

PRIVATE LAND CLAIMS IN THE SOUTHWEST

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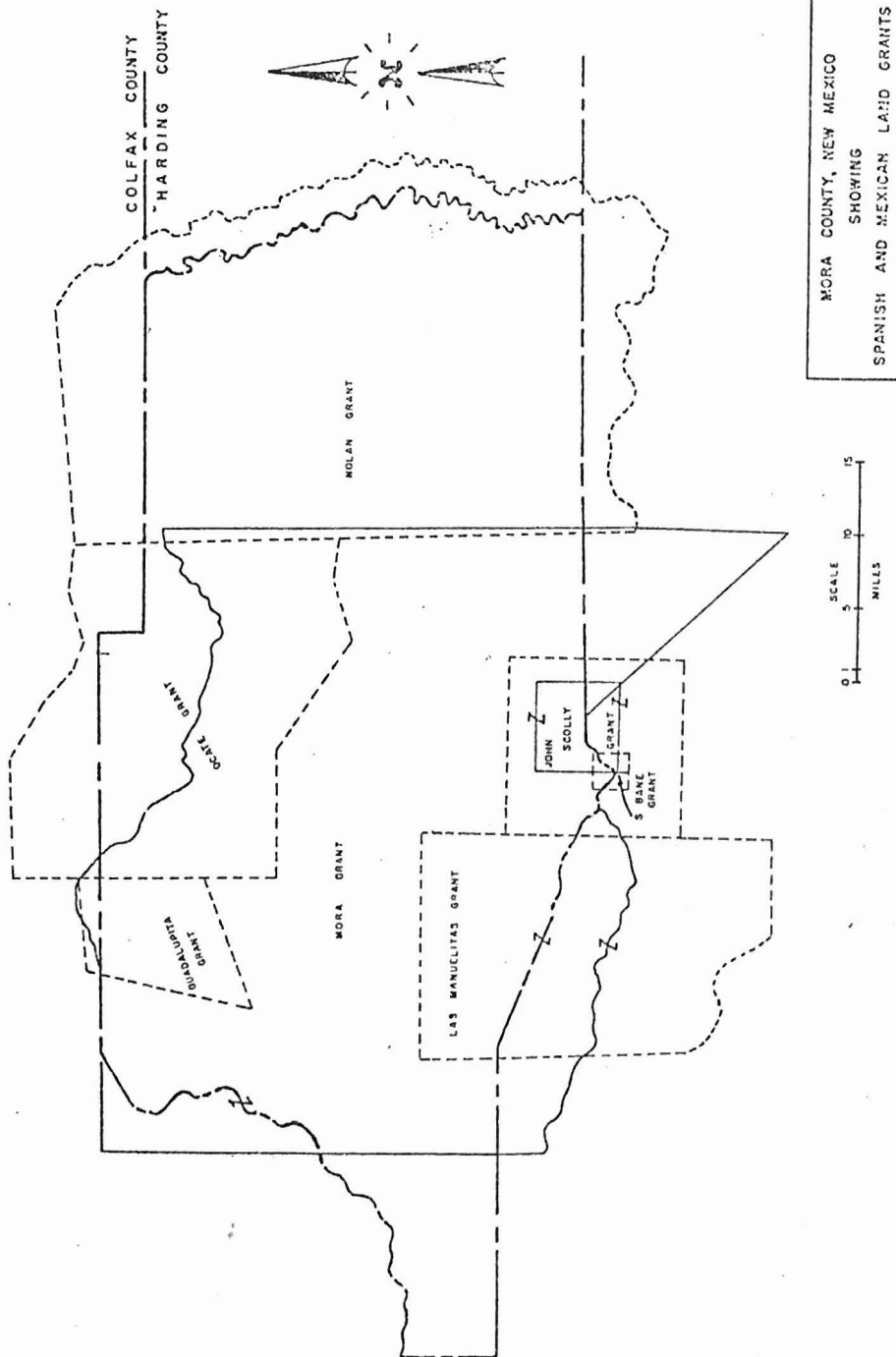
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THE TOWN OF MORA GRANT

