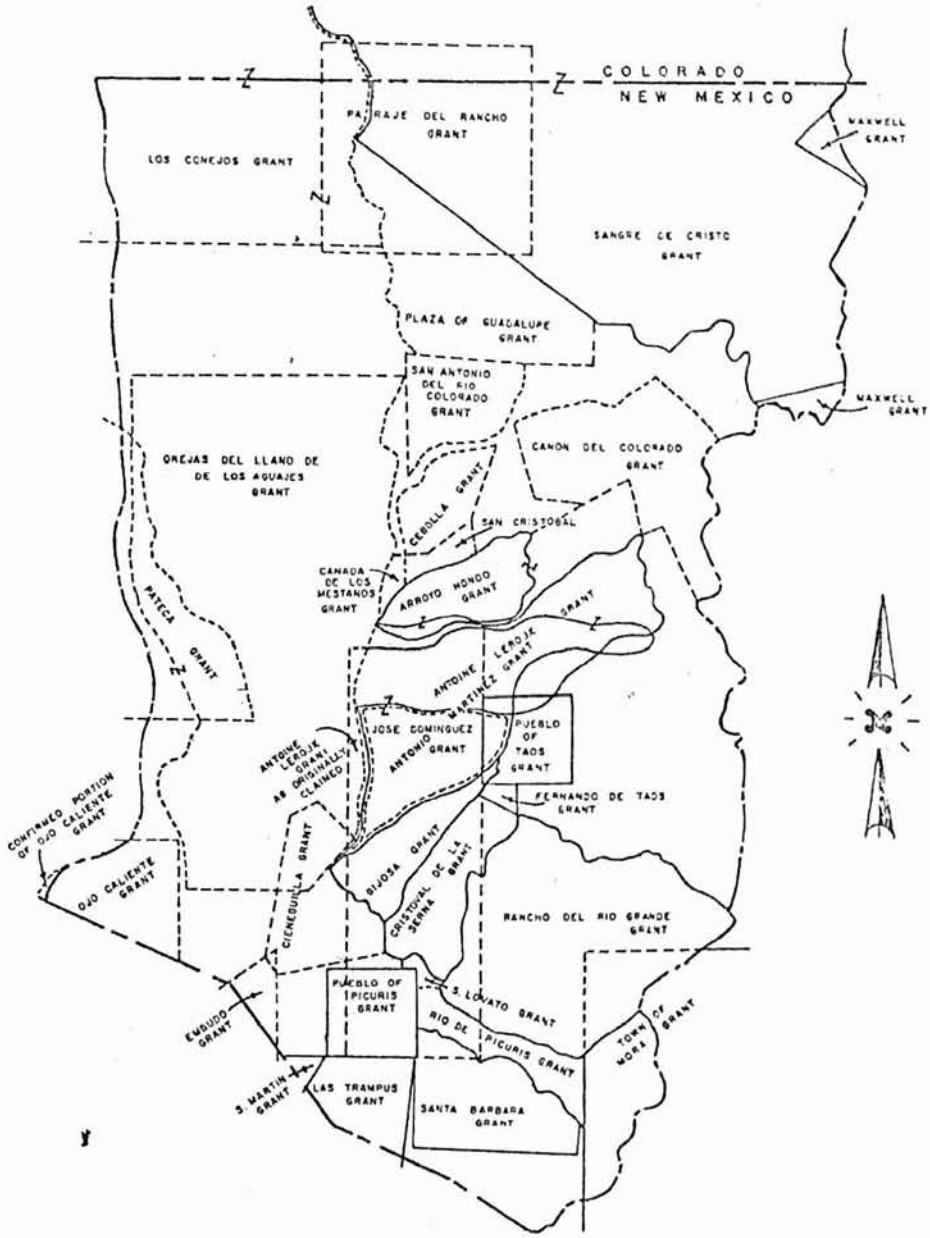
* See Rio Arriba County



TAOS COUNTY, NEW MEXICO
SHOWING
SPANISH AND MEXICAN LAND GRANTS

THE SANGRE de CRISTO GRANT

The history of one of the largest and most interesting New Mexican Grants commences two days after Christmas in the year 1843, with the filing of a petition by a small boy and one of the most important men of Taos, New Mexico, in which they asked for a grant covering the lands situated in the valleys of the Costilla, Culebra, Trinchera Rivers. The boy was Narciso Beaubien, the thirteen year old son of Charles Beaubien, and the man was Stephen Luis Lee, a naturalized citizen of Mexico. Beaubien and Lee advised Governor Manuel Armijo that the requested lands were ideally suited for cultivation and ranching purposes, and contained an abundance of water and all that was required for colonization and settlement.

The petition was referred by Armijo to Juan Andres Archuleta, the Prefect of Rio Arriba, on December 30, 1843, with instructions to place the grantees in legal possession of the land. This order was countersigned by Donaciano Vigil, Acting Secretary of the Departmental Assembly. Archuleta, in turn, referred the matter to the Alcalde of Taos, Jose Miguel Sanchez, in whose jurisdiction the grant was located and directed him to

carry out the Governor's decree, provided the grant did not adversely affect the rights of any third party. On January 12, 1844, Sanchez went to the grant and made the following survey of its lands:

> Commencing on the east side of the Rio Grande, a mound was erected at one league distance from its junction with the Costilla River, thence following up the river, on the same eastern bank to one league above the junction of the Trinchera River, where another mound was erected, and continuing from west to northeast, following up the current of Trinchera River to the summit of the mountain, where another mound was established, and following the summit of the mountain to the boundary of the lands of Miranda and Beaubien, the fourth mound was established, and continuing on the summit of the Sierra Madre, and following the boundary of the aforementioned lands to opposite the first mound erected, on the Rio Grande, where the fifth and last mound was erected, from thence in a direct line to the place of beginning.

After completing the survey, Sanchez performed the customary ceremony of delivering legal possession of the grant to the grantees.[1]

In 1845 the grantees attempted to establish a colony on the grant but the Utes drove the settlers back to Taos. It does not appear that the grantees made any further attempt to colonize the land prior to the acquisition of the territory by the United States, but livestock was apparently pastured on the grant whenever the Indian situation would permit. Both of the grantees were slain

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[1] H. R. Report No. 457, 35th Cong., 1st Sess., 4-6 (1858).

during the Taos Massacre on January 19, 1847. Charles Beaubien inherited his son's interest in the grant. Lee's personal effects proved insufficient to pay the numerous claims which were presented against his estate. Therefore, his administrator, Joseph Pley, with the approval of the Probate Court sold Lee's undivided one-half interest in the grant to his father-in-law, Charles Beaubien, for one hundred dollars. Agricultural settlements were established by Beaubien on the Costilla and Culebra Rivers in 1849 and 1851. Thereafter, population on the grant rapidly increased.[2]

One of the first petitions[3] presented to Surveyor General William Pelham upon his arrival at Santa Fe was Charles Beaubien's seeking the confirmation of the Sangre de Cristo Grant. In his report dated December 30, 1856, Surveyor General Pelham found the grant to have been made by a competent authority without any conditions. He therefore recommended that Congress confirm Beaubien's title to all the lands described in his petition. Congress, on June 21, 1860, passed an act[4] validating Beaubien's

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[2]H. R. Report No. 321, 36th Cong., 1st Sess., 7-15 (1860).

[3]The Sangre de Cristo Grant, No. 14 (Mss., Records of the S.G.N.M.).

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

title to the grant as recommended for confirmation by the Surveyor General.

It then became important to determine the meaning of the term "as recommended for confirmation by the Surveyor General." John G. Tameling attempted to homestead a 160-acre tract of land located within the boundaries of the grant. He claimed that since the colonization law of August 18, 1824 limited the maximum amount of land which could be granted to an individual to eleven leagues, that the grant insofar as it covered more than twnety-two leagues was void. He insisted that inasmuch as the Surveyor General's Report stated that Lee and Beaubien were the legal owners in fee of said claim and since they could not be the legal owners of more than twenty-two leagues, it must follow that the recommendation was for only the maximum amount of land which the grantees could legally receive under the Mexican Law. The United States Freehold Land and Emigration Company, which, in the meantime had purchased the portion of the grant known as the Costilla Estate from Beaubien, filed an ejectment suit against Tameling in the District Court of Pueblo County, Colorado. The case was tried upon an agreed statement of facts. Judgment was for the plaintiff in the trial court and the case was appealed

to the Supreme Court of the Territory of Colorado. The Colorado Supreme Court stated:

> We must regard it as a valid confirmation for the entire tract, or treat the act of Congress as void, and conferring no rights on Lee and Beaubien, for it nowhere points out the location of a less quantity than the whole.[5]

The Court concluded its opinion by holding that the unconditional confirmation of the grant by Congress amounted to a grant de novo to the whole claim without regard to the question of whether or not the claim was originally valid. This decision subsequently was affirmed by the United States Supreme Court.[6]

The Secretary of Interior on March 16, 1877, advised the Commissioner of the General Land Office that the decision of the Supreme Court in the Tameling case[7] must be taken as the true construction of the act of June 21, 1860,[8] and patent should be issued to Beaubien for all of the lands described in the testimonio notwithstanding the fact that the grant covered more than twenty-

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[5]Tameling v. United States Freehold & Emigration Co., 2 Colo. 411 (1874).

[6]Tameling v. United States Freehold & Emigration Co., 3 Otto (93 U.S.) 644 (1877).

[7]Ibid.

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

two leagues.[9] Pursuant to the decision, a contract was entered into with Deputy Surveyor E. H. Kellog to survey the grant. Kellog's survey was made in 1877 and showed the grant as containing 998,780.46 acres. Patent based on this survey was issued on December 20, 1880.[10]

For the next ten years, the validity of the Sangre de Cristo Grant was universally recognized. However, on May 9, 1890, O. P. McMains, who represented certain homesteaders who had unsuccessfully attempted to settle within the grant urged the Commissioner of the General Land Office to cause a suit to be instituted to set aside the patent on the grounds that in 1843 the lands covered by the grant were in Texas. If this were true, then Governor Armijo, of course, had no authority to make an extra-territorial grant. Secretary of Interior John W. Noble, in a decision dated August 22, 1890, declined to recommend such a suit. He pointed out that even if the land had been located within the Republic of Texas on the date the grant had been made, Texas had sold the lands in question to the United States under the Compromise of 1850[11] and therefore, they unquestionably belonged

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[9]The Sangre de Cristo Grant, No. 14 (Mss., Records of the S.G.N.M.).

[10]Ibid.

[11]Compromise of 1850 (Texas and New Mexico), Chap. 49, 9 Stat. 446 (1850).

to the government when the grant was confirmed. Under the decision of the Tameling case, it would make no difference if the grant was valid or not, since the act of June 21, 1860,[12] quit claimed all of its interest in the lands to Beaubien.[13]

The turbulent history of the subsequent exploitation of the grant by speculators, both foreign and domestic, while extremely interesting, need not be pursued in this brief account of the grant.[14]

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[12]An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860). This question was finally settled by the New Mexico Supreme Court which held, "It is urged upon us by Counsel for the plaintiffs that the Las Vegas Grant is not within the portion of New Mexico protected by the Treaty of Guadalupe Hidalgo, being originally a part of the State or Republic of Texas. The trial court properly rejected this contention." Cartwright v. Public Service Company of New Mexico, 66 N.M. 64 343 P. 2d 654 (1959).

[13]The Sangre de Cristo Grant, 11 L.D. 203 (1890).

[14]A number of writers have written on the Sangre de Cristo Grant. These include Hafen, "Mexican Land Grants in Colorado," 4 Colorado Magazine, 83-86 (1927); Carr, "Private Land Claims in Colorado," 25 Colorado Magazine, 15-18 (1951); Carr, "The Sangre de Cristo Grant," The Westerners Brand Book, 1947, 61-83 (1949); Herstrom, "Sangre de Cristo Grant," The Westerners Brand Book, 1960, 73-103 (1961); and Brayer, William Blackmore: The Spanish and Mexican Land Grants of New Mexico and Colorado, 59-125 (1949).

THE PARAJE del PUNCHE GRANT

Suit was instituted[1] on March 3, 1893, by Antonio Jose Gomez and Jose Marie Baca in the Court of Private Land Claims against the United States in an effort to obtain the recognition of the Paraje del Punche Grant. In their petition, the plaintiff's alleged that the grant had been issued to their respective fathers, Antonio Mateas Gomez del Costillo and Jose Luis Baca de Sandaga, by Governor Facundo Melgares on December 7, 1821. It was allegedly made pursuant to a decree issued on April 6, 1820 by Jose Marie Mechelem,[2]

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[1] Gomez v. United States, No. 241 (Mss., Records of the Ct. Pvt. L. Cl.).

[2] Jose Mariano de Michelena and Miguel Dominguez were chosen as substitutes to discharge the duties of the Triumvirate on March 31, 1823. Dominguez was very aged and uneducated. The Triumvirate was comprised of Generals Nicolas Bravo, Guadalupe Victoria and Pedro Celestino Negreto who during the early part of 1823 and early part of 1824, were frequently in the field attempting to check the activities of the Iturbidista. Thus, the government, during this period, was practically in charge of Michelena. 5 Brancroft, History of Mexico, 2, 8 (1885). It should also be pointed out that Mexico never asserted its independence until the Plan of Iguala was adopted on February 24, 1821. Thus, the plaintiffs were obviously mistaken in asserting that the grant had been made pursuant to directions from officials of the Mexican Government in 1820.

Provisional President of Mexico, a decree of the Mexican Congress dated August 20, 1820, and an order by the Provisional Governor of New Mexico,[3] Manuel Salazar, dated March 1, 1820. They described the grant as being a 90,000 acre square tract of land bounded:

> On the north, by the source of the Rito de la Sierra Madre del Rancho with the intersection of the Sierra Blanca; on the east, by the source of the Hurraca; on the south, by the junction of the waters having their source in the springs of the mountains to the north; and on the west, by the Ojo de la Sierra Pedregosa.

Although the plaintiffs had not filed any grant papers in support of their claim, they stated they believed that they could produce them by the time the case came up for trial. The government filed a general answer putting the allegations contained in the plaintiffs' petition in issue.

The claim was set for hearing on May 17, 1897, and the plaintiff still had not been able to locate any documentary evidence of their claim in the archives of New Mexico. Therefore, the plaintiffs, recognizing the applicability of the adage "... if there is no record, there is no grant; and if there is no grant, there is

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[3]Facundo Melgares was Governor of New Mexico between 1818 and 1822. 1 Coan, History of New Mexico 267 (1925).

no title,"[4] requested the dismissal of their petition. The court complied and on the same date issued a decree[5] rejecting the claim.

THE PLAZA OF GUADALUPE GRANT

In 1851 eighty-two local landless families petitioned the prefect of Taos, George Levy, requesting him to grant them the privilege of occupying and cultivating that certain tract of land known as the Plaza of Guadalupe, "in conformity with the usages and customs in force prior to the acquisition of New Mexico by the United States." The tract was described as being bounded:

> On the north, by the Sangre de Cristo Grant; on the east, by the Cumbre de la Sierra Grande; on the south, by the Ojo del Pinabetas and the waters of the Sierra Guadalupe; and on the west, by the Canon of the Rio Grande.

Levy granted the request and appointed a commission comprised of Francisco Martine, Miguel Ortiz, and

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[4] Keleher, "Law of the New Mexican Land Grant," 4 New Mexico Historical Review, 362 (1929).

[5] 3 Journal 207 (Mss., Records of the Ct. Pvt. L. Cl.).

Matias Ortega to divide, pass out, and assign to each of the applicants an individual tract of land ranging from fifty to seventy varas in width. Each of the commissioners was allowed one hundred and twenty varas of land as compensation for his services. Levy also authorized the settlers to use the water from the three small streams which were fed by the melting snow off the mountains which bounded the grant on its east side. In response to the charge, the commission allotted the farm tracts to the petitioners, who immediately occupied and commenced farming their respective lots. Sometime in 1854 Vincento Martinez and a number of other citizens of Taos instituted a suit in the District Court for the Second Judicial District of New Mexico seeking to enjoin Jose Miguel Ortiz and a number of the other inhabitants of the Plaza of Guadalupe from claiming and using the grant. On September 4, 1854, the jury held for the defendants and the court entered judgment in their favor. Thereafter, the inhabitants of the grant continuously held and enjoyed peaceful possession of the premises which were estimated to contain nine square leagues or approximately 39,852 acres of land.[1]

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[1]The Plaza of Guadalupe Grant, No. F-105 (Mss., Records of the S.G.N.M.).

A claim for the confirmation of the grant was presented[2] to Surveyor General T. Rush Spencer on July 17, 1872, by Jose Ignacio Garcia, Jose S. Martinez, and Pedro Vigil, as attorneys in fact for the seven hundred forty-one inhabitants of the grant. In a brief supporting the claim, they pointed out that during the initial session of the New Mexico legislature, which met after the establishment of a civil government under the Organic Act,[3] an act was passed on July 14, 1851, which provided that the laws which previously had been in force and not repugnant to or inconsistent with the Constitution of the United States were to continue in effect.[4] Continuing, the claimants stated that:

> ... ever since 1824, Prefects of New Mexico had the right to extend the settlement of vacant lands within their jurisdiction and parcel it out to the people who wished to form a new town...

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[2] Ibid.

[3] An act proposing to Texas the establishment of her northern and western boundaries, the relinquishment by the said state of all territory claimed by her exterior to said boundaries, and all her claims upon the United States, and to establish a government for New Mexico, Ch. 49, Sec. 7, 9 Stat. 446 (1850). Section 9 of this act provides, among other things, that the legislative power of the Territory of New Mexico shall extend to all rightful subjects of legislation consistent with the Constitution of the United States but that no law would be passed "interfering with the primary disposal of the soil."

[4] Leitensdorfer v. Webb, 1 N.M. 34 (1853).

Therefore, according to their reasoning, if Prefects had the power to make grants under the Mexican Regime, this authority still existed after the United States acquired New Mexico and, thus, their claim should be recognized.[5]

While the peaceful occupation of the grant for more than twenty years might have given them an equitable interest in the lands which were actually occupied, it was clear they had no legal title under the grant. In short, the petitioners had totally failed to establish a legal claim. First, they had not filed any documentary evidence supporting their claim and without some evidence of title, the claim obviously could not be recognized. Second, it was a well-established principle of law that when Mexico ceded the territory to the United States, all of the vacant and unappropriated land therein passes to the United States and the Territory of New Mexico had no title to the unappropriated lands within its borders.[6] Thus, New Mexico could not by its laws, impose or dictate to the United States, the terms or mode by which title to the public lands shall be conveyed. Finally,

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[5]The Plaza of Guadalupe Grant, No. F-105 (Mss., Records of the S.G.N.M.).

[6]Irvine v. Marshall, 20 How. (161 U.S.) 558 (1857).

it should be noted that the facts set forth in the claimant's petition indicated that the Prefect was attempting to make a concession under the Cedula of January 4, 1813, while it was well established that after 1828 only the governor could make valid grants of the public domain in New Mexico.[7] In view of these defects it is not surprising to find that the petitioners did not push for an early hearing upon their claim, and, therefore, no action was had thereon by the Surveyor General's Office. The grant was never presented to the Court of Private Land Claims for adjudication since it only had jurisdiction over claims arising under Spanish and Mexican grants.[8]

THE SAN ANTONIO DEL RIO COLORADO GRANT

Rafael Archuleta, Antonio Elias Armenta, and Miguel Montoya petitioned the Prefect of the First District of the Department of New Mexico, Juan Andres Archuleta,

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[7]Crespin v. United States, 168 U.S. 208 (1897).

[8]Court of Private Land Claims Act, Chap. 539, Sec. 6, 26 Stat. 854(1891).

on February 8, 1842, requesting a grant covering a tract of vacant public land known as San Antonio del Rio Colorado. The applicants, finding themselves without sufficient land to support their families, solicited the grant for agricultural purposes. In a decision issued on the same date, the Prefect held:

> As one of the attributes pertaining to the Prefecture under my charge is to denote and determine the public lands lying within the limits of the district... and taking into consideration the miserable condition of the inhabitants and the promotion of agriculture, I have determined to and do grant them in the name of the Mexican Republic the lands which they have registered and so that possession may be given, the petitioners shall present this decree to the Alcalde of the jurisdiction where the land is situated and the Alcalde shall carry out the proceedings.

On January 19, 1842, Alcalde Juan Antonio Martin, under and by virtue of Archuleta's decree placed the three grantees and thirty-two other colonists in legal possession of the grant and designated the following natural objects as its boundaries:

> On the north, Jelo de los Pinabetas and the point of the Guadalupe Hill; on the east, the mountains; on the south, the brow of the Colorado; and on the west, the point where Guadalupe Hill joins the Rio Colorado.

