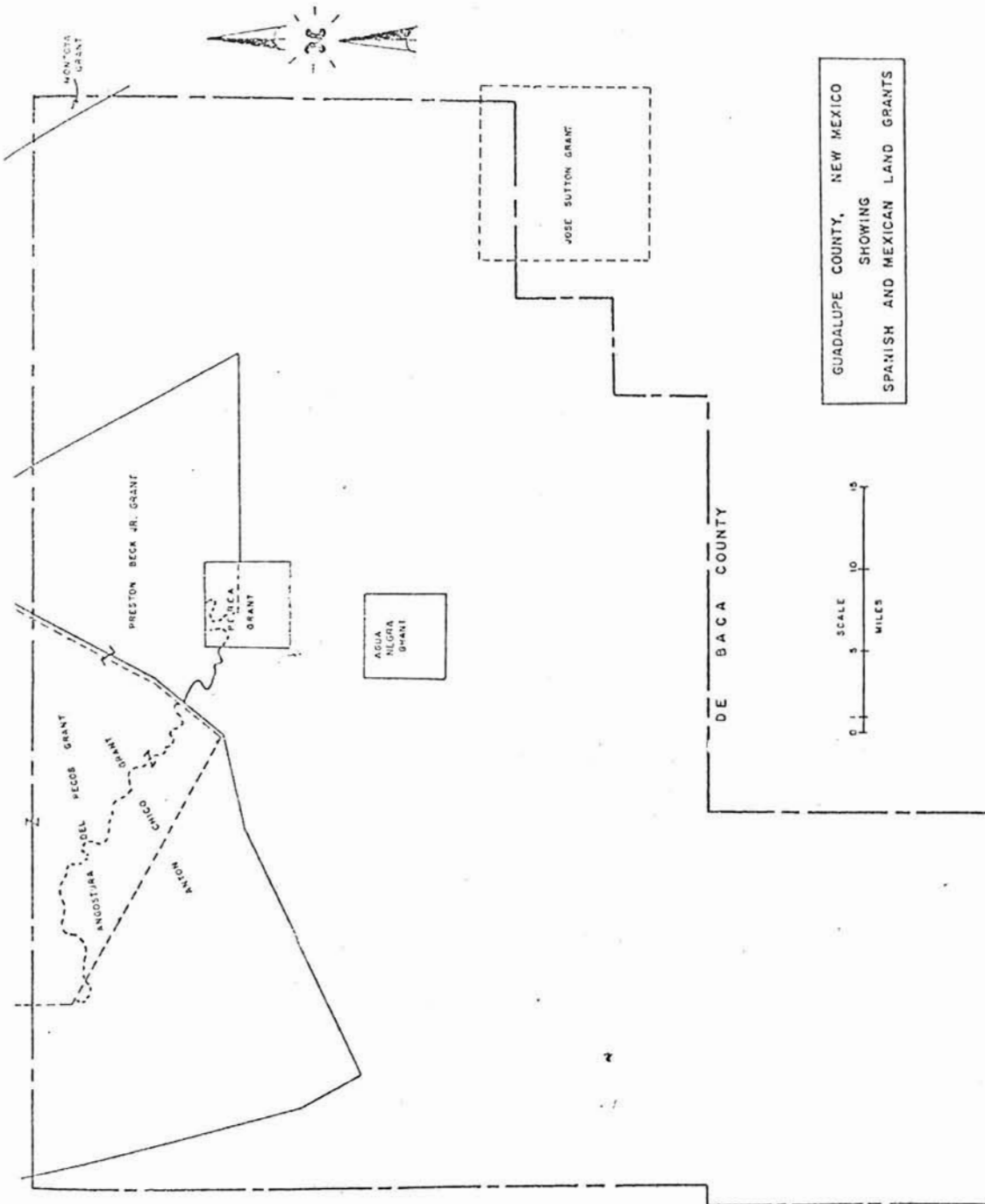


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THE JOSE SUTTON GRANT

Jose Sutton, a naturalized Mexican citizen and one of the leading merchants of Santa Fe, became very concerned over the marked decline in the economy of the department, particularly in the livestock industry, following the Revolution of 1837. He was convinced that the prosperity of New Mexico could best be stimulated by the introduction and raising of merino sheep and the establishment of textile mills for the manufacture of woolen fabrics to supply the needs of its citizens. These new industries would give employment to many idle persons, advance commerce, and increase the public security and general welfare. To assist his adopted country in its economic recovery, he lent the Governor Manuel Armijo at least one thousand dollars. He also offered to construct a woolen mill on the eastern frontier and import within a period of five years, enough merino sheep to supply its entire needs if Armijo would give him a grant large enough to support his proposed operations. He stated that he had found a sixteen Spanish square league tract of vacant land on both

sides of the Pecos River and surrounding the Ojo del Anil, which he stated would be suitable. Sutton then requested Governor Armijo to grant him these lands free of all conditions except that he was to construct a textile mill and commence raising sheep on the grant within three years from the date he would be placed in juridical possession of the premises. He then requested that this condition be restricted by fixing or prescribing no particular limit within which possession must be delivered. He justified this unusual request by stating that he had to make a trip to the United States and had other important business commitments which might temporarily prohibit his taking possession of the grant and delay the prompt institution of his plans for the development of the grant. On March 14, 1838, Armijo granted the requested lands to Sutton "under the conditions expressed in his petition." Armijo also directed the Alcalde of San Miguel del Bado to survey the grant and place Sutton in legal possession thereof whenever called upon to do so.¹ Due to the continuous hostility of the Indians in the Pecos area, Sutton never

¹H. R. Exec. Doc. No. 112, 37th Cong., 2d Sess., 4-5 (1862).

requested the delivery of legal possession or attempted to occupy or use the lands covered by the grant.

