buggy high steppes of Wyoming teaches very little about what occurred in late October and early November 1856. If historical accuracy is the goal, then dressing in period costumes in summer is not enough,

78. Press Release, U.S. Congresswoman Barbara Cubin, Cubin Opposes Martin’s Cove Sale (May 13, 2002), available at <http://www.house.gov/cubin/news/2002/May13.html>; Associated Press, *Cubin: Hansen Unbeatable on Martin’s Cove*, BILLINGS GAZETTE, Jun. 20, 2002, available at <http://www.billingsgazette.com/> (search “Archives” for “June 20, 2002”; follow “Cubin: Hansen Unbeatable on Martin’s Cove” hyperlink under “Wyoming”).

79. Anthony Petterson, *LDS Recapture Pioneer Spirit*, THE GREEN RIVER STAR, Aug. 3, 2005, at C1.

nor were sag wagons any part of the actual-historical landscape, nor were trailside portable toilets. Only a trek in the storms of winter would give an accurate inkling of the horrors.

It is impossible to guess what the courts will decide, or whether any court would enter into a dispute over historical fact and legend. At the very least, it would seem that a reasonable person would conclude that the Martin's Cove lease violates the Establishment Clause of the First Amendment. Using public land for active proselytizing is not what the Framers had in mind. It is worth noting how opposed many of the Framers were to any attempt to marry church and state. If there's one thing that Thomas Jefferson—to name one—remained consistent on, it is this principle: that the state should establish no official religion, and that the business of government and church should be separated by a stout wall.⁸⁰

At the very least, if LDS missionaries are going to be the official interpreters and explainers at Martin's Cove, then they need to get the facts straight, they need to discuss what really happened, and they need to be prohibited from active proselytizing on public land. My own hope is that the story of all emigrants can be told truthfully and accurately, and that whatever interpretation is given would be based on a respect for their suffering rather than a desire for new converts. This hope seems impossible under the present arrangement.

80. See Robert L. Tsai, *Democracy's Handmaid*, 86 B.U. L. REV. 1, 39 (2006).