Following the delivery of possession, Martin allotted each of the colonists an individual 100 vara tract of valley land for agricultural purposes and gave them the privilege of pasturing their livestock on the

adjoining commons. Possession of the grant was given upon the condition that the colonists enclose and fortify the town and arm themselves. Complete title to the individual tracts was not to vest until they had been cultivated four years. Additional allotments were made within the grant by the Alcalde of Arroyo Hondo, Jose Miguel Sanchez, from time to time between 1842 and 1848. By the time jurisdiction over New Mexico was acquired by the United States, the Town of San Antonio del Rio Colorado was a substantial community with some 300 families.[1]

Sixty-two of the residents of the Town of San Antonio del Rio Colorado filed an informal petition[2] in the Surveyor General's Office on March 11, 1872, seeking the recognition of the grant. The claim was investigated by the Surveyor General James K. Proudfit and on January 6, 1874, he reported it to Congress, recommending its confirmation. Proudfit's report pointed out that the claim, which was based on a community grant, was made in accordance with the "usage then in vogue." Therefore, under the instructions given to him on August 21, 1854,[3] by the Commissioner of the General

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[1]The San Antonio del Rio Colorado Grant, No. 76 (Mss., Records of the S.G.N.M.).

[2]Ibid.

[3]S. Misc. Doc. No. 12, 42d Cong., 1st Sess., 1-7 (1871).

Land Office, he had concluded that the petitioners had made a prima facie case notwithstanding the fact that the original proceedings might be irregular. A preliminary survey of the grant was made in September 1879 by John Shaw for 18,955.22 acres.[4]

Since the claim had not been acted upon by Congress prior to 1885, it was one of the grants re-examined by Surveyor General George W. Julian under the instructions he received from the Commissioner of the General Land Office when he took office. In a Supplemental Report dated May 13, 1886, Julian noted that while the courts had repeatedly held that after 1828 the governor was the only territorial authority in New Mexico who had authority to make dispositions of the public lands, the applicants had an equitable title that was "entitled to respect." Continuing, he stated:

> Justice would seem to demand that these people should have the right to select and retain the lands they have actually occupied and improved under the proceedings by which they were placed in possession in 1842, and within the boundaries there specified, the quantity thereof and its precise location to be determined and fixed by evidence to be hereafter taken, and a survey to be made in the field. To this extent, I recommend a confirmation of the claim to the legal representatives of those who were placed in possession of the land on January 19, 1842.[5]

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[4]The San Antonio del Rio Colorado Grant, No. 76 (Mss., Records of the S.G.N.M.).

[5]S. Exec. Doc. No. 7, 50th Cong., 1st Sess., 2-4 (1887).

Notwithstanding Julian's favorable recommendation Congress failed to act upon the grant session after session. Thus, after its creation in 1891, the claim was presented[6] for adjudication by the Court of Private Land Claims. The plaintiff's petition was filed on January 30, 1892, and was brought by Francisco A. Montoya for himself and on behalf of all others similiarly situated. When the case came up for trial on August 18, 1892, he proved that the title papers were genuine and argued that if the title was not legal it was at least and equitable title which the United States was bound under the Treaty of Guadalupe Hidalgo to recognize and protect. The plaintiff based his claim for an equitable title on the fact that more than 200 persons were occupying land which they were claiming under the grant. He asserted that the long occupancy and good faith improvement of such lands would have created an equitable right against the Mexican government. He also pointed out that there were 28 private land claims in New Mexico which had been issued after Mexico gained its independence based on grants made by a Mexican official other than the governor. The government's attorney in turn argued that in 1842 a prefect had

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[6]Montoya v. United States, No. 4 (Mss., Records of the Ct. Pvt. L. Cl.).

no authority to dispose of the public domain or authorize the delivery of possession thereof by an alcalde. He contended that the original colonists were mere trespassers and, therefore, an equitable title had not been created On March 10, 1893, the court handed down its decree[7] rejecting the claim on the grounds that a prefect had no power to make a valid disposition of public land. The plaintiff appealed the decision to the Supreme Court, but the appeal was subsequently dismissed upon the motion of the appellee.[8]

THE CEBOLLA GRANT

Carlos Santistevan, acting for himself and on behalf of five associates, appealed to Governor Manuel Armijo on December 31, 1845, soliciting a grant covering a tract of vacant agricultural land located at the place called Cebolla, which was situated between the towns of San Antonio del Rio Colorado and San Cristoval.

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[7] 1 Journal 119 (Mss., Records of the Ct. Pvt. L. Cl.).

[8] Montoya v. United States, 18 S. Ct. 944, 42 L. Ed. 1213 (1897) (mem.).

Santistevan stated that he and his associates were all poor and landless residents of the Town of Arroyo Hondo and needed the premises to support their families. He described the requested tract as being:

> ... very suitable for cultivation, irrigable from certain water, said to be from the Loma, quite sufficient for its irrigation....

On the same date Armijo directed the Prefect of the Second District of Taos, Diego Lucero, to ascertain whether the tract was vacant, and if such were the case, to instruct the Alcalde of Taos to deliver legal possession thereof to the petitioners. In compliance with these instructions, Lucero, on January 3, 1846, ordered Alcalde Juan Lorenzo Martinez to carry out the governor's instruction and, if satisfied that no injury would result therefrom, to allot the grantees a sufficient amount of land for their cultivation. On March 20, 1846, Martinez together with his attending witnesses and the petitioners, went to Cebolla. Upon finding the tract unoccupied and uncultivated, he performed the customary ceremonies necessary to place the petitioners in legal possession of the lands embraced within the following natural objects, which he designated as the boundaries of the grant:

> On the north, the boundaries of the San Antonio del Rio Colorado Grant; on the east, the mountain; on the south, the boundary of the San Cristobal Grant; and on the west, the edge of the bluffs bordering the Rio Grande.

The Act of Possession recited that the grant was subject to the conditions that the grantees fence the premises in order to prevent damage to their crops; however, they were not to enclose any watering places or obstruct the roads or pasturages. The grantees were also ordered to arm themselves for their protection. The Act of Possession concluded with the notation that individual allotments had not been made due to the inclement weather and very heavy brush. However, the grantees were authorized to partition the tract amongst themselves.[1]

While there is no evidence that the grantees settled upon the grant prior to the acquisition of New Mexico by the United States, it appears that they had used the premises as a pasturage for their livestock. During the twenty-five year period following the issuance of the grant, the interests of the original grantees were sold and re-sold many times. On January 24, 1872, John T. Graham acquired title to the entire grant from

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[1] H. R. Exec. Doc. No. 296, 42d Cong., 2d Sess., 6-7 (1872).

the assignees of the original grantees. He conveyed a half interest in the grant on the following day to William Blackmore for three thousand dollars. Sometime between January and March, 1872, Graham sold an undivided one-fourth interest in the grant to Clarence P. Elder. Just eleven days later, Graham and Blackmore petitioned[2] Surveyor General T. Rush Spencer seeking the confirmation of the grant.

With almost unprecedented dispatch, Spencer just two days later held a hearing on the claim. Three witnesses were questioned concerning the validity of the grant papers, each of whom testified that in his opinion the signatures of the granting officials were genuine. In a report dated March 23, 1872, Spencer found that while Armijo's decree dated December 31, 1845, some somewhat vague, it nevertheless, was sufficient to constitute a valid grant; provided Armijo had the power to issue grants in 1845. On this question, he found that the Colonization Law of August 18, 1824,[3] and Regulations of November 21, 1828,[4] authorized governors of the territories to make grants. Therefore, he held the grant to be valid and recommended its confirmation

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[2] Ibid., 1-3.

[3] Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[4] Ibid., 141.

by Congress.[5] A preliminary survey made by Deputy Surveyors Elkins & Marmon in November, 1877, showed that it contained 17,159.57 acres.[6]

Once the claimants had secured the Surveyor General's approval of the grant and it had been surveyed, they attempted to force a number of sheep operators, who previously had free use of the land, to pay grazing fees. They also tried to prevent the unauthorized cutting of wood on the grant. These efforts prompted the trespassers to file protests with the Surveyor General charging that the grant was invalid, incomplete, and fraudulent. The result was a stalemate which lasted until after the creation of the Court of Private Land Claims in 1891.[7]

On February 18, 1893, Clarence P. Elder filed suit[8] against the United States in the Court of Private Land Claims to secure the recognition of the grant. When the case came up for trial on August 28, 1896, the plaintiff offered the grant papers together with a great deal

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[5]The Cebolla Grant, No. 61 (Mss., Records of the S.G.N.M.).

[6]Ibid.

[7]Brayer, William Blackmore: The Spanish-Mexican Land Grants of New Mexico and Colorado, 332 (1949).

[8]Elder v. United States, No. 108 (Mss., Records of the Ct. Pvt. L. Cl.).

of documentary and oral evidence establishing a complete chain of title back to the original grantees. Elder also contended that the Elkins & Marmon Survey was erroneous and the grant covered a substantially larger tract of land. He asserted that the north boundary should be located about two miles further north of the line shown on the survey. This would place the line along the top of the bluffs just south of of the Rio Colorado. He also contended that the south boundary should be located at the mouth of an old acequia, which the inhabitants of the Town of San Cristobal claimed as the north boundary of their grant. The government conceded that the grant papers were genuine but raised five special defenses. First, it argued that Armijo's decree of December 31, 1845, was not a decree of grant but merely a request for additional information and authorization for the applicants to enter into possession pending his further action. Second, Armijo had no authority to make a grant of public land in 1845. Third, Elder was not entitled to prevail since no evidence of the grant could be found in the Archives of New Mexico. Fourth, since plaintiff had failed to present any evidence showing that the conditions mentioned in the grant papers had been fulfilled prior to the United States' acquisition of New

Mexico, the grant was incomplete and imperfect and, therefore, not entitled to confirmation. Finally, since the original grantees had sought only the agricultural lands, the grant, if confirmed, should be restricted to the irrigable lands situated within the river valley.

The court, on September 5, 1896, announced its decision[9] holding the grant to be one entitled to confirmation but sustained the government's contention concerning the extent of the grant. Justice William M. Murray wrote a dissenting opinion in which he stated that the government's position concerning the invalidity of the grant was sound. While the area which had been confirmed by this decree was relatively small, the adverse decision on the first four defenses raised by the government was important since they affected a number of other grants which were then pending in the Court of Private Land Claims. Therefore, the government appealed the decision to the United States Supreme Court.

In answer to the questions raised by the government in the appeal, the Supreme Court stated that while the Governor of New Mexico undoubtedly possessed the power to make a grant of public land in 1845, such power was

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[9] 3 Journal 173-175 (Mss., Records of the Ct. Pvt. L. Cl.).

derived solely from the Colonization Law of 1824[10] and the Regulations of 1828. The Regulations of 1828[11] established the procedure to be followed in issuing grants under the Colonization Law of 1824, in the Territory of New Mexico. In brief, the Regulations of 1828 required (1) the applicant for a grant to present a petition to the Governor setting forth a number of facts pertaining to himself and the requested lands, (2) the governor to investigate the merits of the application and, depending upon the conditions, to either issue a grant in strict conformity with the provisions of the Colonization Law of 1824 or reject the application, (3) the approval of (a) the Territorial Deputation if made to the head of a family or an individual, or (b) the Supreme Government if made to an emprisario, and (4) after a grant had been definitely made and approved, the granting official was to give the grantee a testimonio to serve as his title and make a corresponding entry in a a book intended for that purpose. Following a careful examination of Armijo's decree of December 31, 1845, the Supreme Court held that the decree was merely an

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[10]Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[11]Ibid., 141.

order by Armijo directing the prefect to gather the preliminary facts necessary to justify a grant but was manifestly not an actual grant of title. While the Court conceded that the grant papers clearly reflected that the prefect and alcalde had intended to grant something, either a fee or merely a right of possession, it was clear that neither of those officials had authority to make a valid grant of public lands. Even if it were presumed that the prefect and alcalde were acting on behalf of the governor, his failure to subsequently ratify their acts rendered the proceedings a nullity. Continuing, the Court pointed out that a grant could not be created by the mere conferring of juridicial possession since the authority to give possession was necessarily derived from and must conform to a precedent grant. In an effort to rationalize the proceedings, the Court stated:

> When it is borne in mind that the application of Santistevan purports to have been made at a time when hostilities were impending between Mexico and the United States and the territory of New Mexico was undoubtedly in a disturbed condition, its citizens in all probability preoccupied with preparation for an impending clash of arms, the inference from the documents we have been considering is not unwarranted that but a mere temporary possession or license was intended by the Prefect and Justice of the Peace to be conferred upon the applicants. Such an hypothesis would account for the long delay following the direction of the Prefect to the Justice of the Peace, bearing date January 3, 1846, and the delivery of possession the 20th of March following.

The Court also noted that since the plaintiffs' muniment of title had come from private custody and no evidence of the grant was to be found in the Archives, it would appear that the claim was not a grant made in strict conformity with the provisions of the Regulations of 1828. In conclusion, the Court stated:

> It may be added that the record fails to satisfactorily establish any occupancy or cultivation prior to the conquest, and but trifling cultivation thereafter, and the latter by a portion only of the alleged grantees... As a consequence of the foregoing reasons, it results that the claim should have been rejected by the Court of Private Land Claims, and that because it erroneously confirmed the alleged grant, the decree made below should be reversed, and the cause remanded with instructions to reject the claim and dismiss the petition. And it is so ordered.[12]

In response to this mandate, the Court of Private Land Claims on May 5, 1900, set aside its former decision, rejected the claim and dismissed the plaintiff's petition.[13]

The Supreme Court's decision must have come as a bitter disappointment to the claimants, who for more than a quarter century had believed their claim to be beyond reproach.

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[12] United States v. Elder, 177 U. S. 104 (1900).

[13] 4 Journal 160 (Mss., Records of the Ct. Pvt. L. Cl.).

THE CANADA DE LOS MESTANOS GRANT

Juan Gallegos and ten associates appeared before Vicente Trujillo, Alcalde of Taos, requesting a grant covering a tract of land located in the Canada de los Mestanos. In response to their oral petition, Alcalde Trujillo granted the tract to the eleven applicants on December 11, 1828, stating that he knew it would not prejudice the rights of any third party. The testimonio of this proceeding recites that the grant was made "in conformity with the Proclamation of 1813, which provides that the lands which are vacant shall be given to persons who will cultivate and work them."[1] Having made the grant, Trujillo proceeded to place the petitioners in possession of the premises and designated the following natural objects as its boundaries:

> On the north, the Penasco de San Cristobal; on the east, the Mesita road which goes to San Cristobal; on the south, the brow of said canada which separates it from the lands of Arroyo Hondo; and on the west, the Rio Grande.

Next, he allotted each of the grantees a separate farm tract and cautioned them to comply with the usual conditions pertaining to settlement and their mutual defense. He also

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[1]The Decree of January 4, 1813 provides for the disposal of the royal domain to private individuals and the defenders of the country "in order to improve agriculture and industry". Hall, The Laws of Mexico, 45 (1885).

authorized the grantees to use the waters from the San Cristobal and Lovo Rivers for the irrigation of their fields.[2]

The owners of the grant deposited their grant papers in the Surveyor General's office on June 7, 1861 but did not request an investigation into its validity. Several suspicious alterations have been made on this document. First, the name of Juan Gallegos has been stricken through and the name Vicente Trujillo has been added in a manner to make it appear that the Alcalde allotted himself a 200 vara tract. The amount of land allotted to Darcan Archuleta has been erased. The most suspicious of these changes is the one pertaining to the 10050 vara allotment allegedly made to Gaviel Garcia. Most of the allotments were 232 varas, however, the last two were for only 100 varas. Garcia's allotment was third from the last and would appear to also have been for 100 varas, but that someone added "50" after the figure 100.

On March 3, 1893, Julian Martinez instituted a suit[3] in the Court of Private Land Claims seeking the confirmation of the grant which he alleged contained 16,000 acres of land. When the case came up for trial on November 23, 1896, Martinez offered the grant papers and deeds from several of the original grantees as the foundation for his claim. He also

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[2]The Canada de los Mestanos Grant, No. F-82 (Mss., Records of the S.G.N.M.).

[3]Martinez v. United States, No. 163 (Mss., Records of the Ct. Pvt. L. Cl.).

introduced the oral testimony by several witnesses in support of his claim. One witness testified that after possession had been delivered, he had heard that the Governor had confirmed, validated, and ratified the grant. The balance of the oral testimony tended to prove that the grant had been occupied continuously after 1828. The government offered no evidence but merely argued that an alcalde had no authority to make grants of the public domain in 1828. The court adopted the government's contention in its unfavorable decision[4] dated December 2, 1896. Martinez, considering himself aggrieved by the decision, appealed to the Supreme Court. The Supreme Court dismissed the appeal on January 17, 1899, pursuant to Rule 10.[5]

THE SAN CRISTOBAL GRANT

In response to a request made by Severino Martinez for a grant covering a tract of agricultural land on the San

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[4] 3 Journal 170 (Mss., Records of the Ct. Pvt. L. Cl.).

[5] Martinez v. United States, 19 S. Ct. 878,; 43 L.Ed. 1177 (1899) (mem).

Cristobal River, Governor Alberto Maynes, on August 4, 1815, notified the Alcalde of Taos, Pablo Lucero, that he had granted Martinez's request and directed Lucero to place Martinez in possession of as much land as he could till, together with additional lands for corrals and buildings. The Governor's granting decree also directed Lucero to give land to others who might request it if there was space to accommodate them. Lucero, after carefully investigating the matter and finding that the grant would not prejudice the rights of any third party, proceeded to the grant with his witnesses and Martinez. The party arrived at the grant on October 8, 1815, and Lucero performed the customary ceremonies necessary to place Martinez in formal possession of a tract of land bounded:

> On the west, by the mouth of the Canoncito of the Rio San Cristobal; on the east, by a large spruce which stands above the Sierra del Alamo; and on the north and south, by the ridges lying on each side of the river.

A tract located between the spruce and a point 400 varas east thereof was given by the Alcalde to Juan Antonio Lucero at the same time.

Almost twenty years later, Father Antonio Jose Martinez, Severino Martinez's son, presented the testimonio of the grant to the Alcalde of the First Demarcation of Taos, Jose Mariano Jaramillo, and requested a grant covering the lands lying east of his father's concession be issued to him and four associates. Alcalde Jaramillo studied the papers

and concluded that Maynes, in his granting decree, had delegated to his office authority to make the requested grant. Therefore, on November 13, 1835, he granted the following tracts in the San Cristobal Valley to the following persons:

Tract 1

> A 100 vara tract lying east of the Juan Antonio Lucero tract to Antonio Jose Ortiz.

Tract 2

> A 100 vara tract lying east of the Ortiz Tract to Jose Madrid.

Tract 3

> A 600 vara tract lying east of the Madrid tract to Pablo Lucero and his two sons, Juan Antonio and Tomas.

Tract 4

> A 100 vara tract lying east of the Luceros' tract to Juan Antonio Salazar.

Tract 5

> All the valley lands bounded on the west by the Salazar tract and on the east by the point where the river disembogues from the mountains, to Father Martinez.

Jaramillo retained the testimonio of the 1815 proceedings in order to file them in the archives, but gave Father Martinez a certified copy of all the proceedings before his office.

On January 19, 1878, Daniel Martinez, for himself and on behalf of the other owners, petitioned[1] Surveyor General Henry M. Atkinson, seeking the confirmation of the 1815 and 1835 grants, which for all practical purposes was consolidated and called the San Cristobal Grant. In support of his

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[1]The San Cristobal Grant, No. 110 (Mss., Records of the S.G.N.M.).

claim to the consolidated grant, he filed the certified copy of the two proceedings. The testimony of a number of witnesses was also taken in support of the claim. This testimony tended to prove that the certified copy was signed by Jaramillo and that in 1835 he held the position of Alcalde of Taos. The witnesses also recounted how the insurgents, during the Taos rebellion of 1847, had broken into Prefect Jose Maria Valdez's house, seized the box containing the Archives of Taos, tore the archives into pieces and scattered them all over town. Next, they testified that while none of the grantees had actually lived upon the lands covered by the San Cristobal Grant, their peons or tenants had continuously used the lands subsequent to the delivery of possession. Atkinson, in an opinion[2] dated October 4, 1878, recommended that Congress reject the claim. First, he noted that there was no record of either grants in the archives of New Mexico. He pointed out that, while the claimants had attempted to account for the lack of archive evidence of the grant by showing that the archives of Taos had been destroyed, they had failed to prove such evidence ever existed and were among the archives of Taos at the time they were destroyed during the Insurrection of 1847. Next, he called attention to the fact that under Spanish Law, Severino Martinez would have had to been settled upon the 1815 grant for a period of four years in order to have perfected a valid title, and the

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[2] Ibid.

testimony showed he had never settled upon the land. Atkinson stated that in his opinion the occupation of the grant by Severino Martinez's peons or tenants would not satisfy this condition. Finally, he asserted that the decree of August 4, 1815 gave Alcalde Jaramillo no authority to confer a valid grant upon Father Martinez and his associates and since the claim based upon the 1815 proceedings was at best questionable, it also should be rejected.[3] Thus, the San Cristobal Grant became one of the six grants rejected by the Surveyor General's office prior to the time Surveyor General George W. Julian took office. Since the San Cristobal Grant covered a relatively small area - less than 5,000 acres - the petitioners abandoned their claim under the grant and sought relief under the homestead laws.