Sutton petitioned the Surveyor General's Office on December 14, 1858, asking for the confirmation of his claim to the Ojo del Anil or Jose Sutton Grant which he alleged contained sixteen leagues square of land. He asserted that the tract had been made to him in consideration of money advanced to the New Mexican government during the Revolution of 1837. In his decision dated September 25, 1861, Surveyor General A. P. Wilbar held that the claimant had satisfactorily shown that the grant papers were genuine; that the Governor of New Mexico had authority to make grants and that the grant had been made as a repayment of large indebtedness due Sutton by the Government. Continuing, Wilbar found the grant to be complete and absolute notwithstanding the lack of a formal delivery of legal possession to Sutton. Wilbar noted that the hostilities of the Indians in the vicinity of the grant from 1838 up to and including the date of his decision were of such a nature as to render it quite hazardous to go into the Pecos area temporarily, let alone to settle there permanently. Therefore, he was of the opinion that since Sutton

had the privilege of selecting the time within which to take formal possession of the land he could postpone such delivery until conditions became safe enough to permit the use of the land without unreasonably imperiling his life and property. In conclusion, he recommended that the grant be confirmed by Congress for sixteen square leagues of land.²

Sutton's claim was referred to the House's Committee on Private Land Claims, which reviewed the matter. In a report dated May 16, 1868, the Committee noted that there was no evidence that Sutton had ever demanded possession or attempted to comply with the conditions contained in the grant. It further called attention to the fact that Sutton had left New Mexico long before the United States acquired the area. The Committee therefore, concluded that Sutton had no title at the date of the Treaty of Guadalupe Hidalgo, but simply an inchoate or equitable right to acquire a title in the future. In conclusion, the Committee stated it could not recommend the confirmation of the grant but felt that Sutton should

²Ibid., 11-12.

be afforded an opportunity to assert his claim in the court of justice in which the validity of his claim could be legally tested and at the same time the interests of the United States would be amply protected.³ It does not appear that Congress took any action on this report.

A preliminary survey of the grant was made in December, 1877, by Deputy Surveyor S. C. McElroy. This survey showed that the grant contained 69,455.55 acres, and was approved by the Surveyor General on February 20, 1878.⁴

No further action was taken on the grant until George W. Julian was appointed to the Office of Surveyor General. Pursuant to instructions from the General Land Office, he proceeded to review all land grants then pending before Congress. As a result of his investigation, he submitted a Supplemental Report dated April 3, 1886 pertaining to the grant. In this report, he recommended the rejection of the claim on the following grounds:

1. The Regulations adopted November 21, 1828, under colonization law of August 18, 1824, were the

³H. R. Report No. 66, 40th Cong., 2d Sess., 1-3 (1868).

⁴The Jose Sutton Grant, No. 45 (Mss., Records of the S.G.N.M.).

only laws providing for the disposal of the public domain in force in New Mexico at the date the grant allegedly was made and under the Regulations no grant to a private person could be valid without the approbation of the Territorial Deputation of the Supreme Government.

2. Under the Colonization Law and Regulations, the Governor had no authority to make a grant for a monetary consideration nor a grant in excess of eleven leagues.
3. Since the grantee failed to demand and recover legal possession of the grant and did not establish himself on the land and comply with the conditions, he had no valid claim to the land.
4. Since the documentary evidence presented by the claimants was from private records and not from the public archives, such evidence was not sufficient to support the claim.⁵

Although there was no evidence of fraud in connection with this claim, Julian unjustly branded it as being "one of the most bare-faced frauds yet perpetrated through the machinery of the Surveyor General's Office."⁶

The claim was still pending before Congress when the Court of Private Land Claims was established. The owners of the grant filed suit in the Court of Private Land Claims on February 28, 1893, seeking the recognition

⁵ Report of the Secretary of Interior, 266-268 (1887).

⁶ Julian, "Land Stealing in New Mexico", 145 The North American Review, 22-23 (1887).

of their claim.⁷ There were no substantial issues of fact and the case turned solely on questions of law. The government argued that the grant had not been made in consideration of a loan but for the grantee's promise to raise a new type of sheep and construct a textile factory on the land. Since these obligations had never been performed and the grantee had left New Mexico in 1840, never to return, the government contended that he had abandoned his claim to the land. In the alternative, the government advanced two defenses which were even more fundamental and basic. First, it asserted if the grant was made in consideration of a loan, it was void since in 1838 the Governor of New Mexico had no authority to make grants for such a purpose. The Vigil case⁸ was cited as authority for this proposition. The second was a jurisdictional point in which the government contended that the Court of Private Land Claims had no power to confirm an incomplete grant. Since the grantee had failed to perform the conditions contained in the grant prior to the date

⁷Lutz v. United States, No. 143 (Mss., Records of the Ct. Pvt. L. Cl.).

