

THE PERILS OF PELHAM, DS

Tom Webb, September 2020

Charles Henry Pelham (CHP) was born in Kentucky in 1790. By 1822 he had settled in Poke Bayou, Arkansas (later renamed Batesville). In 1821 he received his first contract as a Deputy U.S. Surveyor to lay out 2 townships in Randolph County near Pocahontas, Arkansas. Over the next 28 years, he would complete 78 surveys of township exterior boundaries and subdivide 117 townships into their aliquot parts in Arkansas.

Pelham was no stranger to Missouri. His notes are of record for GLO surveys of 11 townships in Missouri and plats of three townships bearing his name as deputy surveyor are of record in 1821. He surveyed exteriors of at least 6 townships. Other plats he may have been responsible for were “annulled” for “discrepancies”. One plat, Twp 22, Rng 20 W, that is of record is explicitly annulled by a large inscription by deputy surveyor Conway in 1847. His plats often have extensive notes written in the margins in his distinctive gothic script with convoluted and confusing explanations of his work. Many of these notes are crossed through as if in belated recognition (by Pelham or the Surveyor General) of their erroneous nature.

Despite the opportunities for fraud that the Arkansas GLO system provided, the shortcomings of Pelham’s work were first detected and corrective resurveys ordered by Surveyor General Rector. In an 1822 letter to Rector, Pelham pleaded “It was impossible for me to do better than I have, in consequence of the Cane and other undergrowth...Should the work not close exactly I hope you will make for me the necessary allowances – as I am satisfied it would not be in the power of any man to do it more correctly...”

Review of Pelham’s work on 8 townships along the White River in Independence County reveals that few of the prudent measures dictated by the GLO were made in his original surveys. The river, wide and swift, runs through these townships and is a significant obstacle to surveys. Its twisting meanders and limestone bluffs fractionalized the sections that abutted it. It was the practice that townships split by the river were surveyed by different deputies who closed their work on the steep banks. Each surveyor produced their own plat and set of notes. Sections cut in two by the river appeared on two township plats, one on each side of the stream. Sixty-seven such sections appear on this segment of the river roughly centered on Batesville.

The surveys were to proceed from two east-west standard lines: one 24 miles north of Batesville and the other a little over 40 miles south. It was assumed that sections on each side of the river would match up fairly well across the river. This did not prove to be the case for two reasons: Prospect Robbins mileposts set along the Principal Meridian in 1815 were set at intervals exceeding 5280 feet and Pelham’s defective methods in his 1840s surveys which were revealed by resurveys in the 1850s.

If the plan to lay out townships on opposite sides of the White River from the two separate standard lines and not extend the lines across the river had been adhered to, there would have been no problem. Apparently, CHP had other plans. In May of 1827, CHP extended a standard line on the east side of the White River across to the west bank and marked it for 6 more miles along what he believed was the south line of Township 13 North, Range 6 West. About a half mile south CHP discovered the line Deputy Surveyor Charles McPherson had laid out as the north line of Township 12 North, Range 6 West in 1819. These two lines should have been one and the same. Deputy Surveyor McPherson had spent the fall of 1819 laying out seven townships (42 miles) northerly from the standard line south of the White River to establish his township boundary. In a long and rambling note on his plat, CHP announced that he had “abolished” and “destroyed” McPherson’s corners and extended the lines of the six sections in the northern tier of Township 12 North, Range 6 West, northerly to his line, stretching them from 5,280 feet in length to around 9,000 feet (Figure 1 inset).

Resurveys in the 1850s confirmed that CHP’s abolition of Deputy Surveyor McPherson’s line had displaced the standard line and shifted Township 13 North, Range 6 West too far north—just the pitfall that was meant to be avoided by segregating the surveys on each side of the river. CHP’s grid of sections on the south side of the river did not line up with the sections in the townships to the west or with their separated portions across the river. All along the 40 mile stretch of river there is a crazy quilt of fragments of sections and staggered boundary lines. For example, Sections 19 and 20 of Township 13 North, Range 7 West, north of the river, are separated from the White River by parts of Sections 29 and 30 along the bank while across the river, Sections 19 and 20 of the same township abut the south bank. Largely due to CHP’s lack of care, the portions of the same townships on opposite sides of the river west of Batesville are offset from each other by about a mile. Because ownership of these parcels had been taken in reliance on the erroneous plats during the intervening years, the lines and corners could not be moved—the resurveyed plats could only show the warped grid as it had originally been laid out and the actual distances between the corners. In January, 1842, the report of the Arkansas Surveyor General to the Commissioner of the GLO stated:

“It is Mr. King’s (a GLO investigator) opinion...that all the old plats of the townships that are not authenticated by the Surveyor General should be made out anew from the field notes. There is a book on file in this office, containing 382 plats, besides some loose ones, which bear no mark of authentication, all of which were received in this condition from the Surveyor’s Office in St. Louis at the time of the establishment of this office [in Little Rock in 1832].”