THE CANON DEL RIO COLORADO GRANT

Jose Antonio Laforte presented[1] the Canon del Rio Colorado Grant to Surveyor General T. Rush Spencer on February 10, 1872 for investigation under the eighth section

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[3] Ibid.

[1] The Canon del Rio Colorado Grant, No. 93 (Mss., Records of the S.G.N.M.).

of the Act of July 22, 1854.[2] In support of his claim, Laforte filed the testimonio of certain proceedings had in connection with the grant in 1836. It showed that on June 12, 1836 Antonio Elias Armenta, Jose Victor Sanches, and Jose Manuel Sanches petitioned the Alcalde of Taos, Antonio Jose Ortiz "praying for a tract of land in grant for our livestock" at the place known as the Canon del Rio Colorado from the mouth of the canon to the source of the river and bounded on the north by the Ridge of the Rito del Cabresto. Ortiz, who was the presiding officer of the Ayuntamiento of Taos, presented the request to that body for its consideration during its June 23, 1836 session. After a full discussion, the Ayuntamiento "decided to make the parties the grant", however, it limited the size of the concession to an area extending from the mouth of the canon to the first little valley east of the lake. Spencer took no action on the claim but his successor, James K. Proudfit, received a considerable amount of oral testimony concerning the grant between May 22 and June 30, 1874. This testimony tended to prove that the signatures on the Ayuntamiento's decree were genuine, that the signing parties were the corporate officials of Taos on June 23, 1836, the grantees and their successors had held peaceful and bona fide possession of the

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[2]An act to establish the Office of Surveyor General of New Mexico, Kansas and Nebraska, to grant donations to actual settlers therein, and for other purposes, Chap. 103, Sect. 81, 10 Stat. 308 (1854).

premises at all times after 1836, and one witness, Donaciano Vigil, stated:

> It was the custom and usage, and was such in accordance with the seven laws, known as the siete leyes, and under that authority the governors, prefects, and alcaldes, in conjunction with the Ayuntamientos, had authority to make grants of land. This law of the siete leyes was promulgated by one of the national governments of Mexico. The law was enacted in 1836 and remained in force till 1838, when, another government coming in, it was repealed.[2]

In a short opinion dated June 30, 1874[3] Surveyor General Proudfit recommended that the grant be confirmed to the original grantees and their legal representatives according to the bounaries set forth in the decree of June 23, 1836. A preliminary survey was made by Deputy Surveyors Griffin & McMullan in October, 1877, in which the claim was shown as containing 42,936.21 acres of land. This represented quite a reduction from the 115,000 acres which Laforte had estimated on the plat attached to his petition.[4]

Since Congress had not acted upon Proudfit's report, the Canon del Rio Colorado was one of the claims which Sur-

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[2]The Canon del Rio Colorado Grant, No. 93 (Mss., Records of the S.G.N.M.).

[3]S. Exec. Doc. No. 2, 43rd Cong., 2d Sess., 5-9 (1874). A considerable amount of testimony was given concerning the Town of Canon del Rio Colorado. This testimony was not pertinent to this grant since the settlement was not located upon the grant, but was located on the Town of San Antonio del Rio Colorado Grant. Proudfit apparently was unaware of this fact, for, in his opinion, he placed considerable stress on the fact that it was occupied at the time of the American occupation and in 1874 was inhabited by at least one hundred families.

[4]The Canon del Rio Colorado Grant, No. 93 (Mss., Records of the S.G.N.M.).

veyor General George W. Julian was instructed to re-examine following his taking office. On April 10, 1886, he submitted a Supplemental Report[5] in which he pointed out that Proudfit had not mentioned the basis on which he had assumed that the Ayuntamiento had authority to issue a valid grant and, in view of the repeated court decisions to the contrary, the self-serving statements by the claimant's witness, Donaciano Vigil, could hardly be considered evidence of such authority. Continuing, he pointed out that the Colonization Law of 1824[6] and Regulations of 1828,[7] which were the only laws in effect in New Mexico in 1836 pertaining to the granting of the land, authorized an Ayuntamiento to grant small tracts or lots, not to exceed 50 varas, within the limits of its community grant. Under those laws, it was clear that only the governor could make a valid grant covering a portion of the public domain. Since there was no pretense that the lands covered by the Canon del Rio Colorado Grant belonged to the Town of Taos, Julian recommended the grant be rejected. In addition to a complete lack of authority to make the grant, Julian pointed out that the claim lacked two elements essential for its recognition as a valid grant. First, since there was no record of the grant in the archives of New Mex-

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[5] Ibid.

[6] Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[7] Ibid., 141.

ico, the grant under the doctrine of the Peralta Case[8] could not be recognized. Second, a grant was not final and complete until the grantee had been placed in possession of the land, and there was no evidence that possession of the Canon del Rio Colorado had ever been delivered.

Inasmuch as Congress had failed to act upon the claim prior to the creation of the Court of Private Land Claims, Clarence P. Elder, who in the meantime had acquired title to the entire grant, filed suit[9] against the United States on March 3, 1893. Elder originally based his cause of action on the 1836 grant from the Ayuntamiento, but, in an effort to overcome the objections raised in Julian's Supplemental Report, he filed an amended petition on November 19, 1896, in which he sought to sustain his claim on a theory that it was an allotment by the Ayuntamiento under a community grant made in 1815. In support of this contention, he attached a translation of Archive No. 801[10] which showed that Pedro Martin, pursuant to a grant and instructions from Governor Alberto Maynez, placed fifty families in possession of the lands at Rio Colorado on December 23, 1815. Thus, if there was a valid community grant, the Ayuntamiento could, under

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[8]Peralta v. United States, 3 Wall. (70 U.S.) 434 (1865).

[9]Elder v. United States, No. 166 (Mss., Records of the Ct. Pvt. L. Cl.).

[10]Archive No. 801 (Mss., Records of the A.N.M.).

the Colonization Law of 1824[11] and Regulations of 1828,[12] make an allotment or distribution of a portion of the grant to three of its original or subsequent inhabitants. This, he asserted, was the substance of the proceeding had in 1836. If the court would accept this theory it would overcome the objections raised by Julian concerning "the authority of the granting official" and "a lack of archive evidence of the grant". Elder contended that the third and final defect raised in Julian's Supplemental Report, which pertained to the lack of a formal delivery of possession, was cured by certain proceedings held in 1842. Such proceedings were also a part of Archive No. 801, and, according to Elder, amounted to an Act of Possession covering the lands at San Antonio del Rio Colorado as well as a recognition of the previous allotment made in 1836 at the Canon del Rio Colorado. Archive 801 shows that Antonio Elias Armenta, Rafael Archuleta, and Miguel Montoya petitioned Prefect Juan Andres Archuleta for additional allotments of land on January 8, 1842. The prefect, on the same day, granted the request and directed Alcalde Juan Antonio Martin to place them in possession of the requested land. Eleven days later Martin went to the grant and placed thirty-five persons in possession of the following described land:

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[11] Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[12] Ibid., 141.

> On the north, by the Ojito de los Pinabetes and the point of Guadalupe Hill; on the east, by the mountains; on the south, by the questa or brow of the Rio Colorado; and on the west, by the little canyon where the point of Guadalupe Hill joins the Rio Colorado.

On February 22, 1842 the Governor requested the Prefect to report to him concerning the foregoing proceedings. Archuleta immediately complied with the Governor's request. His answer must have satisfied the Governor, for just two days later the Secretary of the province, Jorge Ramirez, directed the Prefect not to disturb the allottees pending the receipt of further instructions from the Junta.[13]

The Goverment's attorney contended that the claim could not have been an allotment under a community grant made in 1815, or any other date, for the reason that the parties had not been allotted any lands nor were they placed in possession of any lands. He asserted that all of the documentary evidence presented by the plaintiff disclosed, on its face, that the "allotments" were purely and simply licenses to use the lands for pasture purposes in common with all other residents of the Town of Rio Colorado. In the alternative, the Government argued that the plaintiff had wholly failed to show that the proceedings in 1815 had any relation to the subsequent proceedings of 1836 and 1842, and that if there was no community grant, then there could be no valid

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[13]Archive No. 801 (Mss., Records of the A.N.M.). These were the proceedings which formed the basis of the San Antonio del Rio Colorado Grant which was rejected by the Court of Private Land Claims in Montoya v. United States, No. 4 Ct. Pvt. L. Cl. (1893).

allotments. In conclusion, the Government asserted that the 1842 Act of Possession, if it were such, had been repudiated by the Governor, and therefore, the plaintiff's predecessors in title had never been placed in legal possession of the land in question.

On November 30, 1896, the Court announced its decision[14] rejecting the claim on the grounds that the Governor had repudiated the Act of Possession but had ordered the parties not to be disturbed pending the further action of the Junta. And, since there was no further action thereon by the Junta, the claim, insofar as the rights of the plaintiff were concerned, rested solely upon the actions of the Prefect. Therefore, the most that could be said for the claim was that it was simply a grant by a Prefect, which the Courts had repeatedly and consistently held to be invalid for a want of authority.

Elder appealed the decision to the United States Supreme Court. However, the appeal was dismissed[15] by that Court on January 18, 1898 pursuant to a stipulation by counsel for the respective parties.

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[14] 3 Journal 148 (Mss., Records of the Ct. Pvt. L. Cl.).

[15] Elder v. United States, 18 S. Ct. 943, 42 L. Ed. 1216 (1898) (mem.).

THE ARROYO HONDO GRANT

Pursuant to the Proclamation of February 28, 1813,[1] which provided any citizen in want of farming land could settle upon the public domain, Nerio Sisneros and "various associates", petitioned the Senior Alcalde of Taos, Jose Miguel Tafoya on March 27, 1815, asking for a tract of land located on the Arroyo Hondo in order to form a new settlement. The petition recited that the granting of the requested lands would:

> ....not injure anyone, as it is distant from the league of the Indians, and is suitable for the formation of a town, as the administration is near, and pasture, water, firewood, and timber abundant.

Tafoya referred the matter to Governor Alberto Maynes for his further action, with a report that the requested lands would not be detrimental to the rights of any third party. On April 2, 1815, Maynes granted the request and instructed Tafoya to distribute farming and building lots of the customary size among the petitioners, subject to the conditions that each lot was to be no larger than the recipient could cultivate, the farm lots were to be fenced in order to

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[1]The petitioners were in error as to this date and undoubtedly were applying for the grant under Section 15 of the Decree of January 4, 1813, which provided for the gratuitous granting of vacant agricultural land to the landless inhabitants of each town. Reynolds, Spanish and Mexican Land Laws, 86 (1895).

protect growing crops from damage by stray livestock, and the commons were to be reserved as a public pasturage for the benefit of all inhabitants of the new settlement. In response to these instructions, Pedro Martin, Deputy Alcalde of the Pueblo of Taos, proceeded to the grant on April 10, 1815 and surveyed the grant which was described as being bounded:

> On the north, by the landmark of Pablo Cordova; on the east, by a ridge of mountains, on the south, by the mouth of the Arroyo Hondo and the landmark of Pablo Lucero; and on the west, by Arroyo Hondo Hill.

After the survey of the exterior boundaries of the grant had been completed, Martin proceeded to designate and distribute individual farm and building tracts, ranging in width from 40 to 300 varas, to the forty-four persons who had agreed to settle upon the grant. Martin then placed the grantees in possession of the grant and informed them that they were to observe and comply with the following conditions:

> That said tract has to be in common not only among themselves but also among all others who may join them in the future; that with respect to the danger at the place, they shall have to keep themselves equipped with firearms and lances, with which they shall pass review at the beginning or at any time deemed proper by the Alcalde in charge, it being understood that all arms they may have shall be firearms, with the penalty that all who do not comply shall be ordered out of town; that the public square they may make be according as proposed in their petition, and to avoid damages they shall fence (their lands), as required by the governor in his decree.[2]

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[2] S. Exec. Doc. No. 126, 50th Cong., 2d Sess., 8 (1889).

The grantees promptly occupied and commenced cultivating their individual tracts. A community irrigation system was constructed and the individual tracts fenced with branches and trees to protect the crops from the animals. Homes were built around the plaza and soon a chapel was completed. A second or "lower town" was later established on the grant east of the original village. By 1887 there were approximately three hundred persons living on seventy-three separate tracts located within the boundaries of the grant. A few of the claimants of these tracts were heirs of the original grantees; however, a majority claimed their interests by virtue of deeds from the original grantees or their heirs.[3]

A portion of the grant papers were filed in the Surveyor General's office on June 17, 1861 and the balance on July 21, 1881.[4] However, for some unexplained reason, the claimants did not petition the Surveyor General's office seeking the confirmation of the grant until December 9, 1887. A hearing on the claim was held on the first and second of

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[3] Ibid. 10-12.

[4] The first of these papers consists of a certified copy of a certified copy of the testimonio of the grant (petition, grant decree, and act of possession). The certificate on the copy was signed by Juan Antonio Lovato on March 19, 1833 but did not reflect his authority or capacity. He states that he made the copy from a "like copy" which was taken from its original by Alcalde Juan de Dios Pena under date of May 12, 1820. The purpose for making the copy was to perpetuate the 1820 copy on account of its "worn out condition". The copy of the copy of the testimonio did not contain an adequate legal description of the lands covered

March, 1888, at which the petitioners offered oral testimony in support of their claims. Surveyor General George W. Julian, in a report[5] to Congress dated March 31, 1888, recommended

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by the grant. Therefore, the claimants filed a certified copy of another "Act of Possession" by Alcalde Martin which was also dated April 10, 1815. This instrument contained the above description of the grant and was certified by Juan Antonio Lovato and Jose Manuel Romero, Corporation Secretary, on July 12, 1823. This certificate stated that the copy "agrees faithfully and legally with its original" and was made pursuant to a petition by Ignacio Gonzales, attorney for the inhabitants of Arroyo Hondo, on March 10, 1823. In the certificate Lovato "declared that the legitimate boundaries" of the grant were:

> On the north, the hill which lies on the side towards the San Cristobal River; on the east, the upper little canon of the river; on the south, the brow of the hill and boundary of the settlers of Arroyo Seco; and on the west, the Rio Grande.

He also certified that the settlement of Arroyo Hondo had a full and absolute right to run water from "its fountain head". The settlers of Arroyo Seco were instructed not to use the acequia which they had constructed to the Arroyo Hondo since the waters of that river belong to (a) the settlers of the town of Arroyo Hondo whose fields abutted thereon, (b) those below by right of priority, and (c) those above by order of Governor Jose Antonio Vizcarra subject, however, that in years of drought sufficient water was to be permitted to flow down the river for the irrigation of the fields of the lower settlers, who had a priority thereto. Ibid., 9-10.

[5]The Arroyo Hondo Grant No. 159 (Mss., Records of the S.G.N.M.). On June 7, 1861, Jesus Maria Lucero filed the testimonio for a tract of land known as the Talaya Grant in the Surveyor General's office. This instrument consists of a petition dated August 6, 1825, by Juan Miguel Talaya and seven associates to the Alcalde and Ayuntamiento of Taos seeking a grant of vacant land for agricultural and grazing purposes. The tract was described as being adjacent to the "boundary of the Town of Arroyo Hondo and on the other side to the Aneo Torcido". In response to their request and pursuant to the directions of the Ayuntamiento, Alcalde Servino Martinez on August 20, 1825, "granted by appointment" individual tracts of 128 varas each to the eight petitioners. Fifty varas were also set aside to the Alcalde for his ser-

the confirmation of the Arroyo Hondo Grant. Congress failed to act upon the claim prior to the creation of the Court of Private Land Claims.

Julian A. Martinez, for himself and sixty-nine other lineal descendants or assigns of the original grantees, sued[6]

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vices. The grant was made "without prejudice to the first settlers of Arroyo Hondo, who depended on its waters". These proceedings undoubtedly are merely allotments under the Arroyo Hondo Grant. Therefore, the Surveyor General never acted on the claim. The Talaya Grant No. F-86 (Mss., Records of S.G.N.M.).

[6]Martinez v. United States, No. 5 (Mss., Records of Ct. Pvt. L. Cl.). Juan N. Martinez filed a suit on March 2, 1893 seeking the confirmation of "1,000 varas" on both sides of the Arroyo Hondo which his grandfather, Jose Ignacio Martin had been given by order of Governor Jose Antonio Vizcarra. Martin was placed in possession of an approximately 500-acre tract on March 21, 1823 by the Alcalde of Taos, Juan Antonio Lovato. In support of his claim, the plaintiff filed the testimonio of the Act of Possession. Martinez v. United States, No. 174 (Mss., Records of Ct. Pvt. L. Co.). A similar suit was instituted on the same day by Juan Antonio Valdez. This claim was also based on the testimonio of an Act of Possession. This instrument was dated July 24, 1823 and showed that Alcalde Lovato had placed Felipe Medina in possession of an 180-vara tract (approximately 300 acres) lying east of the Martin tract. Valdez v. United States, No. 175 (Mss., Records Ct. Pvt. L. Cl.). A third suit was filed at the same time by Manuel Espinosa for the confirmation of his claim to an estimated 300-acre tract on the Arroyo Hondo which was known as the Manuel Fernandez Grant. This claim was based on the testimonio of an Act of Possession dated December 20, 1823 wherein Alcalde Lovato placed Fernandez in possession of that tract. Espinosa v. United States, No. 176 (Mss., Records Ct. Pvt. L. Cl.). Each of these alleged grants was undoubtedly only the allotment of a small individual tract to a new settler who had joined the colony of Arroyo Hondo. Thus, as each of these three cases came up for trial on January 31, 1898, the plaintiff requested that his suit be dismissed without prejudice to his claim under the Arroyo Hondo Grant. 3 Journal 327-328 (Mss., Records of the Ct. Pvt. L. Cl.). A fourth suit was filed on March 2, 1893 by William Fraser seeking the recognition of his claim to a tract described as being bounded:

the United States on February 3, 1891 in the Court of Private Land Claims in an effort to secure the recognition of the Arroyo Hondo Grant as a community grant. He estimated that the grant contained 23,040 acres together with valuable water rights mentioned in the "second" act of possession. When the case came up for trial on April 5, 1892, the Government objected to the introduction of an unauthenticated typewritten copy of the grant papers. The court sustained the Government's objection but gave the plaintiff until the following term of court in order to produce further evidence to sustain the grant. A certified copy of the "second" Act of Possession was obtained from the Surveyor General's Office and introduced at the trial on August 27, 1892. On December 17,

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> On the north, by the summit of the mountains; on the east, by the ridge where the boundaries of the Arroyo Hondo settlement reaches; on the south, by the mouth of Arroyo Hondo; and on the west, by the log cabin of Jose Gonzales.

He asserted that the tract covered approximately 15,000 acres, but the tract embraced within the above boundaries would appear to cover only a few hundred acres of land lying primarily, if not wholly, within the Arroyo Hondo Grant. The claim was based upon an Act of Possession dated December 23, 1835 which recites that the Judge of the Second District of Arroyo Hondo, Pascual Martinez, acting in accordance with a "determination" by the Ayuntamiento of Arroyo Hondo placed Miguel Chaves in possession of the grant. Obviously, the claim was either (1) a grant of public land by the Ayuntamiento which would be void for want of authority, or (2) merely an allotment of a portion of the Arroyo Hondo Grant. Fraser v. United States, No. 186 (Mss., Records Ct. Pvt. L. Cl.). When the case came up for trial on May 17, 1897, the plaintiff requested that the suit be dismissed. 3 Journal 204 (Mss., Records of the Ct. Pvt. L. Cl.).

1892 the court found that the Act of Possession supported by the long, continuous and peaceful possession of the lands gave the plaintiffs "such an equitable right as the United States ought to recognize". Therefore, it held[7] that the plaintiffs were entitled to the relief they sought and confirmed the grant. The Government announced that it would appeal the decision but none was perfected.