⁸United States v. Vigil, 13 Wall. (80 U.S.) 449 (1871).

of the acquisition of New Mexico by the United States, it could not be considered to be an absolute and perfect grant unless some obstacle excused or rendered it impossible for the grantee to perform the conditions subsequently contained in the grant. In view of the fact that the Indian situation in the vicinity of the grant was substantially the same for some years prior to the date of the making of the grant as it was between 1838 and 1840, when the grantee permanently left New Mexico, it afforded the grantee no excuse for failing to perform the conditions. The Court of Private Land Claims in its decision dated December 20, 1898, rejected the claim and dismissed the petition on two grounds. First, that Sutton's failure to perform the conditions contained in the grant prior to the acquisition of New Mexico by the United States amounted to an abandonment of the premises. Second, that the failure of the grantee to perform the conditions subsequently rendered the grant incomplete and the Court had no authority to confirm an incomplete grant. No appeal was taken.⁹ This ended the history of one of the more controversial grants in New Mexico.

⁹4 Journal 75 (Mss., Records of the Ct. Pvt. L. Cl.).

THE AGUA NEGRA GRANT

Early in the year 1824, Antonio Sandoval, a resident of the town of Los Padillos, New Mexico, petitioned the governor of New Mexico, Bartolome Baca, for a grant covering the four square leagues tract of land surrounding the Ojo del Agua Negra, which he had used as a pasturage for his stock for a number of years. Shortly after Sandoval had applied for the grant, he was forced to make an unexpected trip to Durango, Mexico. During his absence, his wife, Ursula Chaves Sandoval, requested Baca on November 5, 1824, to take action upon her husband's petition. Her petition was forwarded by the governor to the Territorial Deputation of New Mexico for its further action. The petition was taken up for consideration by that august body on November 19, 1824, and referred to the governor with a request that he report upon the merits of the request. Baca replied on the same date and stated that nothing was more important to the welfare of New Mexico than the propagation of the ranching industry and that a liberal

policy of granting land to ranchers, who were willing to settle upon the frontiers would be of incalculable benefit to the territory. He felt called upon to point out to the Territorial Deputation that a ring of ranchos on the frontiers tended to protect the interior settlements from the ravages of the hostile Indians. He felt that prejudices which had developed against the granting of land to industrious and influential persons, who alone had the means of developing the frontiers, was impeding progress. He concluded by strongly recommending the granting of the modest request which had been made by Sandoval for "one league square of land." In almost unbelievably swift action, the Territorial Deputation for a second time considered the matter on that very same day and proceeded to grant the lands at the Ojo del Agua Negra to Sandoval. He also appointed Francisco Sarracino as a Commissioner to deliver legal possession of the grant to Sandoval. On December 5, 1824, Sarrancino went to the Ojo del Agua Negra and surveyed the boundaries of the grant. They extended 5,000 Castillian varas in each of the cardinal directions from the spring. Following the completion of the survey, legal possession of the grant was formally delivered to Sandoval.

He promptly went into possession of the grant, built certain improvements upon it, and continued to occupy and use its lands until driven off by the hostilities of the Indians.¹

Antonio Sandoval filed a petition with the Surveyor General on October 21, 1856, praying for the confirmation of his claim. Under the date of September 17, 1857, Surveyor General William Pelham made, as contemplated by the eighth section of the Act of July 22, 1854,² a report and recommendation that Sandoval's claim to the tract of land containing one league square at the place known as Agua Negra be recognized and honored.³ Congress, by Act of June 21, 1860,⁴ confirmed the claim as recommended by Pelham. A survey of the grant was made in February, 1877, by Deputy Surveyors Sawyer & McElroy. The survey showed

¹The Agua Negra Grant, No. 12 (Mss., Records of the S.G.N.M.).

²An Act to establish the offices of Surveyor General of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes, Chap. 103, 10 Stat. 308 (1854).

³H. R. Report No. 321, 36th Cong., 1st Sess., 194-200 (1860).

⁴An Act to confirm certain Private Land Claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

the grant as containing 17,361.11 acres, or nearly four square leagues.⁵

On July 20, 1886, Surveyor General George W. Julian called attention to the fact that the grant contained within its boundaries, as then surveyed, four times the quantity of land which had been granted and confirmed. He recommended that the Sawyer & McElroy Survey be rejected and a new survey ordered to embrace only one square league of land with the spring at its center. Acting Commissioner of the General Land Office, S. H. Stockslager, on August 13, 1886, concurred with Julian's recommendations and ordered a re-survey of the grant so that each side would be 5,000 varas in length with the spring at the center and contain 4,438.68 acres. By letter dated January 11, 1887, Julian wrote the Commissioner of the General Land Office that the vara in common use in New Mexico was only 33 inches long and, therefore, the grant should cover only 4,340 acres or 98.40 acres less than mentioned in his instructions. In an interesting and highly informative letter dated March 18, 1887, Acting Commissioner William Drank discussed the length

⁵The Agua Negra Grant, No. 12 (Mss., Records of the S.G.N.M.).

of the vara. He stated that the Castilian vara had been determined to be equal to 33.373 inches in length *Mitchell v. United States*, 15 Pet. (40 U.S.) 57 (1841), and that the Mexican vara was equal to 33.386 inches *Alexander, Dictionary of Weights and Measures* (1850). The common vara of 33 inches, which was known as the San Francisco vara, had been used in California between 1852 and 1858, but in 1858, the Castilian vara was adopted as the standard measurement. A 33-1/3 inch vara was used in Texas *United States v. Perat*, 98 U.S. 428 (1878). He, therefore, held that Julian was correct and that the smaller Castilian vara should be used in the resurvey of the grant. On July 25, 1888, R. H. Langwell, one of the owners of the grant, strenuously protested the approval of the resurvey on the grounds that it was an unauthorized and arbitrary action. In a decision dated April 5, 1894, Secretary of Interior Hoke Smith held the Surveyor General's report, upon which the confirmation of the grant was based, could reasonably be construed as recommending the confirmation of the grant as "made to and occupied by the grantee." While recognizing that a strict interpretation of certain language in the grant might limit it to one square league,