On September 28, 1835, Albino Perez, Governor of New Mexico, ordered the Alcalde of Las Trampas, Manuel Antonio Sanchez, to distribute the lands in the Santa Gertrudis and San Antonio Valleys which had been granted to the inhabitants of the Colony of Mora. In compliance therewith, Sanchez went to Mora on October 20, 1835, and proceeded to survey the grant which was described as being bounded:

On the north, by the Rio de Ocate; on the east, by the Aguage de la Yegua; on the south, by the mouth of the Sapeyo River, where it empties into the Rio de Mora; and on the west, by the Estillero..

Following the completion of the survey, Sanchez established a town site in each valley and allotted individual farm tracts along the river which ran down each of the valleys to the seventy-five adult male inhabitants of the colony. The allotments ranged in width from 100 to 500 varas.¹

Since they were far from any military assistance, the residents of the grant were left to their own devices for the protection of their homes, families and crops. Somehow they managed to overcome all the adversities of the frontier. This isolation may account for the fierce

¹H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 184-185 (1860).

individualism and consuming interest in politics which developed at Mora. Therefore, it is not surprising to find that a number of the citizens of Mora took part in the Rebellion of 1837 which led to the beheading of Governor Perez and the overthrow of his government less than two years after he had issued the grant to them.²

Mora was a flourishing loyal Mexican community on August 18, 1846, when Brigadier General Stephen Watts Kearny, in command of the Army of the West, conquered New Mexico. A number of the northern communities, including Mora, refused to recognize the newly established American rule and participated in the Taos Revolt in which Governor Charles Bent and several other territorial officials were killed. Eight Americans were ruthlessly murdered at Mora, and Captain I. R. Hendley rushed there to quell the insurrection. During the ensuing battle which lasted several hours Captain Hendley was killed, and the American forces were compelled to withdraw. On January 29, 1847, Captain Morin with a greatly reinforced force returned to Mora. Upon his approach, the insurgents fled, leaving the settlement to the mercy of the Americans, who inflicted a great deal of damage upon the town and burned its public archives.³

²Twitchell, Old Santa Fe, 200 (1963).

³Stanley, The Mora Story, 8 (1963).

Jose Maria Valdez and Vincento Romero on behalf of themselves and all other inhabitants of the Town of Mora Grant petitioned⁴ the Surveyor General, William Pelham, on June 20, 1859, requesting the confirmation of the grant. The petitioners expressly relinquished any claim they might have to the portion of the grant that conflicted with the John Scolly Grant which previously had been approved by Pelham. In support of their claim, the petitioners filed the testimonio of the Act of Possession which recited that the proceedings had been made pursuant to an order issued by Perez on September 28, 1835. The United States District Attorney, R. H. Tompkins, protested the approval of the claim on the grounds that there was no documentary evidence that a grant actually had been made by Governor Perez to the inhabitants of the Town of Mora or that Perez had ordered a partitioning and distribution of

⁴The Town of Mora Grant, No. 32 (Mss., Records of the S.G.N.M.). Juan Francisco Pinard petitioned Pelham, asking for the confirmation of two tracts on September 8, 1856, which he had purchased from Juan Trujillo Bernadt. Bernadt, in turn, had purchased one of the tracts from Carlos Salazar and the other from Juan Bautista Llorca. Salazar had received the land as an allotment from Alcalde Juan Antonio Garcia on September 18, 1838. Llorca received his from Alcalde Juan Francisco Sandoval on December 20, 1845. Both were allegedly made pursuant to Perez's order of September 28, 1835. The Juan Francisco Pinard Grant, No. F-35 (Mss., Records of the S.G.N.M.). Jose Manuel Cordova filed a petition on October 7, 1856, seeking the confirmation of a tract which he had purchased from Estancilado Sandoval, who had received it as an allotment on October 31, 1842. The Jose Manuel Cordova Grant, No. F-35 (Mss., Records of the S.G.N.M.). Since both of these claims were located within the Town of Mora Grant, no action was taken thereon by the Surveyor General's Office.