After the appeal period had expired, a contract was awarded to Deputy Surveyor Steward Coleman for the surveying of the grant. Coleman surveyed the premises in the summer of 1896 and his work showed the grant as containing 30,674.22 acres. On January 26, 1898 the Government filed a motion seeking to vacate the Decree of December 17, 1892 and protesting the approval of Coleman's survey. It pointed out that the Act of Possession called for the eastern boundary of the grant to be located at "La Chuchella del Cerro. It argued that a literal translation of this call is the "ridge of the hill" instead of the "ridge of the mountain" as contained in the translation relied upon by the court in reaching its decision. Therefore, it requested the court to amend the decree in order to fix the east line of the grant along the ridge of the hill or about eight miles further west than the line surveyed by Coleman. The Government filed a second motion on the same date asking the court to set the decree

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[7] 1 Journal 99-101 (Mss., Records of the Ct. Pvt. L. Cl.).

aside on the grounds that the court had no jurisdiction to confirm the grant except to the individual farm tracts allotted to the forty-four grantees on April 10, 1815 and described in the Act of Possession. By decision[8] dated February 1, 1898 a majority of the court recognized that in the Sandoval Case[9] the Supreme Court appeared to hold that title to all unallocated lands within the out boundaries of a community grant were reserved by the soverign and the Court of Private Land Claims did not have authority to confirm any portion of such a grant other than the allocated lands. However, the court contended that the doctrine of the Sandoval Case had no bearing upon the question and held that it did have jurisdiction over all the lands within the Arroyo Hondo Grant. Since its decision had been issued prior to that of the Supreme Court in the Sandoval Case, it had merely made an error in interpreting the Spanish Law, and thus, overrruled the Government's motion on the grounds that they could not set aside in a collateral attack. However, the court rejected the Coleman Survey on the grounds that the Government's protest to the location of the east boundary was valid and had come up in the "regular course of procedure".

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[8] 3 Journal 321 (Mss., Records of the Ct. Pvt. L. Cl.).

[9] United States v. Sandoval, 167 U. S. 278 (1896).

The decision fixed the east boundary as a line running north from Station 29 on the south boundary across the mouth of the Canon of the Arroyo Hondo to Station 19 on the north boundary. Martinez appealed this decision to the United States Supreme Court, but the appeal was dismissed by the court pursuant to Rule 10 on January 17, 1899.[10]

Deputy Surveyor Coleman surveyed the new east line in July, 1899. The corrected survey reduced the area of the grant to 20,000.38 acres. The grant was finally patented on April 9, 1908.[11]

THE ANTOINE LEROUX GRANT

Pedro Vigil de Santillan, for himself and on behalf of his nephews, Juan Bautista and Cristoval Vigil, petitioned Governor Domingo de Mendoza for a grant covering a tract of vacant land adjacent to the Pueblo of Taos, and described as being bounded:

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[10]Martinez v. United States, 19 S. Ct. 878, 43 L. Ed. 1177 (1899)(mem.).

[11]The Arroyo Hondo Grant No. 159 (Mss., Records of S.G.N.M.).

> On the north, the Rio Colorado; on the east, the lands of the Pueblo of Taos and the mountain; on the south, the lands of Sebastian Martin; and on the west, the bed of the river.

He called attention to the fact that while the tract, which was known as Los Luceros, had been granted previously to General Felix Martinez, a former Governor of New Mexico, it had been forfeited when he failed to settle upon it within the time prescribed by law. Vigil also pointed out that he had faithfully served the King for twenty years. During this period he had lived in a small house and supported his large family on his meager salary. He had even been able to accumulate a small herd of livestock which, since he was without land, he had pastured on rented land. However, since his retirement from service he had encountered hard times and was forced to finance the needs of his family by borrowing, and the landowner upon whose lands his stock were being pastured had terminated the arrangement. Therefore, finding himself with no place to pasture his stock and no land to support his family, he prayed that he and his nephews, who were in a similar situation, be granted the requested lands for colonization purposes. Mendoza granted the land to the three petitioners on August 9, 1742 and directed the Chief Alcalde of Taos to deliver possession of the tract, subject to the terms and conditions required by Spanish Law and particularly those which prohibited injuries to third parties. To guarantee that the rights of the Indians were not prejudiced, the grantees were instructed not to erect their

houses within two leagues of the Pueblo. The Alcalde was also instructed to fix the boundaries of the grant as follows:

> On the north, to the Arroyo Hondo, and two leagues in latitude shall be given him in the direction of the Del Norte River and towards the mountains to its summit.

In compliance with the governor's instructions, Alcalde Francisco Guerrero summoned the officials of the Pueblo of Taos on August 12, 1742 and notified them of the grant. After measuring off 5000 varas from the cross in the cemetery plus an additional 100 varas for good measure to insure there would be no damages to the Pubelo, the Alcalde fixed the location of the east boundary of the Los Luceros Grant at that point. The Indians agreed that the grant would not injure them in any manner. Next he showed the grant to Sebastian Martin, who likewise was satisfied it was not prejudicial to his rights. Thereafter the Alcalde:

> ... took each of the petitioners personally by the hand and walked with them over the tract, and gave royal possession in the name of his Majesty (whom may God preserve!), with the required conditions contained in said grant ....

The expediente of the grant was returned to Mendoza, who on September 3, 1742, deposited it in the Spanish Archives at Santa Fe.[1]

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[1] H. R. Exec. Doc. No. 112, 37th Cong., 2d Sess., 24-26 (1862).

The Vigils promptly settled upon the grant and their descendants were still living there when Antoine Leroux, the famous mountain man, married Juana Caterina Vigil, a granddaughter of Jean Bautista Vigil, on November 4, 1833. He moved into the family hacienda on the Luceros River and became the principal owner and manager of the grant. Thereafter, it was usually referred to as the Antoine Leroux Grant.[2] While Leroux's life as a mountain man and trapper had been extremely colorful prior to his marriage, he did not let his new obligations as a haciendero tie him down. Between 1833 and 1840 he "went discovering and exploring all over the West". As the market for furs declined, he began devoting more and more time to his ranching activities. By the time the United States conquered New Mexico, he was probably the best informed and most experienced guide in the Southwest. Naturally the United States could use his services, and during the next decade he served as guide for four major expeditions between Santa Fe and California as well as a number of minor expeditions against the Indians. Thus, he was too preoccupied to present his claim to the Surveyor General's Office prior to 1857.[3]

On May 21, 1857 Leroux filed the testimonio of the grant, which he had obtained from Juan Bautista Vigil, and

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[2]Parkhill, The Blazed Trail of Antoine Leroux, 66-68, 82 (1965).

[3]Ibid., 216.

petitioned[4] Surveyor General William Pelham seeking the confirmation of the grant, as described in the petition, decree and Act of Possession contained in the testimonio as "compared and reconciled one with the other; the said piece of land is described and bounded as follows":

> That their house or habitation should be built two leagues, more or less, from the Pueblo of Taos, should be bounded on the north by the Arroyo Jondo, on the west by a line running in a northerly and southerly direction, two leagues west of the house or habitation aforesaid, or four leagues west of a line over one hundred varas west of the cemetery of the church of said Pueblo, and running parallel from north to south with the line running in the same direction on the west of said cemetery; on the east by the west line of said Pueblo, as above described, and by the summit of the mountains on either side of the extent of said Pueblo line, and on the south by lands of Sebastian Martin.

Due to the great number of descendants and the loss of many of the intervening title papers in the Taos Rebellion, Leroux asked that the grant be conferred to the legal representatives of the original grantees.

The Indians of the Pueblo of Taos protested the confirmation of the grant but withdrew their objection when the "legal representatives of the original grantees" conveyed the lands occupied by them to the Pueblo of Taos. Once this obstacle had been removed, Surveyor General A. P. Wilbar proceeded with the investigation of the claim. On October 5,

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[4]The Antoine Leroux Grant, No. 47 (Mss., Records of the S.G.N.M.).

1861 he issued a decision[5] in which he stated that the title papers constituting the claim appeared to be genuine and complete and, since the legal representatives of the original grantees had been in possession of the grant from the date of its inception, he recommended its confirmation by Congress as a valid grant.

The claim was referred to the House Committee on Private Land Claims, which on February 10, 1868, also recommended[6] its confirmation. The Committee, while noting that the 12th Section of the National Colonization Law of August 18, 1824[7] and the Regulations of 1828[8] limited the amount of public land which could be legally granted to a single individual to eleven square leagues, pointed out that since the grant was granted prior to 1824 it was not affected thereby even if it contained more than eleven leagues. Congress acted upon the report less than a year later and confirmed the claim by the Act of March 3, 1869.[9] One would think that the troubles of the grant owners were now over. However, this was not the case, for the act was merely a quit-claim of interests of the United States in the lands covered by the grant. Since the description contained in the grant was am-

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[5] H.R. Exec. Doc. No. 112, 37th Cong., 2d Sess., 28-29 (1862).

[6] H. R. Report No. 71, 40th Cong., 2d Sess., 4-5 (1868).

[7] Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[8] Ibid., 141.

[9] An Act to Confirm Certain Private Land Claims in the Territory of New Mexico, Chap. 152, 15 Stat. 342 (1869).

biguous, its real extent became a matter of serious controversy for the next forty-two years.

Notwithstanding the fact that Section 2 of the Act of March 3, 1869[10] required the Commissioner of the General Land Office to cause the grant to be surveyed and platted "without unreasonable delay", no survey was made until July, 1877. The survey finally was made by Deputy Surveyors Sawyer & McElroy and showed that the grant covered 126,024.53 acres. This survey described the grant as being bounded:

> On the north, by the Arroyo Hondo; on the east, by the Pueblo of Taos; on the south, by the Sebastian Martin Grant; and on the west, by a line located four leagues and one hundred varas west of the cross in the cemetery in the Pueblo of Taos (which was located near the center of the Pueblo league).

This survey showed that the grant conflicted with the Rancho de Rio Grande, Town of Cieneguilla, Antonio Martinez and Pueblo of Picuris Grants. The owners of the grant protested the approval of the survey on the grounds that notwithstanding the description contained in Leroux's petition, the east boundary of the grant should have been located along the summit of the Sangre de Cristo Mountains. This just could not be true for to do so would cause the grant to include all of the Pueblo of Taos Grant. Since the description contained in the Decree of Grant dated April 9, 1742 was ambiguous and subject to a number of radically different interpretations,

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[10] Ibid.

Surveyor General Henry M. Atkinson ordered[11] Deputy Surveyor W. H. McBroom to fully investigate the boundaries of the grant. After thoroughly inspecting the premises on the ground and taking a great deal of testimony, McBroom in his report[12] dated October 1, 1880 concluded that the Sawyer & McElroy Survey was completely erroneous. First he found that the lands of Sebastian Martin mentioned in the grant papers were not the Sebastian Martin Grant located some 22 miles southwest of Taos but was a small tract of land located just west of the northwest corner of the Pueblo league. This tract had been granted to Jose Dominguez in 1702 and sold to Martin in 1723. Thus, being adjacent to the Pueblo league, it would be the logical one to be referred to and not the more distant tract. This conclusion would be further supported by the fact that Vigil had requested a tract of land to graze his small herds upon and would have no occasion to need a tract some twenty-five miles in length. Once he had discovered that the grant was located entirely north of the Pueblo league, he turned his attention to an interpretation of the ambiguous descriptions in the grant papers in order to determine the location of the other boundaries. There was little doubt that while the Vigils had sought the Rio

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[11]The Antoine Leroux Grant, No. 47 (Mss., Records of the S.G.N.M.).

[12]Ibid.

Colorado as their northern boundary, the Governor had fixed it at the Arroyo Hondo. It was also clear that the only variance between the petition and the granting decree concerned the location of the eastern boundary. The decree fixed its location at the summit of the mountains instead of the ambiguous call for the mountains contained in the petition. The location of the western boundary also gave him considerable trouble. However, he came to the conclusion that it should be located two leagues west of Vigil's house, which the evidence indicated was located on the north bank of the Lucero River and a little less than two leagues north of Taos. According to McBroom, the grant would be about twelve miles from east to west and four miles from north to south and contain about 30,000 acres.

As a result of McBroom's investigation, the Sawyer & McElroy Survey was rejected and Deputy Surveyor Charles L. Ratliff was awarded a contract to resurvey the premises. Ratliff attempted to resurvey the grant but finally gave up in despair, advising Surveyor General George W. Julian that in his opinion the location of the southern and western boundaries of the grant were not only "utterly impracticable, but impossible". As a result of Ratliff's failure to locate the boundaries, Julian wrote a very vindictive report[13] to the Commissioner of the General Land Office on April 30, 1888 in which he states:

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[13] Ibid.

> A more particular examination of the records of this office shows it (the Sawyer & McElroy Survey) to be shockingly indefensible and glaringly fraudulent ... nothing short of the most incredible ignorance or the most shameless dishonesty can account for this survey ... I only add that this grant would never have been approved by the Surveyor General if the evidence before him had been carefully scrutinized. It is not shown that the grantee ever occupied the land or complied with the conditions of the grant.... Indeed, the grant, from the beginning, seems to have been the spoil of adventurers and speculators, who have availed themselves of the machinery of this office in appropriating to their own use a large body of land without a shadow of right to any of it, except the comparatively small tract lying north of and adjoining the lands of Sebastian Martinez, the north boundary of which as shown cannot be located; and of this comparatively small tract fully three-fourths are covered by the survey of the Antonio Martinez grant. In view of the facts stated, I have no hesitation in recommending the restoration of the lands included in this grant to the public domain for the simple reason that two of the boundaries cannot be ascertained.[14]

Julian's report would probably have been even more venomous had he known that someone (obviously an interested party) had tampered with the description contained in Vigil's original petition to the Governor in 1742. It apparently originally read "on the east, the lands of the Pueblo and Sebastian Martin" but had been changed by erasing the words "Martin por" and changing the word "Sebastian" to "la curra". Thus, after the change, it read "on the east, the land of the Pueblo and the mountains".

Commissioner Silas Lamoraux carefully considered Julian's unfavorable report and in an opinion dated May 29, 1894 decided:

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[14] Ibid.

> In cases of doubt, grants should be construed strictly in favor of the government, and where as in this case, the grant has been confirmed by Congress, it should, if possible, be so construed as to give effect to the will of the legislators. I cannot consent to declare a forfeiture of a confirmed grant when a reasonable interpretation will give it certainty.[15]

Continuing, he held that a reasonable interpretation of the grant would be as follows:

> 1) The decree standing alone clearly defines the north boundary. Instead of granting to the Colorado River, that boundary was limited to the Arroyo Hondo, about twelve miles farther south.
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> 2) The petition prayed for the mountains and town lands as an eastern boundary. According to the rules of construction, the land, had that boundary as asked for been granted, would have stopped short at the base of the mountains, and it appears that as a compensation for cutting off the north boundary, the eastern boundary was extended to the top of the mountain, some nine miles east of the base.
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> 3) The western and southern boundaries can only be determined by looking to both the decree and petition, for the decree standing alone is ambiguous. The petitioners ask for the hollow of the Del Norte River as a western boundary. They also ask for the lands of Sebastian Martinez as a southern boundary. The decree does not specify the western boundary, unless it does so in the language "on that which looks towards the river of the north". Looking to the petition for aid we find the prayer for the river as the western extreme. No other western boundary being limited, the irresistible conclusion is that the intention was to grant the land clear to the river. This leaves but the southern boundary to be considered, and that boundary is very clearly established by the decree, "Two leagues in breadth (latitude) shall be given to him."[16]

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[15] Ibid.

[16] Ibid.

The Commissioner recognized that no other construction would give certainty to the grant. He noted that if it was assumed that the Vigil house was a boundary call, then it would leave the location of the southern boundary completely to the discretion of the grantee, since the house had not been constructed at the time possession was delivered. Therefore, the Commissioner ordered a new survey of the grant. To prevent an irregular or crooked southern boundary, which would result from the southern boundary being located parallel to the river, he ordered the boundary drawn on a straight line in a manner as to give the grant owners the same amount of land that they would receive if it had been drawn parallel to the river.[17]

The next problem arose when it was learned that the Arroyo Hondo had three branches. The middle one ran in an easterly direction but was not the principal stream. The Surveyor General asked the Commissioner for further instructions localizing the northern boundary of the grant. In a long and detailed opinion dated May 3, 1900, Commissioner Binger Hermann, after reciting all of the survey problems concerning the grant, stated:

> In conclusion, I have only to invite attention to a few of the more prominent elements in this case, lending to impeach the integrity of the grant, and as demonstrating the utter impossibility of identifying it

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[17] Ibid.

> either on the face of the earth's surface or by virtue of any memoranda or document of other evidence extent .... The duty incumbent upon this office is to ascertain the area covered by the grant and to define it by a practical survey. After a most careful and painstaking examination and study of the entire subject, I find this too impracticable. I am confronted at the threshold with the records and plots of this office indicating that the larger portion of that tract which is claimed by the present claimants to have been included under the grant, has been confirmed to other parties by the courts, and under grants made long prior to 1743, the date of the grant under consideration.... The courts have held from time immemoriable that in the description of premises conveyed there must be a sufficient, definite and certain reference as will enable the land to be identified; otherwise, said conveyance will be void for incertainty.... I am therefore forced to conclude that the area intended to be conveyed under the grant in question cannot be ascertained by reason of the uncertainty and vagueness in description, and as no survey of said grant pursuant to the Confirmatory Act of Congress has been found practicable after numerous attempts by surveying officials of the Department, and after long years of investigation by this office, there is but one alternative left, and that is to decide the survey and plotting of said grant impossible, and to declare the last survey made as disapproved and rejected. The decree of May 29, 1894 is therefore revoked ....[18]

The owners of the grant promptly appealed this decree to the Secretary of Interior, who on January 17, 1902 held the true boundaries of the grant were susceptible to certain locations and were:

> On the north, the Arroyo Hondo; on the east, the summit of the main chain or range of the Rocky Mountains; on the south, a line extending from the summit of the main chain or range of the Rocky Mountains to the Del Norte River, established at a distance of two leagues, right angle measurement, from the Arroyo Hondo and parallel to the general course thereof, said line to be run between stations fixed at such points as will make its

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[18] The Los Luceros Grant, 31 L.D. 202 (1900).

> course conform to every material change in the course of the Arroyo Hondo; and on the west, the bed of the Del Norte River.

It was recognized that the grant, as thus defined, covered a portion of the Antonio Martinez Grant and a small fraction of the Pueblo of Taos Grant. The Antonio Martinez Grant had been confirmed and patented subsequent to the confirmation of the Antoine Leroux Grant but the Pueblo of Taos Grant was in all respects the senior grant. Therefore, Secretary of Interior E. A. Hitchcock rejected the Ratliff Survey and ordered a resurvey of the grant, which was to exclude all lands covered by the Pueblo of Taos Grant but was to disregard the conflict with the Antonio Martinez Grant. The surveyor was also instructed to follow the principal or northeasterly branch of the Arroyo Hondo as long as it ran in an easterly direction. The northern boundary was to run due east from that point to the summit of the mountains.[19]

A contract was awarded on May 18, 1903 to Deputy Surveyor John H. Walker to resurvey the grant in accordance with Hitchcock's decision. The survey was made during the months of June and July, 1905 and September, 1907. The final field notes were approved on August 25, 1909 and showed that the grant covered 56,428.31 acres. A patent was issued for such land on August 1, 1911.[20]

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[19]The Los Luceros Grant, 37 L.D. 512 (1902).

[20]The Antoine Leroux Grant, No. 47 (Mss., Records of the S.G.N.M.).