The newly appointed surveyor general who wrote this report was William Pelham, CHP’s younger brother. Also trained in surveying, William Pelham had followed his older sibling to Arkansas in the 1820s and worked as a hand on his crew. By the late 1830s William had received a number of contracts from the GLO, including one to help survey the boundary between Arkansas Territory and Louisiana. GLO surveying

contracts were a prized source of cash on the frontier, attracting not only scrupulous and competent surveyors, but greedy opportunists ready to take shortcuts and engage in fraud. And, of course, family and political connections counted for much in the award of contracts. William Pelham cultivated these connections. In 1831 he married Mary Ann Conway, the sister of James Conway, who after serving as Surveyor General of Arkansas for 4 years was elected governor. In 1841, President John Tyler, a Whig, appointed William to the office of Surveyor General. In 1845 when James Polk, a Democrat, was inaugurated as president, Pelham fired all the Whigs in his office and switched parties. That kept him in office until 1848 when a Whig won the presidency.

Over his eight year tenure, William Pelham proved to be a politically savvy surveyor general who took good care of his older brother. Although not yet a year in office, Surveyor General Pelham used King's investigation to seek an increase in his budget to hire two extra clerks to complete the recommended work. The old plats were not redrawn, but Surveyor General Pelham cheerfully wrote his certification in bold fresh ink on his elder brother's faded plats from the 1820s and 30s. My research has identified at least 55 of these artifacts. William Pelham continued to bestow new surveying contracts on CHP until October of 1848.

While having a brother as surveyor general was highly advantageous, it was not the only reason why CHP's largely deficient surveying work remained in the records for as long as it did. During the 1820s and early 1830s, the GLO slowly offered up portions of the Arkansas public domain for sale to the public, much to the consternation of many politicians. Territorial Delegate Sevier complained how little of the territory had been made available for sale, blaming the absence of an Arkansas-based surveyor general as well as insufficient wages of three dollars per mile paid to deputy surveyors. Increasing political pressure and the demands of settlers and land speculators for more of the public domain would eventually override concerns about accuracy or survey quality

The practice of using subcontractors to complete surveys awarded to deputies was widespread even though the instructions issued by Arkansas Surveyor Generals Conway, Cross, and even Pelham specifically declared their use illegal. By 1843 the GLO commissioner had formalized established the strict policy of "... letting contracts to one deputy for the survey of the exterior township lines and to another deputy for the subdivisions... thus preventing frauds and gross errors." HRSS p100.

Four of CHP's plats clearly state that the work was done by a subcontractor. It is hard to believe that he had sufficient time to complete the number of surveys he was contracted to do. During this period, few deputy surveyors were solely employed by the GLO; CHP was no exception, and his resume includes many different positions with government, private business, and as a planter. CHP received a commission as a captain in the Arkansas Territorial Militia on September 21, 1824 and Lieutenant Colonel on October 24, 1828; by 1830 he was elected Colonel Commandant of the Independence County militia. CHP had put his surveying background to use locally,

such as when he surveyed the location for the Independence County jail in March of 1824. CHP was elected the surveyor of Independence County between 1827 until 1830.

When William Pelham was relieved of his duties as Arkansas Surveyor General, CHP lost his chief benefactor and protector, and CHP's poor surveying work began to face harsh scrutiny. For years, fraud and error in CHP's work had been blatant to the settlers who bought their homesteads in reliance on his plats and notes. Seeking their boundaries, they found few of the blazed lines or witness trees, and the corner posts, if ever set, had succumbed to decay, leaving only one rock pile among the many strewn upon the hills of Arkansas. Rumors and accusations of error and fraud increasingly swirled around the GLO office in Little Rock during Surveyor General Pelham's administration; apparently, he had conducted limited investigations of some of these problematic surveys, but turned up little (not surprisingly). The new Surveyor General Lorenzo Gibson immediately launched a more thorough review and quickly found what he called "strong evidence of fraud and forgery" in thirty townships completed by deputy surveyors "known to be guilty of making false returns in other instances (Pelham was not specifically named).

William Pelham's political affiliation appears to have been pretty flexible. When the Democrat James K. Polk won the presidency in 1844, William Pelham promptly defected from the Whig Party to Democrat and fired every Whig-affiliated clerk in the GLO office, thereby earning another stint as Arkansas Surveyor General until the Whigs retook the White House in 1849 and Pelham was promptly fired. The vicissitudes of national politics broke up the cozy Pelham family arrangements. President Zachary Taylor appointed Lorenzo Gibson in William Pelham's place. For the first time, Charles Pelham's work was subjected to unfriendly scrutiny.