he noted that the act of possession gave the grantee four square leagues. Smith was of the opinion that everyone connected with the grant prior to Julian's letter had interpreted the grant as conveying and the Act of June 21, 1860, as confirming four square leagues of land. He stated that one of the most sacred duties of government was the preservation of vested interests acquired in good faith and the maintenance of the stability of titles. Therefore, he rejected the resurvey of 1888 and ordered the issuance of a patent to the owners of the grant in accordance with the 1877 survey.⁶ The grant was patented on October 1, 1900, for 17,361.11 acres.⁷

THE JOSE LEANDRO PEREA GRANT

Pedro Jose Perea, a resident of the Pueblo of Sandia, petitioned the Territorial Deputation of New Mexico,

⁶The Agua Negra Grant, 18 L.D. 876 (1894).

⁷The Agua Negra Grant, No. 12 (Mss., Records of the S.G.N.M.).

on November 30, 1824, for a grant covering a tract of land on the Pecos River known as Los Esteros which he had been occupying and farming since 1815. He described the tract as extending one league in each of the cardinal directions from a central point located at the junction of the Arroyo de los Esteros and the Rio Pecos. In support of his request, Perea stressed the equitable nature of his claim to the land and pointed out that a number of grants recently had been made in the vicinity. He, therefore, asked that a grant be made to him on the same terms as the Ojo del Agua Negra Grant, which had been issued to Antonio Sandoval on November 19, 1824. Twenty days later, the Territorial Deputation referred the petition to Bartolome Baca, the Governor of New Mexico, and requested him to report on the expediency of complying with the petitioner's request. On February 25, 1825, Baca, in a lengthy report, stated that in view of the issuance of the Antonio Sandoval Grant, the petitioner naturally had the right to expect to receive a similar concession. The report set forth the conditions then existing in the territory and the advantages to be derived from reducing the public domain to private property, but cautioned against increasing the size of grants in the

area between the Rio Grande and Pecos Rivers. He concluded by recommending that the grant be made. After considering Baca's report, the Territorial Deputation on March 3, 1825, decided to issue the grant. Perea was then directed to appear before the Alcalde of San Miguel del Bado, Juan Esteban Pino, in order that possession of the grant could be legally delivered to him. While there is no evidence that possession was formally delivered to Perea, it is known that he took immediate possession of the grant and continuously occupied it thereafter whenever the Indian situation would permit the reasonably peaceful utilization of the land. The tract was used primarily as a rancho or pasturage for Perea's extensive herds. On December 15, 1856, Perea, by a Gift Deed, conveyed the grant to his son, Jose Leandro Perea.

Jose Leandro Perea petitioned Surveyor General William Pelham on May 15, 1857, seeking the recognition of his claim. Surveyor General Pelham in his decision dated September 15, 1857, found the grant to be absolute and unconditional and, therefore, recommended its confirmation by Congress.¹ The grant was confirmed by the Act

¹H. R. Report No. 321, 36th Cong., 1st Sess., 260-268 (1860).

approved June 21, 1860.²

Deputy Surveyor William W. Griffin was directed to survey the grant. After conducting a preliminary investigation into the boundaries, he advised the Surveyor General that the northern 5,000 acres of the grant conflicted with the Preston Beck, Jr. Grant. Griffin was instructed to give the interested parties notice of his plans to survey the Perea Grant and see if they could not agree upon the location of their common boundary. Upon receipt of notice, the owners of the Preston Beck, Jr. Grant protested the conducting of any survey which would cloud their title. Since the Preston Beck, Jr. Grant was older and its survey had been approved by the Surveyor General, it has been generally believed to be the senior grant. Notwithstanding the fact that as a general rule, junior surveys must yield to senior surveys, Griffin surveyed the grant in 1871 for the full four leagues or 17,712 acres described in the grant papers. A patent was issued to the owners of the grant on March 20, 1877 in accordance with Griffin's survey.³

²An Act to confirm certain Private Land Claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

³The Jose Leandro Perea Grant, No. 16 (Mss., Records of the S.G.N.M.).

In an effort to remove the cloud cast upon their title by the patenting of the Jose Leandro Perea Grant, the owners of the Preston Beck, Jr. Grant filed suit against the proprietors of the Jose Leandro Perea Grant in the District Court of San Miguel County, New Mexico. The trial court held that the land in conflict rightfully belonged to the Preston Beck, Jr. Grant. From this decree, the owners of the Jose Leandro Perea Grant appealed. The Supreme Court of New Mexico held that both the Preston Beck, Jr. and the Jose Leandro Perea Grants were not only imperfect, but were void grants prior to the passage of the confirmatory Act of June 21, 1860.⁴ The Preston Beck, Jr. Grant was void because it had been made in the interim period between the suspension of the Iturbide Colonization Law of 1823⁵ and the passage of the National Colonization Law of 1824.⁶ During this period there was no valid law in effect under which the public domain could be legally granted. The Jose Leandro Perea Grant was void because there was no evidence that legal possession of the grant had been

⁴Supra, note 2

⁵1 Gammel, The Laws of Texas, 27-30 (1895).