THE ANTONIO MARTINEZ GRANT

Antonio Martinez appeared before Governor Felix Martinez and advised him that he wished to emigrate from Sonora with his family and property and, having no place to settle, wished to register the tract of vacant land located in the Taos Valley which had formerly belonged to Sergeant Major Diego Lucero de Godoi.[1] Pursuant to the King's policy to encourage the settlement of the frontier areas, Governor Martinez granted him the tract on December 26, 1716 according to the boundaries originally held by Godoi. Since the Alcalde of Taos, Cristobal Tafayo, was out on a campaign against the Indians, the governor directed his Secretary of War and Government, Miguel Terrorio de Alba, to determine if the Pueblo Indians of Taos had any objections to the issuance of the concession and if they didn't, then he was to place Martinez

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[1]Sergeant Major Diego Lucero Godoi had apparently been granted a tract of land north and west of the Pueblo of Taos. He was in El Paso del Norte on escort duty when the Pueblo Revolt commenced, thus, he escaped the massacre which took the lives of the thirty-two members of his household. In 1689 he received permission to move from El Paso del Norte south to New Spain. Therefore, the grant was not reoccupied after the Reconquest of New Mexico in 1693. Chavez, Origins of New Mexico Families, 60 (1945). The expediente of the Godoi Grant is not available since all of the archives of New Mexico were destroyed during the insurrection of 1680. Upon their return following the Reconquest, Governor Diego de Vargas required the New Mexicans to reoccupy the lands which they had abandoned in 1680 and obtain from the government a

in possession of the premises. Due to the great distance and hardship Antonio Martinez would encounter in moving to New Mexico, he was given "all the year 1717 to settle upon the grant". Three days later, Terrorio assembled the Cacique and other representatives of the pueblo at the Royal House at Taos and informed them of the terms of the grant. The Indians advised Terrorio that they had no complaints and, while they had planted a number of fields in a valley located within the boundaries of the grant, they would be content with any lands which Martinez would let them use. However, they made it clear that they expected to be compensated for their damages. Thereupon, Terrorio delivered royal possesion of the lands within the following boundaries:

> On the north, the mountains which are the source of the Lucero River; on the east, an arroyo, being the nearest one to the Pueblo; on the south, the junction of the Rio Grande and Taos Rivers; and on the west, the Rio Grande; save and except the portion thereof located south of the Lucero River.[2]

The heirs of Antonio Martinez petitioned[3] Surveyor General James K. Proudfit on January 17, 1876 asking that the grant be confirmed. Proudfit docketed the claim as the Lucero de Godoi Grant but took no action on it. His succes-

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recognition of the renewal of their title before possession could be given. 1 Twitchell, Spanish Archives of New Mexico, 142 (1914). Since the land had not been occupied for a four-year period prior to 1716 it could be denounced and regranted to Antonio Martinez.

[2]Archive No. 503 (Mss., Records of the A.N.M.).

[3]The Lucero de Godoi Grant, No. 116 (Mss., Records of the S.G.N.M.).

sor, Henry M. Atkinson, investigated the grant and, after finding the expediente to be genuine and that the claimants and their predecessors had possession of the land for many years, recommended[4] on October 4, 1878 that the grant be confirmed in accordance with the boundaries set forth in the Act of Possession. He pointed out that, while it had not been proven that the original grantee had settled upon the grant in 1717 as required by the expediente, the timely fulfillment of the condition could be presumed from the long and peaceful occupancy of the tract by its claimants. A preliminary survey of the grant was made by Deputy Surveyor Robert G. Marmon in September, 1879. This survey showed the grant as containing 67,480.20 acres of land.[5]

The claim came before Surveyor General George W. Julian for re-examination pursuant to special instructions from the General Land Office. In a Supplemental Report[6] dated February 10, 1888, Julian recommended the rejection of the claim because the claimants had failed to sustain their burden of proving that the claim was one which the Treaty of Guadalupe Hidalgo obligated the United States to recognize. He contended that since there were several hundred persons residing within the boundaries of the grant claiming adverse

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[4] Ibid.

[5] Ibid.

[6] Ibid.

interests, the petitioners' occupation of the grant was not exclusive. Therefore, there could be no presumption that the conditions set forth in the granting decree had been fulfilled. Continuing, he asserted that the law actually raised a presumption in favor of the government that the conditions had not been fulfilled and the claimants had the burden of overcoming this presumption. And this they had completely failed to do, for they had not offered any evidence concerning its occupation between 1717 and 1721.

The conflicting recommendations out of the Surveyor General's Office caused Congress to pigeonhole the claim. Thereafter, it lay dormant until revived by the claimants' filing suit[7] against the United States in the Court of Private Land Claims on March 5, 1892. After a careful examination of the claim, the government was unable to assert any special defense against the confirmation of the grant. Therefore, when the case came up for trial on March 13, 1892, it appeared that the plaintiffs would encounter little opposition. However, during the trial of the case, it discovered that the major portion of the grant conflicted with the Antoine Leroux Grant. The case was continued in order to permit the plaintiffs to join the owners of that grant as parties defendant. The case was reset for trial on Decem-

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[7]Martinez v. United States, No. 9 (Mss., Records of the Ct. Pvt. L. Cl.).

ber 3, 1892, at which time it was tried. The Court, in an opinion[8] dated February 9, 1893 held, notwithstanding the fact that the expediente obviously was genuine and long peaceful possession had been established, it did not have authority to adjudicate the merits of the conflicting land claims. Therefore, it confirmed the entire grant and, thus, left the settlement of the question of the ownership of the lands in dispute to the local courts. Neither party appealed the decision and once it became final, a contract for the surveying of the grant was awarded to John H. Walker. He was instructed to survey the grant in strict accordance with the boundaries set forth in the Act of Possession without regard to the conflict with the Antonio Leroux Grant, which was the junior grant. However, he was ordered to exclude the small portion of the grant which was also located within the boundaries of the Pueblo of Taos Grant, which was the senior thereto in all respects. Walker's Survey was completed in March, 1894 and reflected that the grant covered 61,605.46 acres. The survey subsequently was approved by the Court and a patent based thereon was issued on May 8, 1896.[9]

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[8] 1 Journal 92-98 (Mss., Records of the Ct. Pvt. L. Cl.).

[9] The Antonio Martinez Grant, No. 116 (Mss., Records of the S.G.N.M.).

THE JOSE DOMINGUEZ GRANT

Santiago Valdez petitioned[1] Surveyor General Henry M. Atkinson on January 14, 1880 stating that the papers evidencing a grant to Jose Dominguez had been in his possession a number of years and, while he diligently had searched for the heirs of Jose Dominguez, he had been unable to find them. Therefore, he decided to file the grant papers so an investigation of the claim could be conducted pursuant to the eighth article of the Treaty of Guadalupe Hidalgo.[2] The papers showed that Jose Dominguez had petitioned Governor Pedro Rodriguez Cubero seeking a grant covering a tract of vacant land located in the Taos Valley which had formerly belonged to Francisco Gomez Robledo as a remuneration for the military services he had rendered against the Indians. On February 9, 1702 Cubero granted the request and directed the Alcalde of Taos, Juan Paez Hurtado, to place Dominguez in royal possession of the lands he had requested. In response to the governor's decree, Hurtado assembled the officials and in-

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[1]The Jose Dominguez Grant, No. 120 (Mss., Records of the S.G.N.M.).

[2]5 Miller, Treaties and Other International Acts of the United States of America, 217-218 (1937).

habitants of the Pueblo of Taos and advised them of the grant. Since no objections were raised, he delivered possession of the grant to Dominguez. The grant papers consisted of a certified copy of a certified copy of the testimonio. The certificate was dated March 9, 1836 and made by Antonio Jose Ortiz, based on a certified copy made by Santiago Martinez on June 12, 1795. None of the three instruments which comprised the grant papers contained a description of the boundaries of the tract or other means of identifying its limits or areal extent.

Twelve days later, Atkinson, who usually approved even dubious claims, handed down a decision[3] recommending the rejection of the claim. He pointed out that the claim was based upon a copy of a copy, neither of which were properly authenticated, and that there was no documentary evidence of the grant in the archives. Therefore, he did not believe that the claim had been documented sufficiently to form the basis of a valid title. And, even if the grant papers were presumed to be genuine, the claim still could not be approved for the muniments of title nowhere contained a legal description of the grant.

Ordinarily one would think that after this adverse decision the grant quickly would have been forgotten. However, the grant was destined to play an important role in

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[3] Ibid.

interpretation and fixing of the boundaries of the Antoine Leroux Grant. The grant papers of that grant recited that it was bounded on the south by the lands of Sebastian Martin. Deputy Surveyors Sawyer & McElroy interpreted this call to mean the Sebastian Martin Grant which was located some twenty-two miles southwest of Taos. Several protests were filed against the approval of the Sawyer & McBroom Survey on the grounds that it had mislocated the boundaries of the grant. As a result of these protests, Atkinson conducted a full investigation of the boundaries of the Antoine Leroux Grant. During the course of his investigation he discovered a deed in the Archives[4] which disclosed that on October 25, 1723 Dimas Jiron and Maria Dominguez, his wife, conveyed a tract of land which Maria had inherited from her father, Jose Dominguez, to Sebastian Martin. The tract was described as being located on both sides of the Arroyo Seco and bounded:

> On the north, by the lands of Diego Lucero and the Arroyo del Lucero; on the east, by the landmarks of the Pueblo of Taos; on the south, by the Taos River; and on the west, by the Rio Grande.

This obviously was the Sebastian Martin Grant which fixed the southern boundary of the Antoine Leroux Grant. Thus, the rejected Jose Dominguez Grant played an important role in reducing the size of the Antoine Leroux Grant from the 126,024.53 acres contained in the Sawyer & McElroy Survey

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[4] Archive No. 510 (Mss., Records of the A.N.M.).

to the 56,428.37 acres covered by its patent.

The discovery of the deed did not prompt Valdez to seek the reopening of the claim on the ground it amounted to newly discovered evidence because it was obvious he had no interest in the grant. In the meantime, the Antonio Martinez Grant, which had been granted subsequent to the Juan Dominguez Grant, had been approved for confirmation and covered all of the lands in question. Thus, this rather obscure grant was allowed to slip back into oblivion.

THE PUEBLO OF TAOS GRANT

The Pueblo of Taos with its twin five-storied Tewa communal dwellings has been well known to Europeans since 1540 when Hernando de Alvarado, a captain in Coronado's Army, first explored the Rio Arriba or upper river area. The Tewa name for the pueblo was Towik, which the Spaniards mispronounced as Taos. When New Mexico was divided into mission districts in 1598, Taos was assigned to Fray Francisco de Zamora, who, following the Pueblo's submission to the Spaniards on September 9, 1598, commenced the construction of the mission of San Geronimo de Taos. While a large portion

of its inhabitants were christianized, the Taos Indians refused to cease practicing their ancient religious rites. Religious intolerance by the missionaries coupled with the demands for tribute from the encomenderos sowed the seeds of discontentment. The encroachment of the Spaniards upon the lands which the Taos Indians were actually occupying and had long considered as a tribal possession fanned the smoldering fires of rebellion. However, it was the widespread mistreatment of the Pubelo Indians by the Spanish authorities which finally led them to unite under the leadership of Pope, a Tewa medicine man, and sparked the Pueblo Revolt in 1680. The combined Pueblo Indian forces either killed or drove every Spaniard out of New Mexico and prevented their return until 1692, when Diego de Vargas brought the rebellious Indians to their knees. When De Vargas marched against Taos in October, 1692, the inhabitants fled into the mountains. He returned nearly a year later only to find the Pueblo deserted. Peace terms were finally negotiated in 1694 and missionaries returned to Taos. However, five priests and twenty-one other Spaniards were massacred when the Taos Indians joined the unsuccessful revolt of June 4, 1696. De Vargas marched against the Pueblo in September and laid siege upon the Indians, who had fortified themselves in a canyon. A month later, the Indians surrendered and a lasting peace was finally established between the Taos Indians and the Spaniards.[1]

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[1]Forrest, Missions and Pueblos of the Old Southwest, 87-88 (1962).

Spanish settlers did not return immediately to the Taos area in great numbers; however, during the eighteenth century, the Spanish officials issued a number of grants in the vicinity of Taos, at least three of which encroached upon the Pueblo league.[2] At the time of the issuance of these grants, the Indians did not object, since they did not interfere with their agricultural and stock raising activities. However, as the Spanish population increased, disputes arose. In 1750 there were 125 non-Indians in the Taos jurisdiction, most of whom lived at the Pueblo. At first these disputes did not concern the conflict between the private and Pueblo grants but involved the efforts by the white inhabitants, who were cultivating lands within the Pueblo Grant, to keep the Indians' livestock out of their crops. The Spanish officials invariably decided such disputes in favor of the Indians and ordered the whites to fence their fields and stop interfering with the Indians' use of their traditional pastures. By 1795 the hostilities of the Comanches had abated somewhat and most of the Spaniards moved from the Pueblo to their grants or to form new settlements. Thereafter, serious boundary controversies became prevalent.[3]

On April 11, 1815 Jose Francisco Lujan, Governor of the Pueblo of Taos, petitioned Alcalde Jose Miguel Tafoya

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[2]These were the Antoine Leroux, the Antonio Martinez, and Francisca Antonia de Gijosa Grants.

[3]Jenkins, "Taos Pueblo and its Neighbors", 41 New Mexico Review, 91-100 (1966).

seeking the ejection of the trespassers who were encroaching upon the Pueblo League. Lujan asserted that in view of the fact that the King had given the Indians of the Pueblo of Taos "a league of land in the four directions", the Spaniards who had usurped lands within their league should be removed "in order that their families might spread out over the planting lands and have ample pasturage for their animals". Tafoya advised the Indians that they should apply to the Governor for relief because the owners of the ranches inside the Indian league would probably vigorously oppose the granting of their petition, and only he could settle the dispute. Governor Alberto Maynez issued a decree on April 18, 1816 which clearly defined the rights of the Pueblo Indians. This decree provides:

> The league of five thousand varas measured from the cross in the cemetery in all directions, of which His Majesty made grant to each town of Indians from the beginning of its establishment, is in order that it be conserved for the maintenance of its natives; so that they have the use and cannot give nor sell without permission of the King; because of its being a patrimony or entailed estate, so that no judge or governor has the power to sell a part or the whole of said league.
>
> If it should result that for many years past or in any manner whatever citizens may have intruded to plant and build on the Indians' land, ought to lose the work done, leaving their ground free to them; but as from this grave injuries might result to the citizens, the Chief Alcalde of Taos will temper equity with justice so far as possible, hearing the parties and adjusting their differences in such manner that the natives shall not be left injured in the compromise which they may make; and Don Felipe Sandoval, the Protector of the Indians, will set forth after this decree whatever may occur to him in regard to the present petition.[4]

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[4]Archive No. 1357 (Mss., Records of the A.N.M.).

The Spaniards protested this decision, stating that it would deprive them of forty-four tracts, two villages containing about 200 families and their church. They complained that since the Indians had invited their forefathers to settle upon the land in order to help in the defense of the Pueblo against the Comanches, it would be unfair to deprive them of the lands which had been granted without objection from the Indians. They contended that since the Indians had not improved or cultivated the lands in question, they, being members of the conquering nation, ought to have the land or, at least, be allowed to rent it. In conclusion, they intimated that if they were deprived of the land they would be placed in such a hopeless position that they might be driven to some act of desperation. This led the Governor to urge the Indians and Spaniards to compromise their differences so he would not have to refer the matter to the Royal Audiencia. However, he re-emphasized that the Indians' right to the league which had been granted to them by the King was incontestable, and if the Spaniards took the matter to trial in order to placate themselves, the Indians would undoubtedly prevail.[5]

Few changes were made in the legal status and administration of Indian affairs after Mexico gained its independence from Spain in 1821 and the various Mexican governments invariably recognized and protected the Pueblo land titles.

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[5] Ibid.

After the United States acquired New Mexico, it was bound under the eighth section of the Treaty of Guadalupe Hidalgo[6] to recognize the rights of the Pueblo Indians, who, under the laws of Mexico, had been Mexican citizens. Thus, Congress, when it created the office of Surveyor-General for New Mexico, ordered him to investigate and report upon the nature of the land titles held by the Pueblos in order that their bona fide claims might be confirmed.[7] In response to this change, Surveyor General William Pelham commenced a general inquiry into the validity of pueblo land titles, one of which was that of the Pueblo of Taos. On August 2, 1856 he held a hearing on the Pueblo of Taos Grant, at which time Pablo Romero, the then governor of the Pueblo, together with War Captain Juan Reyno and Cacique Benito Casillas, testified that they did not have any papers evidencing the original grant to the Pueblo but there was a tradition that a four-league grant had been made to the Pueblo of Taos at the same time that grants were made to all the other pueblos in the territory. In support of this tradition, they filed the following letter:

> The communication of your reverence of the 11th instant is received concerning the measure of the league of land of the Pueblo of Taos, which shall contain five

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[6] 5 Miller, Treaties and Other International Acts of The United States of America, 217-218 (1937).

[7] An Act to establish the office of Surveyor General of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes, Chap. 103 Sec. 8, 10 Stat. 308 (1854).

> thousand varas from the cross in the cemetery towards the four cardinal points, concerning which matter I have today issued a decree to the senior justice of that jurisdiction, requiring him to be governed thereby, mingling equity with justice, so that the citizens who are on alien lands may not be injured more than what is absolutely necessary, in which I trust your reverence will cooperate with your kind offices.
>
> God preserve you many years:
>
> Santa Fe, April 15, 1815
>
> Alberto Maguez
>
> Very Reverend Friar Jose Benito Pereyro.[8]

In his Annual Report dated September 30, 1856 Pelham, in connection with the Pueblo land titles upon which he had reported, stated:

> The Pueblo Indians are constantly encroached upon by the Mexican citizens, and in many instances the Indians are dispoiled of their best lands; I therefore respectfully recommend that these claims be confirmed by Congress as speedily as possible, and that an appropriation be made to survey their lands, in order that their boundaries may be permanently fixed.[9]

Congress heeded the Surveyor General's advice and by Act approved on December 28, 1858[10] it conferred title to seventeen pueblo grants, including that of the Pueblo of Taos. The grant was surveyed in July, 1859 for 17,360.55 acres, and

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[8] H. R. Exec. Doc. No. 1, 34th Cong., 3d Sess., 512 (1856).

[9] Ibid., 411-412.

[10] An Act to confirm the land claims of certain pueblos and towns in the Territory of New Mexico, Chap. 5, 11 Stat. 374 (1858).

a patent was issued to the Pueblo of Taos on November 1, 1864.[11]

THE DON FERNANDO DE TAOS GRANT

Governor Francisco Cuervo y Valdez issued an Order[1] on August 25, 1794 which prohibited Spaniards, mulattoes, and Negroes from settling in the pueblos and Indian towns on the theory that the association was bad for the Indians. However, by the middle of the eighteenth century, many Spaniards and half-castes were living amongst the Pueblo Indians and had appropriated large portions of the pueblo lands. In many cases they had gained control of the government of the pueblos.[2]

At first, the Pueblo Indians encouraged the influx of Spaniards and half-castes into their communities in order to assist them in warding off the incursions of the hostile

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[11] The Pueblo of Taos Grant, No. I (Mss., Records of the S.G.N.M.).

[1] Archive No. 1340 (Mss., Records of the A.N.M.).

[2] Bolton, The Spanish Borderlands, 183-184 (1921).

Indians. However, by 1794 the pacification of the indios barbaros nearly had been accomplished as a result of the fulfillment of the General Indian Policy which had been formulated by Commandant General Teodoro de Croix.[3] Whereupon, the Taos Indians commenced agitating for the ouster of all non-Indians from their Pueblo. To ease mounting tension, most of the non-Indians moved out of the Pueblo and formed a new settlement just south of the southwest corner of the Pueblo League and petitioned Governor Fernando Chacon for a grant covering the surrounding lands. Chacon granted the petition and ordered the Alcalde of Taos to give possession of the place known as Don Fernando de Taos to the sixty-three families who had formed the new settlement. On May 1, 1796 Alcalde Antonio Jose Ortiz placed the grantees in royal possession of the grant and designated the following natural objects as its boundaries:

> On the north, the lands of the Indians of Taos; on the east, the Canon of the Rio de Don Fernando de Taos; on the south, the brow of the ridge on the other side of the river; and on the west, the lands of Antonio Jose Lavato below and the middle road above.

Following the delivery of possession, Alcalde Ortiz informed the grantees that the concession was a community grant and any person who wished to join the colony should be welcomed. The grantees were also directed to assist in their own defense by arming themselves with firearms or bows and arrows

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[3]Jones, Pueblo Warriors & Spanish Conquest, 168 (1966).

at the time of their settlement, and those armed with only bows and arrows were, under penalty of expulsion, to acquire firearms within two years.

Since the livelihood of the inhabitants of Don Fernando de Taos depended upon the success of their irrigated crops, they petitioned Chacon for a grant covering the surplus waters from the Taos and Lucero Rivers. The governor granted their request and on November 7, 1797 Alcalde Ortiz gave them a certificate evidencing their appropriation of such water rights. As a result of the steady growth of the town, its inhabitants became increasingly anxious to secure individual allotments covering the lands upon which they were living and cultivating. To dispel their fears, Governor Chacon ordered the Alcalde of Taos to partition the grant amongst its inhabitants. Pursuant thereto, Alcalde Antonio Jose Pomero made the requested allotments on August 9, 1799.[4]

Although Don Fernando de Taos or "Taos", as it was usually called, was primarily an agricultural settlement, it developed into the principal trading center of New Mexico. During the latter part of the eighteenth and first part of the nineteenth centuries, its gala annual trade fair attracted traders, including representatives of hostile plains tribes, from all over the southwest. It was also the spawning ground for the uprisings of 1837 and 1846. Despite such festivities

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[4]Archive No. 883 (Mss., Records of the A.N.M.).

and historic events, Taos has remained basically a small but picturesque Spanish town.