After an investigation and interview with Pelham, Arkansas's new surveyor general George Milbourne reported to Washington: "In this connexion [sic], I deem it my duty to report the condition of the surveys executed by Charles H. Pelham, esq., who, for many years, enjoyed the confidence of the several surveyors general of this district as a faithful, skilful [sic], and honest deputy, and has had the benefit of large and lucrative contracts, at various times, during the last twenty-five or thirty years. In contracts of John W. Garretson and David W. Lowe, esqs., deputy surveyors, were included fragments of incomplete or erroneous surveys in, or adjacent to, townships surveyed and returned by Charles H. Pelham, deputy surveyor, both of which gentlemen report the fact that most of the work executed by Pelham, as far as coming under their observation, was erroneous; and in some instances his returns are shown, by examinations on the ground, to have been false, and in others fraudulent."

"The examination] found ...books of the field notes of surveys, I placed them under examination, and finding them without the affidavit required by the act of Congress of the 8th August, 1846, and replete with manifest errors and bearing the impress of great carelessness and disregard both of law and instructions"

Field investigation and resurveys by a team of deputy surveyors (Lowe, McPherson, and Garretson) commenced and continued until 1856 when Washington shut down GLO operations in Arkansas. Surveyor general Milbourne's report of 1854 stated: "... the fraudulent character of his [Pelham's] returns...you are respectfully referred to the plat of township 11 N., Rng. 3 W. constructed from Pelham's notes, and contrast that part of it west of the White river with the plat of the same constructed from the field notes of the resurvey of John Garretson, both on file in the GLO office, from which it will be seen that the western tier of sections is wider by nearly a half mile than represented by Pelham; and the south side of section 31, represented by Pelham to be 109.51 ch. is found by Garretson to be 144.20 ch. Also it will be seen that frac. section 34 containing 153.39 acres, is represented to lie on the west bank of the White River; whereas Mr. Garretson shows by his resurvey and traverse of that river that no part of section 34 lies on the west bank and that the river cuts off a considerable portion of the NE $\frac{1}{4}$ of section 33 represented by Pelham's notes as a full $\frac{1}{4}$ section... The White River rarely changes its bed..." In a cover letter to the report to Congress, the Commissioner of the GLO, John Wilson concludes: "The surveys in Arkansas, it will be perceived, is only prevented from closing the business of his [Milbourne] district by the discovery of frauds in surveying executed many years ago, which require correction or the resurvey of considerable tracts of land."

"I found that there was no possible way of legalizing the work, as Colonel Pelham could not *safely* swear that the work had been *faithfully* and *correctly* done, nor could the deputy who might be intrusted [sic] with its examination make the required affidavit, unless he had done the entire work, or had had it "executed under *his immediate personal superintendence.*"[Milbourne]

David W. Lowe, esq., under instructions from this office, examined fractional township 22 north, range 6 east, (west of Black river,) executed and returned by Pelham in 1845, and found that not a corner had been established, or a line blazed, nor was there any trace of a survey in any part of the fractional township. The same state of facts was found by John W. Garretson, deputy surveyor; to exist in part of township 12 north, range 5 west, north of White river. Mr. Garretson examined and re-surveyed said township.

Mr. Garretson finds, in his resurvey, that they are from fifteen to twenty-three chains east. Mr. Pelham reports the east boundary of township 12 north, range 4 west, as a straight line. Mr. Garretson finds, where the line crosses White River, an offset of more than twenty chains, and on the north side of the river, near to it, he finds no trace of a line.

The Little Rock office began maneuvering to resurvey the flawed original surveys of CHP and a handful of other deputy surveyors in earnest as a means to both fix problematic surveys and prolong the operations of the Arkansas GLO. This became more apparent in Surveyor General Milbourne's 1854 annual report. The next Arkansas

Surveyor General, Henry Massie Rector, detected even more evidence of fraud and error by CHP and a few other deputy surveyors.

In addition to lacking a formal process and criteria for conducting retracements and resurveys of problematic original surveys, GLO Commissioner Thomas Hendricks was looking to close long-running offices such as the one in Little Rock to provide more resources for other parts of the country without any completed surveys. Since the completion of the original surveys of all the townships in Arkansas in the mid-1840s, the GLO had expected the Little Rock office to wrap up its business and cease being an item on its budget. Instead, for most of the last decade, Arkansas had become a seemingly inexhaustible deposit of substandard surveys which its surveyor generals mined at the expense of GLO coffers.

CHP's death on October 10, 1855, did not halt Surveyor General Rector's campaign to expand resurveying of his original surveys—indeed, his passing may have even encouraged the effort, since even during the financially troubled last few years of his life, CHP was still well-connected politically. In his 1856 annual report, Rector produced a lengthy table of over 200 original surveys completed by CHP between 1821 and 1843—a second table included another 45 that had been resurveyed to date. To emphasize the extent of the problem, Rector had his cartographers update the state-level GLO survey status map for Arkansas to include CHP's flawed surveys (including those that had already been resurveyed), going so far as to include a prominent "P" and an entry appended to the legend.