the farm tracts. Pelham recognized that the failure of the petitioners to explain why documentary evidence of the grant could not be found in the Archives at Santa Fe tended to show that a grant had not been made; however, he presumed that Sanchez would not have distributed the land unless he was instructed to do so by a duly constituted authority. In support of this contention, Pelham pointed out that the inhabitants of the colony would not have remained on the grant in light of the hardship which confronted them or expended the large sums of money and effort improving the lands unless they were satisfied that a valid grant had been made to them. Several witnesses testified that they had seen a copy of the grant in the Archives at Mora prior to their destruction in 1847, and one even produced a receipt dated in 1836 for a copy of the grant signed by the Alcalde of Mora. Pelham, in his decision⁵ dated July 9, 1859, held:

It is not to be presumed that the government would allow the richest and most fertile portion of its territory to be usurped and taken up by a party of men without the color or shadow of law. Such was not the policy of the Mexican Government at the time. There certainly was a grant, or they would not have been allowed to remain unmolested from 1835 to 1846, when the United States took possession of the territory.... The instructions to this office provide that when the existence of a town is proven at the time the United States took possession of the country, it is to

⁵The Town of Mora Grant, No. 32 (Mss., Records of the S.G.N.M.).

be considered as prima facie evidence of the existence of a grant to said town or to the persons under whom they claim.

In conclusion, Pelham found the grant to be good and valid and recommended to Congress that it be confirmed to the original grantees and those claiming under them to the full extent set forth in the metes and bounds description contained in the Act of Possession except for the portion which conflicted with the John Scolly Grant. Congress by an act⁶ approved June 21, 1860 confirmed the grant as recommended by Pelham in his report.

Deputy Surveyor Thomas Means was awarded a contract on July 4, 1861, to survey the Town of Mora Grant. He surveyed the grant during the months of July and August, 1861, and did certain corrective work in the field in November, 1861. His survey excluded the portion of the twenty-five league tract referred to as the John Scolly Grant, which conflicted with the Town of Mora Grant. The survey embraced a total of 827,621.1 acres of land and was approved by the Surveyor General on August 5, 1871. A patent, was issued to Jose Tapia and the other grantees on August 15, 1876, subject to a stipulation which recognized the rights of the United States to the Fort Union Military Reservation.⁷

⁶An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, Sec. 31, 12 Stat. 71 (1860).

⁷The Town of Mora Grant, No. 32 (Mss., Records of the S.G.N.M.).

After the owners of the John Scolly Grant had selected the five leagues out of the twenty-five league tract which they were entitled to receive under the act of June 21, 1860,⁸ the owners of the Town of Mora Grant petitioned the General Land Office requesting that the patent to the Town of Mora Grant be amended to include the portion of the twenty-five league tract which conflicted with the Town of Mora Grant but had been released upon the selection of the five league tract by the owners of the John Scolly Grant. By decision dated October 14, 1895, Acting Commissioner E. F. Best held that the exception of the conflicting portion of the John Scolly Grant applied only to the confirmed and patented portions of the John Scolly Grant. Thus, the portions of the twenty-five league tract which conflicted with the Town of Mora Grant and had not been selected by the owners of the John Scolly Grant were covered by the original patent and, therefore, were not public lands.⁹ This decision had the effect of increasing the size of the Town of Mora Grant to approximately 890,000 acres of land.

⁸An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, Sec. 1, 12 Stat. 71 (1860).

⁹The Town of Mora Grant, No. 32 (Mss., Records of the S.GN.M.).

THE GERVACIO NOLAN GRANT

Gervacio Nolan, for himself and on behalf of Juan Antonio Aragon and Antonio Marie Lucero, petitioned Manuel Armijo, Governor of New Mexico on November 15, 1845, requesting a grant covering a tract of vacant land located in a little canyon on the Rio Colorado. The petition described the tract as being bounded:

On the north, by the Miranda and Beaubien Grant; on the east, by the hills on the eastern side of the Rio Colorado; on the south, by a line lying one league south and east of the Sapeyo River; and on the west, by a line running southerly from the northern boundary through the Canoncito de Ocate and a point five hundred varas west of the little hills of Santa Clara to the southern boundary.