⁶Ibid., 97-98

delivered as required under Mexican law. Therefore, the Act of June 21, 1860⁷, gave each grant an equal undivided moiety of the lands within the area of conflict.⁸ The reasoning of this decision is indeed difficult to understand since paragraph 4 of the Act of June 21, 1860,⁹ provided that the act was to be construed only as a quit claim on the part of the United States and was not to affect the adverse rights of any other person. It is obvious that Congress did not intend thereby to confirm title for the same land to the grantees of both grants as a moiety. One must prevail over the other! Therefore, the owners of the Preston Beck, Jr. Grant appealed to the United States Supreme Court, which found that the Preston Beck, Jr. Grant, in all of its steps, preceded the Jose Leandro Perea Grant, and the confirmation of the Preston Beck, Jr. Grant related to the date on which its senior equities arose.¹⁰ Based on this reasoning, it was clear that the area in conflict was unquestionably part of the Preston Beck, Jr. Grant.

⁷Supra., note 2.

⁸Stoneroad v. Beck, 16 N.M. 754, 120 P. 898 (1912).

⁹Supra., note 2.

¹⁰Jones v. St. Louis Land & Cattle Company, 232 U.S. 355 (1914).

THE PRESTON BECK, JR. GRANT

On December 6, 1823, Juan Estevan Pino, a resident of Santa Fe, New Mexico, petitioned Bartolome Baca, acting governor of New Mexico, for a grant covering the lands surrounding the Ojito de las Gallinas, which is located about 85 miles southeast of Santa Fe on the road to Las Conchas. Pino stated that while he had a large amount of livestock, he did not have a suitable place to pasture them. Therefore, in order to relieve this hardship, he requested Baca to grant him all of the lands lying within the following boundaries:

On the north, the landmarks of the farm of Don Antonio Ortiz, and the table lands of the Aguage de la Yagua; on the east, the table land of Pajarito; on the south, the Pecos River; and on the west, the point of the table land of Las Chupaines.

The petition was transmitted by Baca to the Provincial Deputation of New Mexico on December 18, 1823, with the recommendation that the request be granted. The Provincial Deputation considered the matter on December 23, 1823, and resolved that the lands should be granted to

Pino without further delay in order to check the continuous decline in agriculture and industry which had been caused by the prejudicial policy then existing against making grants of the public lands. On the same day, Baca issued a decree granting the premises to Pino. Pino was placed in legal possession of the grant, which was called Hacienda de San Juan Bautista del Ojito del Rio de las Gallinas, on August 29, 1825, by Thomas Sena, Constitutional Alcalde of San Miguel del Bado.¹ Pino promptly settled upon the grant and continuously occupied and used the land until his death in 1838 or 1839. During this period, Pino cultivated the valley lands along the Pecos River and pastured as many as 900 cows and 80,000 sheep and goats on the table lands of the grant. After Pino's death his two sons, and only heirs, Manuel and Justo, owned and operated the grant. By 1845 Indian raids upon their extensive herds had become so frequent that the further operation of the ranch became unprofitable and highly dangerous. Therefore, Manuel and Justo Pino removed all of their stock from the grant and moved to the town

¹H. R. Exec. Doc. No. 1, 34th Cong., 3d Sess., 444-448 (1857).

of Pecos, New Mexico. They subsequently conveyed their interests in the grant to their respective wives. On June 18, 1853, Manuel Pino and his wife, Josefa Ortiz Pino, conveyed their one-half interest in the grant to Hugh N. Smith, Trustee for Preston Beck, Jr. Justo Pino and his wife, Gertrudes Rascon Pino, conveyed the remaining half interest in the grant to Preston Beck, Jr. on October 30, 1854.² Thereafter, the grant usually was referred to as the Preston Beck, Jr. Grant.

Beck filed a petition in the Surveyor General's Office on May 10, 1855, requesting that his title to the Ojito de las Gallinas Grant be investigated and confirmed. He expressly called the Surveyor General's attention to the fact that Alexander Hatch and about one hundred other persons were "squatting" on the grant. Surveyor General William Pelham held a hearing on August 20, 1855, at which a great deal of oral testimony was given concerning the grant. In answer to the question of what was the procedure to be followed in obtaining a grant in New Mexico, Domingo Fernandez stated:

²Ibid., 448-453.

Before the establishment of the Provincial Deputation (in 1822) it was customary to apply to the Governor of the territory. In the time of Don Diego de Vargas, as they were at war, he granted possession himself. Afterwards, application was always made to the Governor, and he referred the petition to the justice of peace to report if the grant would be to the injury of any third person or not. If there was no impediment the possession was granted. Afterwards, when the Provincial Deputation was established, application was made to the deputation through the president, who was the Political Chief Governor, and the petition was referred, by decree of the secretary, to the prefect or the corporation, under whose jurisdiction the land petitioned for was situated.³

Hatch protested the confirmation of the grant on three separate grounds. First, that the governor of New Mexico did not have authority to make a grant in 1823. This contention was based on the theory that once Mexico had severed relations with Spain, all Spanish laws then in effect were automatically annulled and, thus, there was no law in force in New Mexico authorizing the governor acting with consent of the Provincial Deputation to issue the grant. Second, that the grant was invalid since its description was so indefinite that its boundaries could not be definitely located. Finally the grantee had for-

³The Preston Beck, Jr.. Grant, No. 1 (Mss., Records of the S.G.N.M.).

feited all his rights in the grant as a result of his having failed to occupy the lands as required by law.