The inhabitants of the Don Fernando de Taos Grant petitioned[5] Surveyor General Henry M. Atkinson on January 21, 1878 seeking the confirmation of the grant. Atkinson found the grant papers to be genuine and, in his Report dated June 10, 1881,[6] recommended its approval by Congress in accordance with the boundaries set forth in the Act of Possession. Congress, as in all other private land claims from New Mexico which had been pending since 1879, failed to act upon the matter. Meanwhile, a preliminary survey of the grant was made by Deputy Surveyor John Shaw in June, 1883 for 1,899.89 acres.[7]

Juan Santistevan, on behalf of himself and the other heirs, legal representatives and assigns of the original grantees, filed suit[8] against the United States in the Court of Private Land Claims on February 28, 1893 in an effort to secure the recognition of the grant. He pointed out that the United States' continuous failure to recognize the grant had clouded the title to the lands of more than 1,500 residents

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[5]The Don Fernando de Taos Grant, No. 125 (Mss. Records of the S.G.N.M.).

[6]Ibid.

[7]Ibid.

[8]Santistevan v. United States, No. 149 (Mss. Records of the Ct. Pvt. L. Cl.).

of the county of Taos County, "who were claiming under one of the best known and widely accepted grants in the state". The case came up for trial on September 28, 1897, at which time plaintiff offered Archive No. 883 as his muniment of title together with a large amount of oral testimony showing that the inhabitants of Taos had held peaceful possession of the premises for "many years past" but in no way connected them to the original grantees. The government asserted two special defenses. The first was that under the doctrine of the Sandoval Case,[9] confirmation should be limited to the area covered by the lands allotted to the inhabitants of the grant on August 9, 1799. In its second defense the government argued that the east boundary of the grant was located at the western end of the canon of the Rio de Fernando de Taos instead of the eastern end or head of the canon as contended by the plaintiff Under the plaintiff's construction, the grant would contain approximately 38,400 acres, since the canon ran almost due east and west a distance of fifteen miles.

The Court, on October 5, 1897, announced its decision[10] sustaining the government in its contentions and rejecting the claim insofar as it covered all unallocated lands. However, since the record in the case had not connected the present occupants of the grant with the original allottees, the Court

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[9]United States v. Sandoval, 167 U.S. 278 (1897).

[10]3 Journal 298 (Mss., Records of the Ct. Pvt L. Cl.)

granted the plaintiff until the following term of court to furnish data necessary to locate the boundaries of the individual allotments and establish their ownership. On September 4, 1899 further testimony was taken concerning the extent of the allotments and the succession of title from the original grantees. On the following day, the Court held[11] that the allotments located within the boundaries of the Pueblo of Taos Grant were not subject to confirmation. The Court held that while it could reject such allotments on the grounds that they conflicted with a patented grant and that it did not have the power to decide the title to conflicting claims, it had decided to also reject the claim insofar as it covered the allotments within the Pueblo of Taos Grant on the ground that the question had previously been adjudicated by the Mexican authorities. In support of this contention, the Court referred to certain Mexican proceedings held in 1815 in which it it was held that neither the Governor nor any other Spanish official in New Mexico could legally grant any portion of the lands belonging to the Pueblo.[12] Therefore, all allotments made under the Don Fernando de Taos Grant, insofar as they covered any land lying within the out boundaries of the orig-

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[11] 4 Journal 197 (Mss., Records of the Ct. Pvt. L. Cl.).

[12] Archive No. 1354 (Mss., Records of the A.N.M.).

inal allotment[13] the Court decided to confirm title to all of the lands located within the boundaries of the grant, as surveyed by John Shaw and situated "outside the Pueblo of Taos Grant" to the heirs, legal representatives and assigns of the settlers named in a list attached to Alcalde Romero's Act of Possession dated August 9, 1799. Continuing, the Court held that if there were any unallocated strips or gores located within the boundaries of such survey, they were to be owned in common by all the parties to whom the grant was confirmed.

Pursuant to Section 10 of the Act of March 1, 1891[14] Deputy Surveyor Jay Turley was awarded a contract to make an official survey of the grant. Turley surveyed the grant between May 31 and June 8, 1901 and found the grant, as surveyed by Shaw, conflicted with the Pueblo of Taos Grant by 16.17 chains or 82.65 acres and also overlapped the Cristobal de la Serna Grant by 421.89 acres. Since the Decree of Confirmation expressly excluded all lands within the Pueblo of Taos Grant, the Turley Survey relocated the north line of the grant 16.17 chains south of Shaw's north line but did not exclude the lands in conflict with the Cristobal de la Serna Grant. A

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[13]These allotments were narrow tracts fronting on the river with the majority being only 63 varas wide. After a few generations, they were subdivided into numerous extremely narrow tracts as a result of title passing to children of large families under the laws of descent and distribution upon the intestate deaths of their parents. In 1901 many of the tracts claimed in severally by the inhabitants of the grant were only a few feet wide.

[14]Court of Private Land Claims Act, Chap. 539, Sec. 10, 26 Stat. 854 (1891).

patent covering the 1,817.34 acres contained in the Turley Survey was issued to the interested parties on February 25, 1909.[15]

The rejection of the grant, insofar as it covered the allotments located within the Pueblo of Taos Grant, resulted in the institution of a great deal of litigation between the Indians and the non-Indians, who were in possession of hundreds of small tracts of land based upon allotments made under the Don Fernando de Taos Grant and located in the southwest corner of the Pueblo league. In a number of these cases, the settlers were able to prove that they had perfected limitation titles to their lands.

The constant friction between non-Indian claimants and the Pueblo Indians culminated in the passage of the Pueblo Land Act[16] on June 7, 1924. This Act provided for the establishment of a Board which was charged with the responsibility of the determining of the status of all non-Indian land claims lying within the Pueblo Grants. The titles of non-Indians were to be sustained if they could show:

> (a) that they or their predecessors in interest had adverse possession of the premises claimed under color of title between January 6, 1902 and June 7, 1924 and had properly paid taxes thereon between said dates; or
>
> (b) that they or their predecessors in interest had adverse possession of the premises claimed with claim of

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[15]The Don Fernando de Taos Grant, No. 125 (Mss., Records of the S.G.N.M.).

[16]An Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes, Chap. 331, 43 Stat. 636 (1924).

ownership but without color of title between March 16, 1889 and June 7, 1924 and had properly paid taxes thereon between said dates.

The Board, by unanimous decision, had authority to declare all claims meeting one of these requirements as valid title and extinguishing the right of the Pueblo Indians in the lands contained therein. Compensation was to be paid to the party (either Indian or non-Indian) whose title was extinguished. Title to the lands covered by many of the allotments located within the Pueblo of Taos Grant were adjudicated by the Board. By 1938, the Board had completed its investigations and the Pueblo land titles, for the first time since the seventeenth century, finally were freed from controversy.[17]

THE GIJOSA GRANT

Antonio de Moya and his young wife, Francisca Antonia de Gijosa, were among the colonists who resettled New Mexico following its reconquest by Diego de Vargas in 1693. The couple settled at Santa Fe where Moya practiced his trade as a mason. Following Antonio's death, Francisca commenced tending

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[17] Brayer, Pueblo Indian Land Grants of the "Rio Abajo", New Mexico, 27-31 (1931).

sheep to support herself and her children. By 1715 she had accumulated a herd of sufficient size to warrant the petitioning of Governor Juan Ignacio Flores Mogollon for a grant. She requested that the grant cover the tract of land located in the Taos Valley which formerly had been owned by Bartolome Romero but had been abandoned since the Pueblo Revolt. In cognizance of his duty to protect widows, Mogollon, on September 20, 1715, made the requested grant and directed the Alcalde of Taos to place the grantee in possession of the premises. Upon receiving notice of the grant and the Governor's order, Alcalde Juan de la Mora Pineda assembled the leading officials of the Pueblo of Taos at the Royal House, and in the presence of his witnesses and the grantee, explained the terms of the grant to the Indians. Since they did not remonstrate the concession, the Alcalde proceeded to the grant where he pointed out the following natural objects as the boundaries of the concession and placed the grantee in royal possession of all the lands embraced therein:

> On the north, (torn out); on the east, the head of the Acequia which lines with the pueblo; on the south, the middle road (torn); and on the west, the Piedras Negras.[1]

Sometime prior to the spring of 1725, Francisca married Andres de la Paz, moved back to Santa Fe, and decided to sell her sheep ranch. On May 25, 1725 she conveyed the

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[1]Archive No. 309 (Mss., Records of the A.N.M.).

grant to Baltazar Trujillo for fifty pesos and stated "that if it was worth more she made him a gift of the balance". She also specifically waived all "laws favorable to women" and declared, "although I am a woman, I have not been compelled or advised by any person and the said sale has been for my sole benefit, for which I relinquish and give up dominion, share and ownership ...." of the grant. Trujillo presented the deed to Enrique Jiron y Cabrera, the Alcalde of Taos, on June 22, 1725 and requested the Alcalde to place him in royal possession of the Francisca Antonia de Gijosa Grant as well as an adjoining tract of land which had been granted to him in 1702 but which he had not occupied for some time. In response to the petition, Jiron summoned the Caceque, Governor and other head men of the Pueblo of Taos so they could enter any objections they might have to the delivery of possession to Trujillo. Encountering no opposition, he placed Trujillo in possession of both tracts as a single body of land which he described as being bounded:

> On the north, by the Taos River; on the east, by the mouth of the Acequia which lines with the Pueblo; on the south, by the middle road from Picuris; and on the west, by the Piedras Negras as far as the Arroyo Hondo.[2]

Trujillo, in turn, sold the consolidated grant to Baltazar Romero on July 12, 1732 for a consideration of five hundred

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[2]Archive No. 945 (Mss., Records of the A.N.M.)

pesos.[3] Thereafter the consolidated grant was generally referred to as simply the Gijosa Grant. Baltazar Romero sold and conveyed the Gijosa Grant to Juan Joseph Romero, Antonio Romero, Ana Maria Romero, and Domingo Moriano de los Delores on August 14, 1732 for a total consideration of one hundred head of small stock horses, three Apache women, and four fanegas of provisions.[4] On June 15, 1745 Domingo Mariano de los Dolores and four other persons who had acquired the interests of Mariano's co-tenants appeared before Alcalde Francisco Guerrero seeking the partitioning of the cultivatable portion of the grant amongst themselves. In response to their petition, Guerrero examined the grant and, after finding that it contained 8,900 varas of agricultural land along the south bank of the Taos River and 2,700 varas along the east bank of the Rio Grande, partitioned the 11,600 varas as follows:

> (a) Cristoval Tafoya - 2320 varas along the south bank of the Taos River running westward from a point one league from the Pueblo.
>
> (b) Joseph de Villapenado - the 2320 varas west of Tafoya's tract.
>
> (c) Joseph Romero - the 2320 vara tract west of Villapenado's tract.
>
> (d) Rosa Romero - the 1940 varas lying between Joseph Romero's tract and the junction of the Taos River and the Rio Grande and also 380 varas along the Rio Grande south of the junction.

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[3]Archive No. 951 (Mss., Records of the A.N.M.)

[4]Archive No. 750 (Mss., Records of the A.N.M.)

(e) Domingo Mariano de los Dolores - 2320 varas along the Rio Grande located south of Rosa Romero's tract.

The balance of the grant was to be held in common by its owners as a pasturage for their livestock.[5] During the next century and a quarter, the grant was continously occupied and claimed by the descendants of the five parties among whom it had been partitioned. Its population rapidly expanded and, by 1876, there were at least 4,000 persons living in the numerous small settlements scattered along the south bank of the Taos River.

The claim was submitted[6] to Surveyor General Henry M. Atkinson on January 17, 1876. Atkinson, in an opinion dated April 25, 1878, held that the muniments, which had been filed in the case, were undoubtedly genuine and that the grant which had been made Francisca Antonia de Gijosa in 1715 should be confirmed. However, since there was no evidence that a grant had actually been made to Baltazar Trujillo in 1702, he recommended the rejection of that portion of the claim. Noting that evidence in the claim did not set forth the north boundary of the Francisca Antonia de Gijosa Grant, he stated that it would have to be ascertained and determined by the surveyor when he made the official survey of the grant.

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[5]Archive No. 957 (Mss., Records of the A.N.M.)

[6]The Gijosa Grant, No. 109 (Mss., Records of the S.G.N.M.).

Two surveys were made under the direction of the Surveyor General. The first was made in June, 1883 by John Shaw and depicted the Francisca Antonia Gijosa Grant as containing 1,557.83 acres. The claimants protested the approval of the Shaw Survey on the grounds that it did not correctly locate any of the boundaries of the grant and offered an affidavit by Jose Rafael Yigil. He stated that he was seventy-five years of age, that he had been familiar with the grant for more than fifty years and that its northern boundary was the Taos River. Based on this "new evidence", a second survey was made for 16,365.45 acres. This survey covered the same lands as those contained in the consolidated grant described by Alcalde Jiron in his certificate of June 22, 1725. If this latter survey was correct, then the grant to Trujillo in 1702 was located totally within and conflicted with the Francisca Antonia de Gijosa Grant.[7]

Since Congress was not equipped to determine the numerous complex questions which were raised in the multitudinuous Spanish and Mexican land grants pending before it, the Court of Private Land Claims was created in 1891. On June 18, 1892 Felix Romero, for himself and on behalf of the other owners of the Francisca Antonia de Gijosa and the Baltazar Trujillo Grants, filed suit[8] aginst the United States for the confir-

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[7] Ibid.

[8] Romero v. United States, No. 16 (Mss., Records of the Ct. Pvt. L. Cl.).

mation of the consolidated claim. When the case came up for trial, Romero introduced a copy of the several documents contained in the Archives relating to the Francisca Antonia de Gijosa Grant together with a certified copy of an entry from the Book of the Cabildo pertaining to the Baltazar Trujillo Grant. The Book of the Cabildo was a register containing a brief description of all grants made prior to 1713, and was contained in the Archives turned over to the United States when it acquired New Mexico. The entry concerning the Baltazar Trujillo Grant stated that on September 13, 1713 Baltazar Trujillo presented title papers showing that he had been granted the lands which formerly had belonged to the widow of Archuleta by Governor Pedro Cubero on September 19, 1702 and that the Alcalde of Taos, Miguel Tenorio de Alva, had placed him in possession of the four fanegas tract of land covered thereby on September 26, 1702. The government's attorney offered no special defenses against the confirmation of the claim and conceded that if Surveyor General Atkinson's attention had been called to the entry in the Book of the Cabildo, he probably would not have recommended the rejection of the Baltazar Trujillo Grant. The Court, in its opinion[9] dated March 1, 1893, held that it was satisfied that the plaintiff had established a valid and complete claim to both grants, and, therefore, confirmed title thereto in the heirs

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[9] 1 Journal 129-130 (Mss., Records of the Ct. Pvt. L. Cl.).

and legal representatives of the two original grantees. Since the tract was diamond shaped, the Court, in order to avoid any confusion in the surveying of the grant, described its boundaries as follows:

> Beginning at the head of the irrigation ditch... on the Rio del Pueblo; thence following the Rio del Pueblo to where it empties into the Rio Grande; thence following the Rio Grande to the mouth of the Arroyo Hondo; thence following the Arroyo Hondo to the point where the middle road which comes from Picuris crosses the Arroyo; then following said middle road to a point thereon nearest to the said head of said irrigation ditch; and thence in a straight line to the point of beginning.

The grant, as thus confirmed, was surveyed by Deputy Surveyor Albert F. Easley between the 16th and 23rd of January, 1897 and depicted the grant as containing 15,794.47 acres. The Taos Indians protested the approval of the survey on the grounds that it conflicted with the southwest corner of their grant by about fifty chains. The Surveyor General also called the court's attention to the fact that the northwest boundary followed the southeastern boundary of the Antonio Martinez Grant instead of the Taos River as specified in its decree. The court amended[10] its decree on May 5, 1897 in order to exclude the area in conflict and ordered a resurvey of the grant in strict accordance with its decree as amended. Deputy Surveyor Jay Turley ran the new survey of the premises in September, 1901, and it showed that the grant contained 16,240.64

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[10] 3 Journal 182 (Mss., Records of the Ct. Pvt. L. Cl.).

acres. A patent based on the Turley Survey was issued on October 26, 1908.[11]

THE CRISTOBAL DE LA SERNA GRANT

Having resigned his commission as captain in the army and position as commander of the garrison at Santa Fe in order to accept limited duty by performing the functions of a sargeant, Cristobal de la Serna needed an independent source of income to support his large family. Therefore, he petitioned the Governor of New Mexico, Joseph Chacon Medina Salazar y Villsenor, Marquis of Penuela, requesting a grant covering the rancho located in the Taos Valley, which, prior to the Pueblo Revolt of 1680, had belonged to Captain Fernando de Chaves. On April 28, 1710 Salazar granted him the requested tract. About this same time the Apaches migrated westward and began harrassing the settlements along the northeastern frontier of New Mexico. The increased military activity resulted in Serna's being recalled into active military service and prevented his settling upon the grant. By 1715 the Apache problems had somewhat abated and Serna was discharged from the

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[11]The Gijosa Grant, No. 109 (Mss., Records of the S.G.N.M.).

army. He finally was in a position to move to the grant. However, his previous failure to occupy the grant promptly caused Serna no little concern over the validity of his title. Therefore, he petitioned Governor Juan Ignacio Flores Mogollon on May 31, 1715 seeking the revalidation of the grant and delivery or royal possession. Serna expressly requested that the Indian officials of the Pueblo of Taos be notified of the grant and invited to attend the surveying of its boundaries so that they would have an opportunity to voice any objections that they might have thereto. In response to Serna's petition, Mogollon, on the same date, confirmed the grant and directed the lieutenant of the Chief Alcalde of Taos, Juan de la Mora Pineda, to deliver royal possession of the grant. Pineda was also instructed to summon the Governor, Caciques and War Chiefs of the Pueblo of Taos in order that they might accompany him in the performance of his duties in connection with the concession. Lieutenant Alcalde Pineda met with all of the interested parties at the Pueblo of Taos on June 15, 1715 and explained the grant to the representatives of the pueblo, who advised Pineda that the lands covered thereby did not belong to them and the grant would in no way be prejudicial to their rights. While the Indians had planted a few plots of beans on the grant, they agreed not to replant such fields if they were allowed to harvest the growing corps. Finding no opposition to the grant, Pineda and all interested parties then proceeded to the grant and commenced the survey. The field

notes of the survey described a tract of land bounded:

> On the north, by an old landmark; on the east, by the Ojo Caliente; on the south, by the mountains; and on the west, by the middle road.

Following the completion of the survey, Pineda performed the formal ceremonies necessary to deliver royal possession of the grant to Serna.[1]

The grantee promptly settled upon the premises and therafter continuously occupied and used the land until his death, which occurred in about 1724. His sons, Juan and Sebastian, sold the grant to Diego Romero on August 5, 1724. In order to assure himself that he was acquiring a good title, Romero presented the testimonio of the grant to Juan Paez Hurtado, Inspector General of New Mexico, and requested him to pass on the validity of the grant. In a certificate dated November 24, 1724 Hurtado approved the grant and declared the title thereto to be good and sufficient.[2] Under Romero's will,[3] which was dated June 13, 1742, the grant was devised to his three children, Andres, Francisco and Ana Maria. In 1796 the Don Fernando de Taos Grant was made. Since this grant conflicted with the northern portion of the Cristobal de la Serna Grant, the heirs and descendants of Andres, Francisco and Ana Maria consented to the issuance of the Don Fer-

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[1] Archive No. 830 (Mss., Records of the A.N.M.).

[2] Ibid.

[3] Archive No. 759 (Mss., Records of the A.N.M.).

nando de Taos Grant and relinquished their claim to any lands lying between the Rio Don Fernando and La Cruz Alta.[4] Between 1796 and 1876 the lineal descendants of Andres, Francisco, and Ana Maria Romero or their assigns continuously claimed all of the balance of the lands within the grant. By 1876 the grant had a population of approximately 1500 inhabitants and was owned by more than 300 persons. All of the owners except 29 actually resided upon the premises. The owners cultivated the individual parcels which they occupied. About one-half of the claimants were descendants of children of Diego Romero and the other half had acquired their interests by purchase from such descendants.[5]

On January 17, 1876 the owners of the grant petitioned[6] Surveyor General Henry M. Atkinson, seeking the confirmation of the claim. For some unknown reason, no action was taken on the claim until after the owners filed a supplemental petition. This supplemental petition was filed on December 12, 1887 and listed the names of 302 claimants and stated, in more detail, the basis of their claim. Surveyor General George W. Julian carefully investigated the claim and was of the opinion that the signatures of Governor Mogollon and the other officials connected with the concession were genuine. Therefore,

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[4] S. Exec. Doc. No. 125, 50th Cong., 2d Sess., 4-5 (1889).