The petitioners advised the Governor that while the tract contained some agricultural lands, it was primarily range lands. Nolan, a naturalized citizen who had resided in New Mexico for twenty-three years, requested that the land be granted in consideration of the services he and his associates had rendered the country on expeditions against the Indians. Armijo, as a recompense for such services, granted the land to the petitioners on November 18, 1845, with the boundaries set forth in their petition. He directed the grantees to apply to the Alcalde of the Town of Mora in order to secure the delivery of legal possession of the grant.

Pursuant to Armijo's decree, Thomas Benito Lalanda, Alcalde of the Town of Mora, placed the grantees in legal possession of the lands covered by the grant on November 30, 1845, subject to the rules and customs of the country regarding colonization. After possession was given to Nolan and his associates, it was found that a portion of the land granted to them was covered by the grant which had been made in 1835 to the Town of Mora. In an effort to avoid a boundary dispute, Nolan and his associates contacted the Alcalde of Mora, Manuel Lujan, and asked him to see if the inhabitants of the Town of Mora Grant had any complaints or objections to boundaries of the Gervacio Nolan Grant as set forth in their testimonio. Lujan contacted the principal settlers of the Town of Mora Grant who signed a document dated February 23, 1846, in which they approved the boundaries of the Gervacio Nolan Grant and released any claim they had to the area in conflict.¹

Nolan and his co-grantees commenced using the grant as a pasturage for their livestock, but it appears that they never actually moved to or resided upon the tract. On May 27, 1848, Lucero and Aragon sold their interests in the grant to Nolan for a total consideration of one

¹H. R. Exec. Doc. No. 28, 36th Cong., 2d Sess., 4-19 (1861).

hundred dollars. Nolan died intestate in 1858. On February 27, 1860, the children and widow of Gervacio Nolan petitioned² the Surveyor General seeking the confirmation of the grant. The claim was set for hearing on April 4, 1860, at which time they appeared and presented their papers and oral evidence in support of their claim. The only witness heard was Thomas Benito Lalanda, who testified that he was the Alcalde of Mora in 1845. Continuing, he stated that Nolan called upon him requesting him to place the grantees in legal possession of the grant, which he refused to do without an order from the governor. However, when Nolan showed him his testimonio, he delivered possession of the grant as stated in his certificate. After due consideration of the claim, Pelham, in a decision dated July 10, 1860, found the grant papers to be genuine. He also found that the grant was made as

... remuneration or recompense for services rendered to the country in time of need, which is believed, and is so held by the courts of the country, to be sufficient consideration to sever the lands from the public domain and vest the title in the claimants... Deeming it to be a good and valid grant, and that the land embraced within the boundaries set forth in the petition and judicial possession to be severed from the public domain, and the title therefor vested in the heirs and legal representatives of Gervacio Nolan, it is hereby approved and transmitted for the action of Congress on the premises.

²The Gervacio Nolan Grant, No. 39 (Mss., Records of the S.G.N.M.).

This grant and the Rio Don Carlos Grant, which is located in Pueblo County, Colorado and was also owned by Nolan, were considered and favorably reported³ on by the House Committee of Private Land Claims on July 1, 1868, but Congress withheld confirmation of them pending further investigation when it became known that they covered more than a total of eleven leagues. By an act⁴ approved July 1, 1870, Congress confirmed the Rio Don Carlos Grant to the extent of eleven leagues. The act further provided that the issuance of a patent to the grant would be taken as "full satisfaction of all further claims or demands against the United States."