Commissioner Hendricks, in a letter dated June 13, 1857, had directed Surveyor General Rector to only investigate and resurvey fraudulent or missing surveys when county surveyors (or other knowledgeable persons) had petitioned the Little Rock office for redress—their affidavit was then to be forwarded to the Washington GLO office for consideration and approval. In response to Hendricks' firm new directive, Rector distributed a letter to county surveyors across Arkansas informing them of this policy change. The Little Rock GLO office formally closed on March 12, 1859. Surveyor General Henry Rector resigned and was elected governor of Arkansas in 1860 and led the state out of the Union and into the Civil War in 1862.

Land speculation was one of the primary mechanisms by which to earn wealth (or go bankrupt) in early Arkansas, and the surveyors of the public lands were as involved as any in this activity. Indeed, it may have been that many got into the surveying business as a means to become wealthy. Receiving GLO surveying contracts not only brought in a substantial amount of money from the federal government but also provided an insider's track to the best parcels of land for farming, timber, and other kinds of development. A review of historic land records frequently shows GLO surveyors acquiring parcels of land immediately after the surveys in that area.

Surveying-related corruption and malfeasance, promulgated by the implementation of the GLO in territorial Arkansas, continued well into statehood. Statewide, sixty-four of

CHP's suspect surveys escaped resurvey, providing a snare and torment to generations of land owners and surveyors. Letters from county surveyors seeking guidance from the GLO on the proper methods to knit up and untangle the ragged fabric of the original surveys were finally answered in the 1880s by a pamphlet written by the Interior Department (successor to the GLO) on the restoration of lost and obliterated corners.ⁱ However, this pamphlet's preface qualified its guidance: "... the general rules here given must be considered merely as an expression of opinion by this office..."ⁱⁱ For many decades, there was little guidance in the Arkansas statutes or court cases to help the county or private surveyor in their retracement work. Rather, they had to rely upon their judgment based on experience and familiarity with the history of the land lines in their area. Their challenge and duty were expressed well by Randolph County Surveyor Tobe Chastain in 1906. Recall that some of CHP's earliest surveys were conducted in Randolph County.

"This ends my eight years as surveyor of Randolph County, Arkansas. And what I have done I now dedicate to the citizens of my county. And to them and my successors in office would say that during my term in office, I have located many section and quarter section corners from the original witness trees that was in such a state of decay that you will never see the evidence of line and corners as I have saw and found it. I would therefore ask you to seek positive evidence before you attempt to place such corners as I have set at some other point. It is a deplorable fact that so many government corners were not set where theory would have placed them. But law and justice demand that surveyors locate all gov. corners where they were originally set (and not where they should have been set) by the deputy surveyors who sectionalized our country. And on this policy I have always acted. And hope that this record will be of service to the people of my county in the future in helping to locate the boundaries of their lands. I now retire as your county surveyor and turn over the office to my successor."

This November the 1, 1906

Tobe. Chastain

Randolph County Surveyor, Book 3 at page 98.

Deputy Surveyor Granville McPherson, one of the better-spoken men engaged in the retracing effort, in April 1856 interrupted his dispassionate notes about some of CHP's work with an incensed aside: "...his notes for this corner as foreign from truth as heaven is from earth."

Charles Pelham died in October of 1855. A history of Independence County states that he had become "poor and died a broken old man." His reputation had been wrecked by his fraudulent surveys and his fortune dissipated by litigation and land speculation.

William Pelham was appointed Surveyor General of New Mexico in July 1854. He resigned this position in August of 1860. Few public land surveys had been conducted during his tenure. He had only one deputy surveyor on staff and sorting out Spanish land grants occupied most of his time. After the Civil War broke out in 1861 he was arrested on charges of being "a rank secessionist". In 1862 an invading Confederate

force freed him and proclaimed him governor of an insurrectionist new New Mexico. In just over a month he was deposed by a counter attacking federal army. "Pelham's support of the "Lost Cause" slammed the door on any future employment of him by the General Land Office." He retired to his large ranch in Texas and died in 1879. (credit to surveyor Fred Roedler article, *Surveyor of the Public Domain – A Portrait of William Pelham*, Lidar Magazine, 2009.

The assistance of Carol Payne of the Missouri Land Survey in researching Charles Pelham's surveys in Missouri is sincerely appreciated.

Much of the material in this presentation relating to Charles Pelham are from an article by Don Bragg, U.S. Forest Service, and Tom Webb, "As Foreign From Truth as Heaven is From Earth Charles H. Pelham and the original government surveys along the White River in Independence County", *Independence County Chronicle*, 2016.