[5] Ibid., 23-24.

[6] The Cristobal de la Serna Grant, No. 158 (Mss., Records of the S.G.N.M.).

in his report dated March 5, 1888, he recommended the grant be confirmed by Congress "subject to the rights of the United States to any minerals[7] found in the land, leaving its owners to adjust their respective rights according to their own wishes and convenience".

Notwithstanding Julian's favorable report, Congress failed to act upon the claim prior to the transfer of jurisdiction over the confirmation of land grants to the Court of Private Land Claims. On July 18, 1892 Juan de Dios Romero, for himself and all other heirs, successors and legal representatives of Cristobal de la Serna, filed suit[8] against the United States in that tribunal. The United States Attorney, having no special defense, filed a general answer which merely put the plaintiff's allegations in issue. Following the trial of the action, the Court, in its decision[9] dated

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[7]Under Spanish and Mexican law, all minerals were reserved as a prerogative of the sovereign. Mining rights could be acquired by miners under the Royal Mining Ordinance of May 22, 1783. Rockwell, Spanish and Mexican Land Law, 50 (1851). Section 4 of the Act of July 22, 1854 provided that "none of the provisions of this Act shall extend to mineral... or lands settled on and occupied for purposes of trade and commerce, and not for agriculture...." An Act to establish the Office 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). Julian undoubtedly interpreted this provison as a limitation of his authority to recommend the relinquishment of any mineral rights under Section 8 of that Act.

[8]Romero v. United States, No. 21 (Mss., Records of the Ct. Pvt. L. Cl.).

[9]Journal 43-45 (Mss., Records of the Ct. Pvt. L. Cl.).

August 30, 1892, found the grant to be complete and perfect, and, therefore, confirmed title thereto in the heirs, successors and assigns and legal representatives of Cristobal de la Serna.

Deputy Surveyor John H. Walker surveyed the grant in April, 1894 and his work showed that it contained 22,232.57 acres. A patent for such amount was issued on January 19, 1903.[10]

THE RANCHO DEL RIO GRANDE GRANT

Upon learning that a group of persons were considering the formation of a new colony on the premises known as Rancho del Rio Grande, Nicolas Leal appeared before the Alcalde of Taos, Antonio Jose Ortiz, and advised him that the proposed project would be prejudicial to the rights of the inhabitants of San Francisco de las Trampas.[1] He pointed out that they depended upon the waters of the Rio Grande del Ranchito and the Rio Chiquita to irrigate their fields and that there was

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[10]The Cristobal de la Serna Grant, No. 158 (Mss , Records of the S.G.N.M.).

[1]The settlement, which had developed around Diego Romero's ranch headquarters on the Cristobal de la Serna Grant, was known as Francisco de las Trampas.

not enough water in the rivers to support two agricultural colonies. Ortiz referred the matter to Governor Fernando Chacon on February 2, 1795. Chacon was apparently sympathetic for he rejected the request for a grant covering such land, which, in the meantime, had been filed. Shortly thereafter, Leal and ten associates, the majority of whom were heirs of Diego Romero, petitioned Ortiz for a grant covering the Rancho del Rio Grande as a pasturage for their livestock. The petition was obviously made in order to prevent others from seeking an agricultural grant covering the Rancho del Rio Grande. This petition was referred to Chacon, who granted the request and ordered Ortiz to place the eleven grantees in possession of the premises. On April 9, 1795 Ortiz, in obedience to the governor's order, delivered royal possession of the grant to the grantees and designated the following natural objects as its boundaries:

> On the north, by the boundaries of Manuel Montes Vigil; on the east, by the spur of the Rio de Don Fernando Mountain; on the south, by the Cuchilla del Oso Mountains; and on the west, by the Canada de Miranda and the Picuris Pueblo Road.[2]

The grantee promptly stocked the grant and continuously grazed their herds of sheep and cattle upon its lands.

The fact that no permanent settlement had been established on this tract led many persons to believe that it was vacant. One such person was Nicolas Sandoval, a landless

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[2] H. R. Misc. Doc. No. 181, 42d Cong., 2d Sess., 80-82 (1872).

resident of the Pueblo of Taos. It seems that Sandoval had received a deed covering a tract known as Los de Montes in consideration for the services and assistance he had rendered in the construction of an acequia. However, this conveyance had been revoked and the land reconveyed by Alcalde Juan Antonio Lovato to others more of his liking without considering the harm he was doing to Sandoval. As compensation for his loss, Sandoval, in 1827, registered a small tract of agricultural land at the Rancho del Rio Grande. In response to his petition, the Territorial Deputation of New Mexico asked for a full report on the merits of the petition from the Ayuntamiento to Taos. The Ayuntamineto recommended that the application be denied because the issuance of the requested grant "would prejudice third parties in the settlements, as in years of drought, the waters would be diminshed". On March 13, 1837 Sandoval, together with ten associates, petitioned Governor Albino Perez, requesting a grant covering the premises. To overcome the previous objections, the petitioners stated that they would not need "even the smallest portion of the waters" from the Rio Grande del Ranchito or the Rio Chiquita. The petitioners explained that they would irrigate their fields with water obtained from certain springs located on the tops of the mountains. They were careful to point out that the waters from these springs never reached the rivers but were absorbed in or near the foot of the mountains. They planned to carry the water from the springs to their fields through a

long acequia to be constructed at their expense, and thus, conserve such salubrious water. They voluntarily agreed to fence their fields to protect their crops from trespassing livestock and promised to construct such fences in a manner which would not impede traffic or enclose any public watering place. Perez referred the petition to the Ayuntamiento of Taos on the following day, directing it to report "what may occur to them in the matter, keeping in view the recommendation this petition merits". The Ayuntamiento, on March 27, 1837, appointed a committee comprised of David Waldo, Juan Manuel Lucero, and Jose de Jesus Trujillo to investigate and report upon the merits of the petition. After having interviewed the petitioners and the inhabitants of San Francisco del Rancho, the commission reported that the requested grant could not be legally made since the land previously had been granted to Nicolas Leal and his associates. On March 31, 1837 the Ayuntamiento of Taos approved the committee's report and recommended that the petition be denied. The Ayuntamiento's decision recited that the issuance of a grant to the applicants would cause irreparable damage to the approximately three hundred families living downstream from the Rancho del Rio Grande and who had been granted and were using the same lands as a pasturage. It was also pointed out that the small springs referred to by the petitioners would not furnish adequate water to irrigate their fields and, therefore, in order to survive, they would take water from the river which was

already in short supply and fully appropriated. Perez formally rejected Sandoval's petition on April 20, 1837.[3]

Sometime between December 30, 1860 and May 13, 1861 the owners of the Rancho del Rio Grande Grant filed their testimonio of the grant and requested that an inquiry into the validity of their claim be instituted by Surveyor General Alexander P. Wilbar; however, much to the consternation of the claimants, year after year passed with no action being taken on their petition. Desiring to have their claim acted upon as soon as possible, they prevailed upon Representative J. Francisco Chaves to introduce a bill of confirmation in the United States Congress in 1871. This bill passed both houses of Congress but the President, due to the pressure encountered during the closing days of the 41st Congress, failed to sign the Act into law. A similar bill was introduced in the Senate during the 42nd Congress. This bill was passed in the Senate, but due to a crowded schedule, was not acted upon by the House.

The incessant delays and mounting expenses encountered as a result of their Washington activities prompted the numerous inhabitants of the grant to file a supplemental petition on January 10, 1872 in an effort to secure the recognition of the claim through regular channels. Surveyor General T. Rush Spencer promptly conducted an investigation into the background of the grant. Just five days after the filing of the supple-

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[3] Ibid., 82-84.

mental petition, Spencer rendered a decision[4] in which he found the testimonio to be genuine and recommended the confirmation of the grant. A preliminary survey of the grant was made by Deputy Surveyor Robert G. Marmon in September, 1879 for 109,043.80 acres. This survey showed that the grant conflicted with the Mora Grant by about 20,523 acres. Only about one-sixteenth of the grant could be farmed. The balance, which was very rough and mountainous, could only be used for grazing purposes.[5]

Notwithstanding its previous interest in the claim, Congress took no action on the Surveyor General's recommendation and the matter was awaiting Congress' attention when the Court of Private Land Claims was created. Pursuant to Section 6 of the Act of March 3, 1891,[6] Thomas Torres, on behalf of himself and any other heirs and legal representatives of the original grantees, instituted suit[7] in the Court of Private Land Claims against the United States on April 12, 1892 in an effort to obtain the confirmation of the Rancho del Rio Grande Grant. The government in its answer raised two special defen-

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[4]The Rancho del Rio Grande Grant, No. 58 (Mss., Records of the S.G.N.M.).

[5]Ibid.

[6]Court of Private Land Claims Act., Chap. 539, Sec. 6, 26 Stat. 854 (1891).

[7]Torres v. United States, No. 10 (Mss., Records of the Ct. Pvt. L. Cl.).

ses. It contended that since the grant conflicted with the Town of Mora Grant, which had been previously confirmed and patented, its owners should be joined as parties defendant. Second, it asserted that if the grant should be recognized, the Court, pursuant to Section 13 of the act,[8] should limit its area of eleven square leagues. When the case came up for trial, Torres introduced the muniments of the title to the grant, together with oral testimony showing that there were approximately fifty persons living on the premises who were all claiming through and under the original grantees. The government conceded that the grant papers were genuine and that the claimants had an equitable title, but argued that the confirmation should not include any lands within the boundaries of the Town of Mora Grant and should be limited to a maximum area of eleven square leagues. In support of this contention, the government called the court's attention to Section 6 of the Act,[9] which authorized the institution of suit only in cases where the grant had "not been confirmed by Act of Congress, or otherwise finally decided upon by lawful authority", and the seventh subsection of Section 13, which provided that no claim could be confirmed "for a greater quantity than eleven square leagues of land to or in the right of any

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[8]Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891).

[9]Ibid.

one original grantee or claimant ...". The plaintiff replied by pointing out that Section 7 of the Act provided that the confirmation of the grant would only release the title of the United States and would not affect the private rights of any person or other claimant in respect to such lands. He argued that subsection 7 of Section 13 of the Act[10] limited confirmation to eleven leagues only when the size of grants were so restricted "by the respective laws of Spain or Mexico applicable to the claim". Since this was a Spanish Grant, the eleven league limitation under the Mexican Colonization Law of 1824,[11] was not applicable. However, even if applicable, the eleven original grantees under the Mexican Colonization Law of 1824 would be entitled to receive a grant in excess of half a million acres. In its opinion[12] dated August 30, 1892 the Court found that the grant had been made by the Spanish Government in 1795 and recognized but not regranted by the Mexican authorities in 1837. As to boundaries, it accepted the plaintiff's arguments and held that the grant should be confirmed to the heirs and legal representatives of the original grantees without an eleven league limitation or regard to the conflict with the Town of Mora Grant. The Court stated that it had no authority to settle boundary disputes or affix

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[10] Ibid.

[11] Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[12] 1 Journal 49-52.

private rights since the settlement of such questions were within the province of the local courts.

Since neither party appealed from this decision, the Surveyor General awarded a contract to Deputy Surveyor John H. Walker for the surveying of the grant. A patent was issued on August 16, 1901 for the 91,813.15 acres contained in the Walker Survey.[13]

THE SANTA BARBARA GRANT

Valentin Martin, Eusebio Martin and Juan Olgin, for themselves and thirty-eight associates, petitioned Governor Fernando Chacon for permission to resettle the abandoned Town of Santa Barbara[1] and grant them the lands formerly belonging to that settlement. In a decision dated January 11, 1796 Chacon noted that the former inhabitants had forfeited their rights by abandoning the Town of Santa Barbara and

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[13]The Rancho del Rio Grande Grant, No. 58 (Mss., Records of the S.G.N.M.).

[1]It is not known when the Town of Santa Barbara was originally founded or abandoned, however, it was mentioned as an existing settlement in 1751, in the grant papers of the Town of Las Trampas Grant.

authorized the petitioners to proceed with the re-establishment of that settlement, provided at least fifty persons joined the project. He also granted them the lands they solicited and ordered the Chief Alcalde of Santa Cruz to place them in royal possession of the premises. In compliance with the governor's instruction, Alcalde Manuel Garcia, on April 3, 1796, met the interested parties, who by that time numbered 77, at the grant. He set aside an area 3,400 varas in length in the valley of the river and another area 3,300 varas in length on the plain and directed them to occupy the abandoned towns adjacent to the two areas. Next, he allotted each of the settlers a tract of farm land 100 varas in length in either one or the other of said areas. Following the allocation of the farm lands, Garcia placed the grantees in royal possession of the grant, which he described as having the same boundaries as the first settlement of Santa Barbara, which were:

> From east to west from the boundaries of the Pueblo of Picuris; on the south, a timbered hill which extends to the foot of the mountain Lo de Mora; on the north, the river which descends towards said pueblo.

The original grantees and their heirs and assigns held peaceful possession of the grant continuously after the delivery of possession. At the time the United States acquired jurisdiction over New Mexico there were three towns on the grant - Santa Barbara, El Llano, and El Llano Largo - and had a total population of about 200 families.[2]

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[2]S. Exec. Doc. No. 63, 46th Cong., 3d Sess., 28-37 (1881).

On May 14, 1878 a petition[3] was filed in the Surveyor General's office by Concepcion Leyva, Prudencio Martinez and Jose Domingo Abeyta, for themselves and their associates, asking for the confirmation of the grant. After taking the testimony of four witnesses, who were intimately familiar with the grant's background, and considering a supporting brief filed by the claimants' attorney, Surveyor General Henry M. Atkinson, in an opinion[4] dated March 12, 1879, held that while there was no evidence among the Spanish Archives that the grant was ever made, the muniments of title, which formed the basis of the claim, appeared to be genuine notwithstanding the fact that they were found in the possession of interested parties. In commenting upon the description of the grant contained in the testimonio, Atkinson stated that while the boundaries were not designated in either the petition or the governor's decree, Garcia apparently described the boundaries of the abandoned tract and redesignated the same as the boundaries of the Town of Santa Barbara Grant. Although Garcia omitted the call for the eastern boundary of the grant in the Act of Possession, Surveyor General Atkinson found that the testimony of the witnesses "fixed the eastern boundary of the tract as the Narrow Pass of the Horse (Angostura del Caballo ...)". In conclusion, he recommended the confirmation of the

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[3]The Santa Barbara Grant, No. 114 (Mss., Records of the S.G.N.M.).

[4]Ibid.

claim to the heirs and successors of the original grantees with the boundaries given in the Act of Possession as supplemented by the testimony of the witnesses in the case. Atkinson ordered Deputy Surveyor John Shaw to make a preliminary survey of the grant. He ran the survey in September, 1879, and it shows that the grant contained 18,489.23 acres.[5]

Since Congress failed to take any action on the claim, the owners of the grant decided to present the matter to the Court of Private Land Claims for adjudication.[6] When the case came up for trial, the plaintiffs introduced the documentary evidence, which had been filed in the Surveyor General's office, and oral evidence showing that they and their predecessors had held peaceful and undisturbed possession of the grant since its issuance. The United States presented no special defenses and, therefore, the Court had no alternative but to recognize the validity of the grant. In its opinion[7] dated September 29, 1894, the Court confirmed the concession to the heirs and descendants of the original grantees.

The grant was resurveyed in 1895 by Deputy Surveyor Albert F. Easley pursuant to Section 10 of the Act of March 3,

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[5] Ibid.

[6] Martinez v. United States, No. 96 (Mss., Records of the Ct. Pvt. L. Cl.).

[7] 2 Journal 245-247 (Mss., Records of the Ct. Pvt. L. Cl.).

1891.[8] The Easley Survey showed that the grant contained 30,638.28 acres. Thus, the Santa Barbara was one of the few grants to be confirmed with a larger area than confirmed in its preliminary survey. The grant was patented on May 5, 1905.[9]

THE RIO DEL PICURIS GRANT

Rafael Fernandez and twenty-three associates, all residents of the Pueblo of Picuris, petitioned the Territorial Deputation of New Mexico on March 6, 1829, asking for a grant covering the tract of vacant land embraced within the following boundaries:

> On the north, the boundaries of those of Taos; on the east, Mora Hill; on the south, the Rio del Picuris; and on the west, the league of the Pueblo.

This request was taken up by that august body during its regular session held on the following day and referred to the Auyntamiento of Santa Cruz for a full report. In response to this order, the Ayuntamiento investigated the matter, and

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[8]Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891).

[9]The Santa Barbara Grant, No. 114 (Mss., Records of the S.G.N.M.).

on April 5, 1829, advised the Territorial Deputation that it found no obstacle to the granting of the concession provided the pastures and watering places were not enclosed and the applicants were required to fence the fields they had opened. One month later Mariano Rodriguez protested the issuance of the grant on the grounds it was a part of the commons of the Pueblo of Picuris, the applicants were speculators, and not bona fide colonists, and the lands were under the jurisdiction of the Ayuntamiento of Taos and it was the body that should have reported upon the merits of the application. As a result of this protest the Territorial Deputation on June 5, 1829, rejected application and ordered the petitioners to vacate the premises as soon as they had harvested their crops.[1]

Nearly three years later, Rafael Fernandez and twenty-two of his original associates presented another petition to the Territorial Deputation requesting a grant covering the same lands. They called attention to the jurisdictional dispute between the Ayuntamientos of Santa Cruz and Taos and stated that the controversy was working a dire hardship on them since it had prevented them from acquiring the lands which they needed to support their families. They stated that their "children never tired of

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[1]Archive No. 287 (Mss., Records of the A.N.M.).

asking for what they were unable to provide...," but by issuing the grant they would be able to satisfy the wants which they were then experiencing. By order dated April 27, 1832 and signed "Abreu, Secretary," the Ayuntamiento of Taos was instructed to transmit all the information it had on the matter to "his Excellency" in order that "he" might be sufficiently informed to act upon the petition. Upon receipt of this decree, the Ayuntamiento was convened in extraordinary session in order to prepare the requested report. The Ayuntamiento found that the requested lands were under its jurisdiction, there were no objections to the grant, and recommended the issuance of the concession.[2] The petition was referred to a special three-man committee of the Territorial Deputation, which, in a report dated July 18, 1832, recommended the granting of the applicants' prayer subject to the following conditions:

1. Each of the applicants be allotted only the number of varas which he could cultivate.
2. The pastures, watering places and roads remain open.
3. The Alcalde of Taos be instructed to make the allotments and deliver title documents.

The matter finally came up for consideration by the Territorial Deputation on July 22, 1832, and "his Excellency" decided to grant the lands in accordance with the conditions

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[2]Archive No. 396 (Mss., Records of the A.N.M.).

contained in the Committee's report. On July 28, 1832, a formal granting decree was issued by "Abreu, Secretary." Alcalde Jose Marie Martinez on August 16, 1832, placed 42 families in legal possession of the grant, designated its boundaries and allocated each family an individual farm tract. Nine of these tracts contained 50 varas and the balance covered 100 varas. Since some of the original grantees failed to occupy their individual tracts within the time specified by law, the Alcálde on April 14, 1837, re-delivered possession of each of those tracts to the person to whom it originally had been delivered. Thereafter, the grantees and their children or legal representatives continuously occupied the grant and had peaceful possession and enjoyment of the land. By the time the United States acquired jurisdiction over New Mexico, the Town of Rio del Picuris was a well established community.

The inhabitants of the Rio del Picuris Grant filed a petition[3] asking for the recognition of the grant with the Surveyor General's Office on September 1, 1859, and evidence was offered in support of the claim. However, a decision on the merits of the grant was never rendered by that office.

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[3]The Rio del Picuris Grant, No. F-71 (Mss., Records of the S.G.N.M.).

Juan Fernandez, as the heir of Rafael Fernandez, filed suit[4] in the Court of Private Land Claims on January 25, 1893, seeking the confirmation of the grant, which he asserted contained approximately 20,000 acres. The government filed a general answer putting into issue the allegations contained in the plaintiff's petition.

The principal issue raised during the trial of the case concerned the power of the granting officer to make the concession. The government argued that the grant had been made by the Territorial Deputation and under the doctrine of the Vigil case[5] only the governor had authority to make a valid grant in New Mexico after 1828. It also asserted that the plaintiff's translation of the grant papers was in error and the references to "his Excellency" should read "its Excellency" while the title of the governor was "Seignoria." The government also contended that the Abreu who signed the documents in question was Francisco Abreu who was Secretary of the Territorial Deputation in 1832. The plaintiff, in turn, argued that the Abreu was Governor of New Mexico and ex officio President of the Territorial Deputation in 1832. He attempted to distinguish the Vigil Case by showing in that case the governor had refused

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[4]Fernandez v. United States, No. 65 (Mss., Records of the Ct. Pvt. L. Cl.).