A preliminary survey of the Gervacio Nolan Grant was made between December, 1881, and October, 1882, by Deputy Surveyor John Shaw. This survey showed the grant as containing 575,968.71 acres and was approved by Surveyor General Henry M. Atkinson on March 2, 1883. Dr. I.M. Cunningham, one of the owners of the grant, protested the survey on the ground that it failed to properly locate the west boundary of the grant. Shaw's survey showed that boundary as being a straight line running almost due

³H. R. Report No. 71, 40th Cong., 2d Sess., 5 (1868).

⁴An act to confirm the title to the heirs of Gervacio Nolan, deceased, to certain lands in the Territory of Colorado, Chap. 202, 16 Stat. 646 (1870).

north and south. Dr. Cunningham contended that the Canonicito de Ocate, which was located near the northwest corner of the grant, was located approximately twelve miles west of the place where Shaw's survey located it, and therefore, the boundary should be re-run in a northwesterly to southeasterly direction. If Dr. Cunningham's contention was correct, then the grant would include an additional 60,000 to 80,000 acres. An extensive investigation was conducted and on January 17, 1885, Surveyor General Clarence Pullen found that the place which the claimant asserted was the Canoncito de Ocate was, in fact, the Puertocito de Ocate and, therefore, the Shaw Survey correctly located the west boundary line of the grant. This decision was appealed to Secretary of Interior L.Q.C. Lamar, who, by decision dated January 9, 1886, dismissed the protest on the ground that the acceptance of the patent to the Rio Don Carlos grant stopped the heirs and assignees of Gervacio Nolan from asserting any further claim for land against the United States.

The area in conflict was then thrown open for entry and settlement. Hundreds of ejectment suits were filed by the claimants of the grant against settlers who had located in the disputed area. One of these was appealed to the United States Supreme Court. The only question involved in the appeal was whether the instructions given

to the jury in the trial court were proper. The trial court had instructed the jury that if it could not definitely locate the boundaries of the grant it must hold for the defendant. The Supreme Court upheld the judgment by stating that it saw nothing in the jury charges to which the plaintiff could properly complain. However, the Supreme Court refused to pass on the question raised by the defendant as to whether or not the act of July 1, 1870,⁵ affected the plaintiff's claim to the balance of the grant.⁶

The refusal of the Supreme Court to pass on the legal effect of the act of July 1, 1870,⁷ on their claim and the creation of the Court of Private Land Claims gave the owners of the Gervacio Nolan Grant another opportunity to seek the confirmation of their title. Suit for that purpose was instituted⁸ on November 11, 1892. In its answer, the government raised four principal defenses. First, that on November 18, 1845, Governor Armijo had no authority to grant land in consideration of past military services. Second, that the act of July 1, 1870,⁹ was

⁵Ibid.

⁶Pinkerton v. Ledoux, 129 U.S. 346 (1888).

⁷Op. Cit., see Note 4.

⁸Pinkerton v. United States, No. 46 (Mss., Records of the Ct. Pvt. L. Cl.).

⁹Op. Cit., see Note 4.

a final adjudication of the rights of Gervacio Nolan and his heirs and assigns in and to all private land claims protected by the Treaty of Guadalupe Hidalgo. Third, that Nolan could not hold, directly or indirectly, more than eleven leagues of land under the colonization laws and that the acceptance of the Rio Don Carlos Grant in 1843 exhausted his right to secure additional lands in 1845. Fourth, that the grant in reality was made solely to Nolan; Aragon and Lucero were not grantees but were merely figureheads, and, therefore, Nolan, as the assignee of Aragon and Lucero was not entitled to a confirmation of the grant to the extent of twenty-two leagues. The Court of Private Land Claims concurred with the defendant and in its opinion¹⁰ dated April 14, 1894, rejected the claim in its entirety. The plaintiff appealed to the United States Supreme Court, but the appeal was dismissed¹¹ on October 13, 1897, when the plaintiff failed to furnish a printed transcript of the record as required by Rule 10 of the Court.

¹⁰2 Journal 82 (Mss., Records of the Ct. Pvt. L. Cl.).

¹¹Pinkerton v. United States, 170 U.S. 945 (1897).