Surveyor General Pelham recognized the importance of the questions and principles at issue and, therefore, carefully examined the claim. He wrote a decision on September 30, 1856, in which he found that the documents presented in the case were original and signatures of the granting officers and conveyors were genuine. Pelham further found that the grant had been made by the Provincial Deputation, and the granting decree of the governor was but a fulfillment of the wishes of that body. He had no question concerning the authority of the Provincial Deputation to dispose of public land. However, in connection with its boundaries, he found that since the natural objects called for in the testimonio were definite and well known in the community, the limits of the grant could easily be fixed and located. He also found that the grantee and his heirs^r had occupied and used the land until driven off by the hostile Indians. Since the land had not been voluntarily abandoned, there could be no forfeiture of the grant. In conclusion, Pelham found the grant to be absolute and valid and one which the

United States was obligated to recognize under the Treaty of Guadalupe Hidalgo. He, therefore, approved the grant and recommended that it be confirmed by Congress.⁴

On June 21, 1860, Congress passed an act⁵ which confirmed the Preston Beck, Jr. Grant. After the passage of this act, Surveyor General A. P. Wilbar, without giving notice to Beck, directed Deputy Surveyors William Pelham and Reuben E. Clements to survey the grant. The survey was made during the month of September, 1860, and showed

⁴S. Exec. Doc. No. 5, 34th Cong., 3d Sess., 473-478 (1857). Pelham's conclusions were supported by the decision of the New Mexico Supreme Court in *Pino v. Hatch*, 1 N.M. 125 (1855) which held the Preston Beck Grant to be good and valid. This Court held that a grant for a part of the public domain executed by the political chief of New Mexico in 1823 upon a petition of the grantee and with the advice and consent of the provincial deputation, and reciting the fact that it was made pursuant to legal authority, such grant and the possession taken thereunder having remained without objection from the national government for seventy-five years and must be presumed to have been authorized and to be valid. However, the New Mexico Supreme Court in *Stoneroad v. Beck*, 16 N.M. 754, 120 P. 898 (1912), held that the Preston Beck, Jr. Grant was void since it had been issued in the interim period between the suspension of the Iturbide Colonization Law of January 4, 1823, and passage of the Natural Colonization Law of August 18, 1824.

⁵An act to confirm certain Private Land Claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

that the grant contained 318,699.72 acres. Wilbar approved the survey on November 23, 1860.⁶

Beck died shortly after the passage of the Act of June 21, 1860,⁷ leaving his estate to his brother, cousin, nephews, and nieces. Beck's devisees never objected to the survey, but on the contrary, indirectly approved it by repeatedly demanding that a patent be issued to them. The Land Office consistently refused to issue a patent prior to February, 1874, on the grounds that the Act of June 21, 1860,⁸ did not authorize the patenting of grants confirmed by that act. However, Congress remedied this oversight by inserting a provision in the Act of March 3, 1869,⁹ which required the Commissioner of the General Land Office to issue patents to the owners of unpatented private land claims which therefore had been confirmed by Congress and surveyed. Notwithstanding the provisions of this act, the Commissioner doubted that he had authority to patent

⁶The Preston Beck, Jr. Grant, No. 1 (Mss., Records of the S.G.N.M.).

⁷Supra., note 5.

⁸Ibid.

⁹An act to confirm certain private land claims in the Territory of New Mexico, Chap. 152, Sec. 2, 15 Stat. 342 (1869).

previously confirmed grants until the United States Attorney General in an opinion dated February 21, 1874,¹⁰ specifically held that he had such authority.

Meanwhile, the owners of the grant withdrew their request for a patent on the grounds that the Pelham and Clemends Survey was inaccurate. They contended that the surveyors had mistaken the Mesa de Cuervito for the Mesa de Parajito, which was situated about six miles east of the former. Continuing, they asserted that under standard surveying principles the north line of the grant should have been extended eastward from the Mesa of the Aguazi de la Yegera to a point due north of the Mesa de Parajito and that the east line of the grant should have run south from this point through the Mesa de Parajito to the Pecos River. Surveyor General James K. Proudfit, after conducting an extensive investigation into the matter, found the survey to be erroneous and ordered a new survey. This decision was appealed to the Secretary of Interior by a number of parties who had acquired interests in the

¹⁰14 Opinions of the Attorney General of the United States, 624 (1874).

affected area. By decision dated August 21, 1880,¹¹ Acting Secretary A. Bell held that the Surveyor General had no jurisdiction to reopen the question of the accuracy of the Survey and that since the Preston Beck, Jr. Grant had been confirmed by Congress and the Pelham and Clements Survey had been approved by the Surveyor General, the Act of March 3, 1869,¹² left no discretion with the Commissioner of the General Land Office but to perform the ministerial act of issuing a patent in accordance with the survey. Pursuant to this decision, a patent dated June 13, 1883, was tendered to the owners of the grant but was refused on the grounds that it did not contain all of the lands which had been confirmed by the Act of June 21, 1860.¹³

In an ingenious attempt to secure the recognition of his claim for additional lands outside the boundaries of the grant as surveyed by Pelham and Clements, George W. Stoneroad filed an ejectment suit in the New Mexico District Court against James P. Stoneroad, who claimed a tract in the affected area. The State courts held

¹¹The Preston Beck, Jr. Grant, No. 1 (Mss., Records of the S.G.N.M.).

¹²Supra., note 9.

¹³Supra., note 5.

for the plaintiff.¹⁴ However, on appeal to the United States Supreme Court, it was held¹⁵ that since the Act of June 21, 1860, contemplated the survey of the grant for the purpose of marking its boundaries,¹⁶ the Pelham and Clements Survey, which was made by the Land Department within the scope of its authority, was unassailable in the courts in a collateral proceeding. After the Supreme Court had rejected their effort to secure the additional lands which they claimed under their interpretation of the description of the boundaries of the grant, the owners of the Preston Beck, Jr. Grant on November 12, 1917, finally accepted the patent which previously have been tendered to them.

¹⁴Stoneroad v. Stoneroad, 4 N.M. (Gild.) 181, 12 P. 736 (1887).

¹⁵Stoneroad v. Stoneroad, 158 U.S. 240 (1895).

¹⁶Supra., note 5.

THE ANGOSTURA del PECOS GRANT

Jose Manuel Sanchez, for himself and on behalf of 53 other landless persons, registered a tract of vacant land on September 4, 1842, which was situated near the junction of the Pecos and Gallinas Rivers and known as the Angostura del Pecos. Their petition was addressed to the Alcalde of San Miguel del Vada and described the tract as being bounded:

On the north, along the Juan Estevan Pino Grant; on the east, the Sabino Springs; on the south, the Painted Cottonwoods; and on the west, the Anton Chico Grant.

Alcalde Vincente Rivera referred the petition to the Prefect at Santa Fe, Diego Archuleta on October 4, 1842, with a report in which he stated while the lands were vacant he knew that they were susceptible to cultivation. He also advised the Prefect that the applicants were industrious persons who needed the lands to support their families. Six days later, Archuleta directed Rivera to place the applicants in possession of the tract if he was sure no

third person would be injured thereby.¹

It appears that the petitioners were placed in possession of the tract and a colony known as Nuestra Senora del Rosario de la Angostura was established shortly thereafter near the junction of the two rivers. The settlement was also known as the Town of Angostura del Pecos. On January 28, 1843, Geronimo Gonzales received an allotment of 400 varas of land within the grant from Rivera.²

The inhabitants of the Town of Angostura del Pecos filed a petition in the Surveyor General's Office seeking the recognition of their grant on January 28, 1856. Four years later, Gonzales petitioned that office for the confirmation of his title. Since the Angostura del Pecos Grant primarily covered the same area embraced within the disputed area of the Preston Beck and Anto Chico Grants, the Surveyor General was reluctant to act on the claims.

¹The Angostura del Pecos Grant, No. F-23 (Mss., Records of the S.G.N.M.).

²The Geronimo Gonzales Tract, No. F-76 (Mss., Records of the S.G.N.M.).

After the Preston Beck and Anton Chico Grants were approved by Congress,³ the owners of the grant lost interest. With no one to actively prosecute the claims, they became dormant and were never acted upon.

THE ANTON CHICO GRANT

Manuel Rivera, on behalf of himself and thirty-six others, petitioned the Ayuntamiento of San Miguel del Vado for a grant covering a tract of land situated about 30 miles south of San Miguel del Vado on the Pecos River, which was known as Anton Chico. The President of the Ayuntamiento, Manuel Baca, notified the petitioners that the Ayuntamiento did not have authority to issue the grant since the requested lands were located beyond its jurisdiction, but he had referred the matter to the Provincial Deputation of New Mexico for further action. The Provincial Deputation apparently approved the request and referred

³An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

the matter to Governor Facundo Melgares for his consent. On May 2, 1822, Melgares granted the land to petitioners and directed Baca, who was also an Alcalde, to place them in possession of the grant. In compliance with the Governor's instruction, Baca immediately went to the town of Anton Chico and proceeded to survey the grant which was described as being bounded:

On the north, by the Antonio Ortiz Grant; on the east, by the Salino Spring, with the Alto de los Esteros, where the river forms a canyon below where the men were killed; on the south, by the ridge of Piedra Pintada and the little table land of Guadalupe; and on the west, by the Cuesta and Bernal Hill, which is the boundary of San Miguel del Vado Grant.

Following the completion of the survey, Baca gave the grantees legal possession of the premises subject to the conditions that the grant be held in common for the benefit of the grantees and all future settlers who might move to Anton Chico, that each colonist equip himself with fire-arms and arrows for the defense of the colony and be able to pass muster before settling upon the grant, and that each settler must perform his share of any labors necessary for the general welfare of the

community, such as digging ditches.¹

The Indians attacked the settlers so fiercely and frequently that the colonists were finally forced to abandon the grant in 1827 or 1828; however, the settlement was re-established in about 1834. On March 8, 1834, the Acting Alcalde of Anton Chico distributed individual farm tracts ranging in size from two hundred varas down to fifty varas to the thirteen settlers who had re-established the Colony, two of which were original grantees.² Anton Chico was a typical isolated frontier town at the time the United States acquired jurisdiction over the area. The town was located in a beautiful valley and protected by the surrounding high table lands from the cold stormy winds. Since the town was off a "beaten track" commerce could reach the town only by a circuitous route from Santa Fe. The chief occupation of its inhabitants was sheep raising and their homes were all constructed of adobe without the smallest pretention of beauty without a convenience within. The space between the houses and the Pecos River was laid

¹H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 143-144 (1860).