THE GUADALUPITA GRANT

Pedro Antonio Gallegos, Jose Maria Silva, and Miguel Silva, residents of the Pueblo of Las Trampas, petitioned the Alcalde of that pueblo, Juan Nepomoceno Trujillo, on February 20, 1837, for a grant covering a tract of unoccupied land located in the Guadalupe Valley along both banks of the Coyote River. The petitioners alleged that they needed the grant in order to support their families since there was insufficient water to irrigate their lands at Las Trampas. Trujillo, after consulting with the principal citizens of the town of Mora, who stated they had no objection to the formation of a new colony within the boundaries of the Town of Mora Grant, decided to grant the land to the petitioners on March 9, 1837. He directed the grantees to appear before him on April 7, 1837, in order that he might deliver legal possession of the grant to them as required by the colonization laws. On the appointed date, Trujillo, together with the grantees and a number of other colonists who had associated with the original grantees, proceeded to the Guadalupe Valley. Upon arriving at the grant, the colonists assisted Trujillo in the

surveying of the grant. The survey:

Commenced at point on the northwest corner of the Laguna Negro and ran thence eastward to the first hill north of and near a little spring; thence south to the West Ocate River; thence in a southwesterly direction to the mountains lying east of the Mora River near the Town of Agua Negra; and thence north following the top of the mountains to the point of beginning.

Following the completion of the survey, Trujillo performed the ceremonies required to place the colonists in legal possession of the grant. The colonists enjoyed peaceful possession of the grant for the next fifty-nine years.

A petition¹ seeking the confirmation of the Guadalupe Grant was filed in Surveyor General George W. Julian's office on December 28, 1885, by the heirs of the three original grantees. The testimonio of the grant, which had been given to the grantees by Trujillo, was attached to their petition as an exhibit. However, the list of colonists which was referred to in the Act of

¹The Guadalupe Grant, No. 152 (Mss., Records of the S.G.N.M.). A second claim for the confirmation of the Guadalupe Grant was filed by George Gold on March 4, 1866. Gold claimed an interest in the grant by virtue of the purchase of the interests of several of the colonists who had joined the original grantees in forming the colony. Attached to Gold's petition was a schedule which contained the names of all the parties who allegedly had been placed in possession of the grant by Trujillo. This list included the names of his grantors. No action was ever taken on this claim. The Guadalupe Grant, No. F-94, (Mss., Records of the S.G.N.M.).

Possession somehow had been detached and lost or destroyed. The petitioners also asserted that the Governor of New Mexico, acting with the consent and approval of the Departmental Assembly, had confirmed the grant, and, although they had made a diligent search of the archives, they had been unable to find a copy of such action. They contended that it reasonably could be assumed that the confirmation proceedings had been lost or destroyed since it was a well known and accepted fact that the archives were "notoriously incomplete and fragmentary." In conclusion, they called attention to the fact that the southern three-quarters of the Guadalupe Grant conflicted with the Town of Mora Grant but that the principal inhabitants of that grant had voluntarily relinquished the town's interests to such lands. They also pointed out that there were a few persons residing on the northern one-quarter who were asserting claims under the homestead laws of the United States. The grant purportedly covered one hundred eighty square miles, or 115,200 acres of land. Surveyor General George W. Julian, after carefully considering the grant, wrote an opinion² on November 10, 1886, wherein he recommended that the claim be rejected on the ground that an Alcalde had no power or authority to make a grant covering a portion of

²The Guadalupe Grant, No. 152 (Mss., Records of the S.G.N.M.).

the public domain in 1837 and there was no evidence that his actions had been ratified or confirmed by the government of New Mexico.

In a final effort to secure the recognition of their claim, the heirs of the original grantees filed suit³ against the United States in the Court of Private Land Claims on February 27, 1893. Their petition recited the history of the grant but this time estimated that the grant contained only eleven square leagues, or 47,743 acres. The cause came up for trial on November 24, 1896, at which time the plaintiffs announced that they did not desire to further prosecute their claim. Whereupon, the court issued its decree⁴ rejecting the claim and dismissing the suit.