²Ibid., 145.

out in gardens and maize fields, which required irrigation. However, the environs were too little favored by nature for agriculture ever to become extensive. The town had a population of about 500 persons, a church, and one fandango saloon.³

David Steward, for himself and in behalf of the heirs and legal representatives of the original grantees and then ten inhabitants of the town of Anton Chico, filed a claim on April 10, 1859 in Surveyor General William Pelham's office seeking the confirmation of the grant. The claim was contested by the heirs of Preston Beck, Jr. insofar as it conflicted with the Ojito de las Gallinas Grant. The contestants called attention to the fact that the grant was made by Melgares, a Spanish official, after Mexico had declared its independence, and, therefore, the grant was invalid due to a lack of authority in the granting official. Two highly reputable witnesses for the claimants, Juan Bautista Vigil y Alarid and Donaciano Vigil, testified the officials in New Mexico did not receive word of the Declaration of Independence until

³Stanley, The Anton Chico Story, 3 (n.d.).

December 21, 1822, and that the Mexican Government approved all of the public acts performed by Spanish officials from the date of the declaration up to the time the declaration was promulgated or published in New Mexico.⁴

In a decision dated July 15, 1859, Pelham held:

The instructions to this office provide that the existence of a town when the United States took possession of the country being proven, is to be taken as prima facie evidence of a grant to said town; and as it is proven to have been in existence in 1839, and up to 1846, with the knowledge and tacit consent of the Mexican government, and was recognized as a town by that government, it is believed to be a good and valid grant, and the land claimed severed from the public domain. It is therefore approved, and ordered to be transmitted to Congress for its action in the premises.⁵

Congress, by act approved June 21, 1860⁶, confirmed the grant as recommended by Pelham.

An official survey of the grant was made by Deputy Surveyors William Pelham and Reuben E. Clements during the months of September and October, 1860. Although this survey was approved by Surveyor General

⁴H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 146-149 (1860).

⁵Ibid., 150-151.

⁶An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

A. P. Wilbar on December 14, 1860, it was subsequently rejected when it was discovered that it failed to close by a large variance. The grant was resurveyed in June and July of 1878, by Deputy Surveyors John T. Elkins and Robert G. Marmon. Their survey showed that the grant contained 378,537.5 acres.⁷

On August 30, 1881, Rivera requested the grant be patented to him individually. By a decision dated August 30, 1881, N. C. McFarland, Commissioner of the General Land Office, held that the grant had been confirmed to the several grantees and inhabitants of the Town of Anton Chico, and, therefore, it could not be patented to Rivera individually. Pursuant to this decision a patent was issued on March 27, 1883, to "Manuel Rivera and others, being the thirty-six men to whom the grant was made."⁸ Since the patent was ambiguous and it was not clear whether title was vested in the thirty-seven original grantees or in all of the inhabitants of the grant as a community grant, an ejectment

⁷The Anton Chico Grant, No. 29 (Mss., Records of the S.G.N.M.).

⁸Ibid.

suit was brought in the United States District Court of New Mexico to settle the question. The trial court held for the defendant and the plaintiff appealed. Upon appeal, the Circuit Court of Appeals held that the character of the grant must be determined from the confirmatory act and that the court was precluded from going behind the act. The Court stated that the act should prevail over the patent in the event there was a conflict between the two. It then proceeded to explore the nature of the title represented by the act and concluded that it confirmed title as a community grant and not as an individual grant to the thirty-seven grantees.⁹ This decision cast a cloud on title to the unallocated lands within the grant. To remove this obstacle, the New Mexico Legislature passed an act which provided that a person who by purchase or lease had acquired an interest in a particular tract or parcel of land within the grant would not thereby acquire any interest¹ in the commons or unallocated lands.¹⁰ This statute cleared the way for the general management of the commons of the Anton Chico Grant by a

⁹Reilly v. Shipman, 266 F. 852 (8th Cir. 1920).

¹⁰₂ New Mexico Statutes, 337 (1954).

Board of Trustees under the statute relating to the supervision of community grants.¹¹

In 1876, a suit was commenced in San Miguel County, New Mexico for the partitioning of the Preston Beck, Jr. Grant. The Board of Trustees of the Anton Chico Grant intervened in this suit in 1907, claiming title to approximately 120,000 acres of land which were embraced within the Anton Chico Grant as patented but conflicted with the Preston Beck, Jr. Grant as patented. Based on the precedent established in the Jones Case,¹² the trial court held for the intervenors since the Anton Chico Grant was the senior grant. The owners of the Preston Beck, Jr. Grant appealed to the Supreme Court of New Mexico which reversed and remanded the case to the trial court for dismissal. The New Mexico Supreme Court's opinion was based on the theory that since the Anton Chico Grant was a community grant, the unallocated lands covered thereby, which included among others, all of the lands in dispute, remained the property of the Mexican government and passed

¹¹₂ New Mexico Statutes 328 (1954).

¹² Jones v. St. Louis Land & Cattle Company, 232 U.S. 355 (1912).

to the United States when it acquired New Mexico. Therefore, the act of June 21, 1860¹³ insofar as it confirmed title to the portion of the Anton Chico Grant in dispute amounted to a grant de novo or "American Titled Lands." Therefore, on June 21, 1860,¹⁴ the titles to the lands in question were confirmed to the respective grantees on a co-equal basis. However, since the owners of the Preston Beck, Jr. Grant secured a survey and patent prior to the date of the survey and patent of the Anton Chico Grant, it became the senior grant. Thus, title to the lands in the overlap area was recognized as being vested in the owners of the Preston Beck, Jr. Grant.¹⁵

¹³ Supra., note 6.

¹⁴ Ibid.

¹⁵ Board of Trustees of the Anton Chico Grant v. Brown, 33 N.M. 398, 269 P. 51 (1928).