THE OCATE GRANT

Manuel Alvarez, a resident of Santa Fe, petitioned Governor Manuel Armijo on October 15, 1837, for a grant

³Gallegos v. United States, No. 131 (Mss., Records of the Ct. Pvt. L. Cl.).

⁴3 Journal 138-139 (Mss., Records of the Ct. Pvt. L. Cl.).

covering a tract of land situated on both sides of the Ocate River, which he described as being bounded:

On the north, by the Caja de las Piedras Colorado; on the east, by the brow of the Ocate to the Canoncito; on the south, by the Sierra Pelon with its chain of mountains; and on the west, by the Jara and Coyote Mesas.

Alvarez stated that he needed the grant as a pasturage for a herd of marino sheep which he planned to bring to New Mexico. He pointed out that the requested tract was in a distant and unprotected part of the territory and, since the land covered thereby was unsusceptible for agriculture, it was improbable that it would be colonized at an early date. He contended that the introduction of marino sheep would increase the quality of sheep and would, thereby, improve the general economy of New Mexico. He closed the petition by agreeing that should he fail to settle upon and commence raising marino sheep on the grant within a period of three years, he would forfeit all of his rights under the concession. Armijo was obviously impressed with the proposal, for on the following day, he wrote an endorsement at the bottom of the petition, wherein he stated that in view of the public good and great advantages that would undoubtedly result to the territory from such a progressive step in industry and commerce, he had decided to grant Alvarez the lands which he had solicited upon the conditions which

he himself had named. Armijo also directed the Alcalde of Taos to place Alvarez in possession of the grant. In response to Armijo's directions, Alcalde Juan Antonio Aragon delivered legal possession of the premises to Alvarez on October 25, 1837. Armijo noted his approval of the proceedings had in connection with the delivery of possession in the margin of the testimonio on November 24, 1837.

During the next five and a half years, Alvarez made no effort to perform the obligations mentioned in his original petition. Fearing that the grant might be forfeited, he petitioned the Alcalde of Taos on March 9, 1843, stating that due to conditions beyond his control he had been unable to carry out his plans and requested him to revalidate the grant. After considering the matter, Alcalde Cornelio Vigil issued a decree which reinstated the grant. However, Alvarez apparently had a serious question as to whether the Alcalde had authority to renew the grant for on December 5, 1845, he petitioned Armijo for a confirmation of the grant. In his petition, Alvarez explained that the invasion of New Mexico by the Texans and other impediments had prevented him from effecting the planned enterprise. He assured the governor that if the grant was confirmed that he would

settle upon the land and perform all of the covenants which he had agreed to as soon as his circumstances would permit. Armijo confirmed the grant but failed to condition it upon the performance of such covenants.

Conditions apparently never improved for during the next ten years Alvarez made no effort to occupy the grant. Some eighteen years after its issuance, Alvarez filed a petition¹ in the Surveyor General's Office on February 7, 1855, seeking the recognition of the grant, which allegedly contained 16 leagues or 69,848 acres. This was the first private land claim filed in the Surveyor General's Office. No other proceedings were had in the case until October 28, 1860, when the devisees under Alvarez's will filed a supplemental petition stating that Alvarez had died in the month of July of 1856 and they had succeeded to his interests. A certified copy of the will, together with a brief supporting the claim, were also filed. About this same time, the depositions of a number of witnesses were offered which tended to prove that the signatures of the granting officials were genuine. A counter brief was filed by the government on February 11, 1861, protesting the confirmation of the grant on the ground that the conditions upon which it had been made

¹The Ocate Grant, No. 143 (Mss., Records of the S.G.N.M.).

had never been performed. On May 5, 1871, the claimants filed a brief in rejoinder in which they argued that the confirmation decree of December 5, 1845, was an unconditional grant. At this point, the case became stalemated. Surveyor General George W. Julian, for the first time, conducted an investigation into the validity of the claim. After reviewing the history of the grant in his report, which was dated December 22, 1885, Julian stated that the grant presented a number of problems. The first involved the question of whether or not the grant was genuine and whether the granting officials had authority to make the concession. In answer to these questions, Julian found from a comparison of the signatures on the grant papers with the signatures on documents in archives, that the grant was authentic. He also found that as a general rule the governor of New Mexico, after 1828, had authority to make a grant for agriculture and grazing purposes under the colonization laws and regulations. However, he was of the opinion that the recitation in the translation of the grant papers which stated that it covered four leagues square was erroneously translated and should read four square leagues or 17,712 acres. Julian also noted that Armijo had proclaimed himself governor of New Mexico on August 27, 1837, and, therefore, there was some question as to the validity of

such action. However, since Armijo's usurption of power had never been contested by the Mexican government, he felt it reasonably could be assumed that he was governor of New Mexico on October 16, 1837. The second problem pertained to the nature of the Alvarez agreement to introduce marino sheep into New Mexico and settle upon the grant within three years. The claimants contended that this was a condition subsequent and that the grant was valid at the date of its issuance subject only to the government's right to cancel it by a judicial proceeding for failure to comply. However, Julian found that the obligation was a condition precedent and, therefore, the grantee gained no title prior to the performance of the conditions. The third question pertained to the claimants' contention that the grant had been confirmed by the Alcalde of Taos in 1843. Julian found that this confirmation afforded the claimants no comfort since an alcalde had no authority in 1843 to make a grant of the public domain. The last issue involved the claimants' argument that the unconditional revalidation of the grant in 1845 by Armijo perfected their grant. In answer to this argument, Julian held that since neither the petition nor decree of December 5, 1845, described the grant but merely referred to it as being the Ocate Grant, the proceedings did not

constitute a legal grant. Based on these findings, Julian had no alternative but to recommend to Congress that the claim be rejected.²

Since Congress had failed to act upon the claim the owners of the grant were afforded another opportunity to have the claim reinvestigated when the Court of Private Land Claims was created. On March 3, 1893, Eugenio Alvarez and a number of other residents of Algiers, Africa, all claiming to be heirs of Manuel Alvarez, filed suit³ seeking the recognition of the portion of the grant lying north of the Ocate River. They expressly relinquished any claim they had to the lands lying south of the river since they were situated within the Town of Mora Grant. They also called attention to the adverse opinion which had been rendered by the Surveyor General's Office, but alleged that the presentation of the claim had been made by "someone without authority." The United States filed a general answer in the case putting the allegations contained in the plaintiffs' petition in issue.

In developing the case for trial, the government discovered that there were several hundred homestead

²Ibid.

³Alvarez v. United States, No. 231 (Mss., Records of the Ct. Pvt. L. Cl.).

entries located within the tract described in the plaintiffs' petition. The court entered an order on November 10, 1896, making such persons parties defendants.

The cause came up for hearing on October 4, 1898, at which time the plaintiffs' attorney announced in open court that he had not been able to obtain any advice from his clients and requested that the claim be dismissed without prejudice. The government strenuously objected to such a disposition of the case on the ground that it would not finally dispose of the case but would leave its validity open for future determination. It argued that if the request was granted, the Court would perpetuate the cloud which had been cast upon the title to numerous persons holding land under patents from the United States. On the following day, the Court announced that in its opinion where parties had submitted a claim to the jurisdiction of the Court, there are only two ways by which they may be disposed of--one, by a decree of confirmation, or two, by a decree of rejection. Therefore, the Court held that since the plaintiffs had failed to prosecute their case, a decree of rejection was proper. A decree⁴ was entered accordingly. The rejection of this claim relieved the homesteaders of a serious menace to their

⁴Journal 38 (Mss., Records of the Ct. Pvt. L. Cl.).

titles and saved the United States from possible pecuniary liability under the act of March 3, 1891.⁵

⁵Court of Private Land Claims Act, Chap. 539, Sec. 14, 26 Stat. 854 (1891).