[5]United States v. Vigil, 13 Wall. (80 U.S.) 449 (1871).

to make the grant and the Territorial Deputation had acted indefendantly while in this case the governor made the grant in conjunction with the assembly. The court rendered a decision[6] rejecting the claim "for want of authority" on September 15, 1894. The plaintiff did not appeal the decision.

THE SALVADOR LOVATO GRANT

Loranzo Lovato filed suit[1] in the Court of Private Land Claims on February 14, 1893, seeking the confirmation of the Salvador Lovato Grant. In his petition, Lovato alleged that Salvador Lovato and his two sons, Juan Antonio and Rafael, petitioned Governor Fernando Chacon in 1793 seeking a grant for agricultural purposés at the place known as Los Llomitas. Chacon promptly granted their request and directed the Alcalde of the Pueblo of Taos, Antonio Jose Ortiz, to place the three grantees in royal possession of the concession. In compliance with the

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[6] 2 Journal 200 (Mss., Records of the Ct. Pvt. L. Cl.).

[1] Lovato v. United States, No. 93 (Mss., Records of the Ct. Pvt. L. Cl.).

governor's order, Ortiz proceeded to Las Llomitas with his witnesses and the the three grantees on June 20, 1793. He performed the customary ceremonies pertaining to the formal delivery of the grant to the grantees and designated the following natural objects as its boundaries:

> On the north, a small rocky hill opposite the Llomita Chamisalosa; on the east, the Canada de Mirando and the road leading to the Pueblo of Picuris; on the south, the small valley of the Cuesta de Cire; and on the west, by the pass of the ridge of the Canada de los Alamos.

He estimated that the grant contained 2,500 acres. He stated that he had unsuccessfully searched the Archives of New Mexico in an effort to find the expediente of the grant and concluded that while the expediente at one time had been filed in the Archives, it had been lost, destroyed or stolen as a result of the several mutations in sovereignty. He further stated that Salvador Lovato's petition and Governor Chacon's granting decree had been torn off the testimonio and lost. He also pointed out that the claim had never been submitted to or acted upon by any authority of the United States. The government filed a general answer which put in issue the allegations contained in the plaintiff's petition.

The plaintiff apparently realized that under the Supreme Court's decision in the White[2] and Romero[3] cases,

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[2]White v. United States, 1 Wall. (68 U.S.) 660 (1863).

[3]Romero v. United States, 1 Wall. (68 U.S.) 721 (1863).

which held that where no evidence of a grant is found in the archives, the absence thereof is unaccounted for, and there has not been sufficient possession to raise an equity, the claim must be rejected, and Section 10 of the Act of March 1, 1891,[4] which permitted the confirmation of claims only in cases where the court was satisfied that title had been lawfully derived from a former sovereign, he would be unable to prevail. Therefore, when the case came up for trial on February 11, 1898, the plaintiff declined to offer any proof in support of his petition and advised the court that he no longer wished to prosecute the cause. Whereupon, the court, having no alternative, rejected the claim and dismissed the petition.[5]

THE PUEBLO of PICURIS GRANT

Picuris is an ancient Tigua peublo located about forty miles north of Santa Fe and eighteen miles southwest

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[4]Court of Private Land Claims Act, Chap. 539, Sec. 10, 26 Stat. 854 (1891).

[5]3 Journal 356 (Mss., Records of the Ct. Pvt. L. Cl.).

of Taos. The pueblo stands on the north side of Pueblo Creek about a mile above its confluence with Penasco Creek. Although Picuris was visited by Coronado in 1540 or 1541, the Spaniards had no further contact with the pueblo until organized mission work was commenced in 1598 and it was placed under the charge of Fray Francisco de Zamora to instruct and preach among the Indians. However, by 1609, the Spaniards had lost the good will of the Picuris Indians, who had joined the Apaches in a scheme to exterminate the Europeans. This insurrection was swiftly crushed and many of the inhabitants of Picuris were converted to Christianity. The Mission of San Lorenzo was established by Fray Martin de Arvide, who went to New Mexico upon taking his vows in 1612. By 1680 it had become one of the most important pueblos of New Mexico; however, its 3,000 inhabitants were seriously abused and exploited by the Spaniards under the encomienda system. This led the Picuris Indians to become extremely defiant to Spanish rule and strong supporters of Pope, the leader of the Pueblo Revolt of 1680. Pope, in turn, was especially dependent upon the Pueblo of Picuris for both warriors and leaders. After killing their pastor and five missionaries, who were living at the pueblo, the Picuris braves, under the leadership of Luis Tupatu, joined the seige upon

Santa Fe on August 10, 1680. Following Pope's death, Tupatu was chosen as his successor. However, he readily submitted to Governor Diego de Vargas when he entered Picuris on October 5, 1692, following his reconquest of New Mexico. Fray Francisco Covera and his two assistants absolved the pueblo for its participation in the Pueblo Revolt. However, the Picuris Indians rose in open rebellion against the Spaniards in 1694 and again in 1696. De Vargas decided it was time to chastise them for their actions, but, upon arriving at Picuris, he found it deserted. The Indians had fled eastward into the Apache country. After overtaking and capturing a group of 84 women and children he decided to give up the chase since winter was fast approaching. The prisoners were distributed among the soldiers as servants. This action together with the severity of the winter caused the Indians to return to their pueblo and sue for peace. In 1704 the Indians, due to some superstition arising in connection with their practice of witchcraft, abandoned their pueblo, moved to a site on the plains located 350 miles north of Santa Fe called Quartelejo. Here they reamined until 1706, when they were induced to return by Sargent-Major Juan de Ulibarri. Thereafter, the Indians lived quiet and peaceful lives in their secluded pueblo.[1]

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[1]Ayer, The Memorial of Fray Alonso de Benavides, 245-246; (1916); and Stanley, The Picuris Story, 3-9 (1962).

To sedentary people, the security of their land titles is of paramount importance. On the second day after General Stephen W. Kearney took formal possession of New Mexico, a delegation of Pueblo Indians appeared before him seeking assurances that their titles would be respected. Thereafter, they continuously pressed their claims but were unable to secure any relief until Congress passed the Act of July 22, 1854,[2] which created the office of Surveyor General. Section 8 of this Act requires the Surveyor General, among other things, to investigate and report regarding "all pueblos existing in the territory... and the nature of their titles to the land."

On June 2, 1856, the inhabitants of the Pueblo of Picuris caused the following instrument to be filed[3] in the Surveyor General's office in support of their claim for four square leagues of land:

> 1689 - In the town of our Lady of Guadalupe del Paso del Rio del Norte, on the twenty-fifth day of the month of September, in the year one thousand six hundred and eighty-nine, his excellency Don Domingo Jeronza Petroz de Cruzate, Governor and Captain General, stated that, whereas, in overtaking the Queras Indians, and the Apostates and the Thequas, and those of the Thanos Nation, in the Kingdom of

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[2]An Act to establish the office 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).

[3]H. R. Exec. Doc. No. 1, 34th Cong., 3d Sess., 502 (1856).

New Mexico, and having fought with all the Indians of all the other pueblos, an Indian named Bartolome de Ojea, of the pueblo of Zia, one of those who were most conspicuous in the battle, lending his aid everywhere, being wounded by a ball and an arrow, surrendered; and as previously stated, I ordered to declare, under oath, the conditions of the pueblo of Picuris (very rebellious Indians) who apostatized and took part in the wars of that Kingdom of New Mexico.

Being interrogated if this pueblo would rebel again at any future time, as it was customary for them to do, the deponent answered no; that, although it was true they were connected with those of Zia in what had taken place in the year previous, he judged it was impossible for them to fail in giving in their allegiance.

Therefore, his excellency Don Domingo Jironza Petroz de Cruzate, Governor and Captain General, granted the boundaries herein set forth:

On the north, one league, on the east, one league, on the south, one league, and on the west, one league; these four lines to be measured from the four corners of the temple situated on the western side of the pueblo, and his excellency so provided, ordered, and signed before me, the present secretary of government and war, to which I certify.

Don Domingo Jironza
Petroz Cruzate

Before me,

Don Pedro Landron de Guitara
Secretary of Government and War.[4]

Surveyor General William Pelham, in his Annual

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[4]An investigation conducted by Will Tipton, Special Investigator for the Department of Justice, revealed that this instrument was spurious. 1 Twitchell, The Spanish Archives of New Mexico, 478 (1914).

Report dated September 30, 1856,[5] reported and recommended the prompt confirmation of thirteen of New Mexico's pueblo grants, including the Pueblo of Picuris Grant. By Act approved December 22, 1858,[6] Congress confirmed the grant.

The grant was surveyed in July, 1859, by Deputy Surveyor John Garretson for 17,460.69 acres. The grant was patented on November 1, 1864.[7] However, since the confirmation and patent merely relinquished the title of the United States and in no way were to be construed as adversely affecting the vested rights of third parties, the Indians lost 2,507.30 acres to non-Indians who had settled within the boundaries of the grant and perfected valid titles.[8]

THE TOWN of LAS TRAMPAS GRANT

In conformity with a royal order, Governor Tomas

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[5]The Pueblo of Picuris Grant, No. D (Mss., Records of the S.G.N.M.).

[6]An act to confirm the land claims of certain pueblos and towns in the Territory of New Mexico, Chap. 5, 11 Stat. 374 (1858).

[7]The Pueblo of Picuris Grant No. D (Mss., Records of the S.G.N.M.).

[8]Stanley, The Picuris Story, 14 (1962).

Velez Cachupin made a tour through New Mexico in 1751 to determine the general conditions prevailing in his province. At Santa Fe, he found that the population had increased to the point where there was not sufficient agricultural land and water for their support. He also noted that many of its younger inhabitants had no trade or occupation to earn a livelihood. Since there was an abundance of unappropriated public land along the northern frontiers, he exhorted these indigent persons to migrate to that area in order to improve their standard of living and at the same time serve as a barrier between the interior settlements and the hostile Indians. In response to the Governor's fervent plea, twelve families notified him of their desire to settle at the place known as Santo Tomas del Rio de las Trampas if they could obtain an adequate grant. However, when they discovered that there was only a limited amount of vacant land at that site, which was located between the Sebastian Martin and Santa Barbara Grants, their interest in the project began to wane. To insure the formation of the settlement in the vicinity of his grant, Sebastian Martin agreed to give the colonists a strip of land off the east side of his grant. This additional incentive was enough to prompt the interested parties to make the move.

On July 1, 1751, Sebastian Martin conveyed a strip of land 1,640 varas wide off the east side of his grant to

the twelve colonists, being the land situated between the Penasco del Canoncito on the east and the main road on the west. The deed was not signed by Martin due to an impediment in his sight but was certified to be his free act and deed by Alcalde Juan Jose Lobato.

Two weeks later Cachupin granted each of the colonists a 180 varas tract of arable land situated in the canon of the Trampas River. In addition to said 2,160 varas, he granted them the lands located in the canons known as De los Alamos and Ojo Sarco, which were located south of the river. While these additional lands were not irrigable, they were described as being good and fertile. To include all of such lands, Cachupin designated the following natural objects as the boundaries of the grant:

> On the north, the southern boundary of the Pueblo of Picuris Grant; on the east, a narrows made by the river where it joins the mountain; on the south, the summit of the Canada del Ojo Sarco; and on the west, the narrows of the river which marked the eastern boundary of the Sebastian Martin Grant.

Lobato was instructed to allot the individual farm tracts and place the grantees in legal possession of the grant. In conclusion, the governor approved the donation made to the new settlement by Sebastian Martin. Heedful of the governor's command, Lobato placed the twelve grantees in royal possession of the grant and distributed the 12 farm

lots amongst them on July 20, 1751.[1] Nine years later Bishop Tamaron in his report on his tour through New Mexico, mentions that a small settlement had been established at Las Trampas.[2]

It was evident that during the following century, the tenacious inhabitants of that community were able to continually overcome the severe adversities associated with frontier life for it was still in existence when the United States acquired New Mexico. On June 21, 1859, Cristobal Romero, a Justice of the Peace for Taos County, New Mexico, filed a petition[3] in the Surveyor General's Office seeking recognition of the rights of the heirs and successors of the twelve original colonists to the estimated 53,000 acres covered by the grant. The case came up for trial before Surveyor General William Pelham one month later at which time a limited amount of testimony was taken from two elderly witnesses, who each stated that they had known of the Town of Las Trampas since their youth, and it was in existence in 1846. Based on this testimony and the fact that the original grant papers were located among the archives of New

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[1]Archive No. 975 (Mss., Records of the A.N.M.).

[2]Adams, Bishop Tamaron's Visitation of New Mexico, 1760, 56 (1954).

[3]H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 119-130 (1860).

Mexico, Pelham, in his report to Congress dated August 1, 1859, recommended the confirmation of the claim to the legal representatives of the original grantees.[4] As a result of this favorable report, Congress, by act approved June 21, 1860,[5] confirmed the claim.

The Town of Las Trampas Grant was surveyed in June, 1876, by Deputy Surveyors Sawyer & McBroom. The survey represented the grant as being about 12 miles long and containing 46,461.22 acres. By letter dated June 12, 1884, Commissioner N. C. McFarland advised Surveyor General Henry M. Atkinson that the east boundary line of the grant was located too far east and thereby caused the Town of Las Trampas Grant to conflict or overlap the Santa Barbara Grant. He estimated that the area in conflict represented one half of the Santa Barbara Grant and divided it into two irregularly shaped parcels. Atkinson ordered Will M. Tipton to investigate and report on the correctness of the survey. Tipton noted that the only river referred to in the grant papers was the Las Trampas River and that the east boundary line was supposed to be located at the narrows made by the river

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[4]The Town of Las Trampas Grant, No. 27 (Mss., Records of the S.G.N.M.).

[5]An Act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

where it joined to mountains. As a result of his on-the-ground investigation, he discovered that this point was located about two miles south of the seven mile station on the south boundary line as surveyed. By decision[6] dated May 13, 1885, Commissioner William Sparks set the survey aside and ordered a resurvey of the southern and eastern boundaries. The resurvey was to commence at the southwest corner of the Sawyer & McBroom Survey and run in a southwesterly direction to the point where the Las Trampas River joined the mountains and thence north to the southeast corner of the Pueblo of Picuris Grant. Deputy Surveyor Clayton G. Coleman resurveyed the entire grant in May, 1891. His work showed that the grant covered an area of only 28,131.67 acres. A patent based on the Coleman Survey was issued on January 6, 1903.[7]

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[6]The Town of Las Trampas Grant No. 27 (Mss., Records of the S.G.N.M.).

[7]Ibid.

THE TOWN of CIENEGUILLA GRANT

On March 20, 1872, Anthony Joseph, Adolph Guttman, Julian Freedman, and Lucien Stewart petitioned[1] Surveyor General T. Rush Spencer seeking the confirmation of a grant which allegedly had been made to Jose Sanchez and nineteen other colonists by Governor Fernando Chacon. In support of their claim, the applicants filed a certified copy of an Act of Possession, which recited that on February 12, 1795, Antonio Jose Ortiz, Alcalde of the Pueblo of Taos, in obedience to an order by Chacon placed the twenty grantees in royal possession of the grant and designated the following natural objects as its boundaries:

> On the north, the Los Seritos de los Aguajes; on the east, the Arroyo Hondo; on the south, the summit of the Picuris Mountains; and on the west, the surplus lands of those of Embudo in the Rio Grande Valley.

He also allotted each grantee a 256 vara wide individual tract of agricultural land and set the balance of the grant aside as a commons. Possession of the grant was delivered subject to the understanding that, except for the individual allotments, the concession was a community

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[1]The Town of Cieneguilla Grant, No. 62 (Mss., Records of the S.G.N.M.).

grant for the benefit of both the original grantees as well as any others who might subsequently join the settlement. Each grantee was also instructed to arm himself with either a firearm or a bow and arrows for the mutual protection of the community. The certificate attached to the certified copy showed that it was made on May 4, 1826, by Juan Antonio Lovato, Secretary of the Ayuntamiento of the Pueblo of Taos, as a replacement of the original which was "torn and ripped." During his investigation of the claim, Spencer received an affidavit by Adolph Guttmann, who stated that having made a diligent search of the Archives at Taos and Santa Fe and having made reasonable inquiries amongst the residents of the Town of Cieneguilla, the petitioners were unable to find any documentary evidence of the grant and, therefore, firmly believed the grant papers had been mislaid or destroyed. Two witnesses were examined by Spencer. Their testimony tended to establish the genuineness of the certified copy of the Act of Possession, the long peaceful possession of the grant, and the existence of the Town of Cieneguilla in 1846. Based on this evidence, Spencer, on June 13, 1872, approved the grant and recommended its confirmation by Congress to the twenty original grantees named in the list attached to the Act of Possession.[2] A preliminary survey of the grant

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[2] H. R. Exec. Doc. No. 68, 42d Cong., 3d Sess., 2-7 (1873).

was made in October, 1877, by Deputy Surveyors Griffin & McMullen. Their work showed the grant covered an area of 43,961.54 acres.[3]

The long delay, Congress' failure to confirm any grants after 1879, and the Supreme Court's decision in the Peralta Case,[4] which held that documentary evidence from private sources and oral testimony "no matter how formal and complete" would not sustain the claimant's burden of showing that a valid grant had been made if there was no evidence of the grant in the Spanish and Mexican Archives, caused the claimants no little concern. Therefore, on July 29, 1886, they applied for and were given leave to introduce further evidence in support of their claim. Their request was granted and they filed a document written in Spanish and took the depositions of five witnesses. The Spanish document consisted of a series of communications between Governor Facundo Melgares and the officials of the Ayuntameinto of Taos during the months of March and April, 1822. From these, it appears that early in the year 1822, a group of Jicarilla Apaches led by the Indian known as Espilin,

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[3]The Town of Cieneguilla Grant, No. 62 (Mss., Records of the S.G.N.M.).

[4]Peralta v. United States, 3 Wall. (70 U.S.) 434 (1866).

petitioned the governor for permission to settle at the Town of Cieneguilla. The governor granted the request and notified the Ayuntamiento of Taos to that effect. The Ayuntamiento of Taos, under whose jurisdiction the Town of Cieneguilla fell for local governmental purposes, protested such action in a lengthy communication dated April 2, 1822, which set forth many reasons why the Jicarilla Apaches should not be permitted to settle among the Spanish inhabitants of the Town of Cieneguilla and asserting that "the supreme authorities" of New Mexico had granted the Cieneguilla to the Spaniards. The document concludes with an unsigned notation dated April 17, 1822, possibly by the governor, directing Felipe Gonzales, the presiding officer of the Ayuntamiento of Taos, to send Espelin to the capital "to appear before me." The depositions showed that at least parts of the grant had been occupied almost continuously since its inception. Several of the witnesses had a personal knowledge of a settlement at Cieneguilla for sixty or seventy years and stated that when they "first knew the settlement, the houses and lands had the appearance of having been occupied for many years previous." As a result of the introduction of this new evidence, Surveyor General George W. Julian proceeded to re-examine the claim. In a Supplemental Opinion[5] dated July 5, 1886, he stated:

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[5]S. Exec. Doc. No. 4, 50th Cong., 1st Sess., 4-12 (1887).

If the presumption can be indulged that the secretary of the Ayuntamiento of Taos was the proper custodian of the original Act of Possession and that a copy authenticated by him would be legal evidence, this document (the certified copy of the Act of Possession) falls far short of proving the existence of a grant. If the Alcalde acted in pursuance of a decree of the governor, his report should have been transmitted to that official. The instrument merely states that the Alcalde proceeded by order of the governor, but fails to show whether the order was written or verbal and does not pretend to give its date, contents, or under what circumstances it was issued or what, if any, land was granted.

In treating upon the question of secondary evidence in relation to Mexican Grants, the Supreme Court of the United States in the case of United States v. Castro et al. 24 How., 346, said: "But in order to maintain a title by secondary evidence, the claimant must show to the satisfaction of the court: 1st, that the grant was obtained and made in the manner required at some former time, and recorded in the proper public office; 2d, that the papers in that office, or some of them have been lost or destroyed; and 3rd, he must support this proof by showing that within a reasonable time after the grant was made there was a judicial survey of the land, and actual possession by him, by acts of ownership exercised over it..."

The most that can be said... (of the Spanish document) is that if genuine they show that as early as 1822 the governmental authorities of Taos recognized the settlement of Cieneguilla as legal and entitled to the protection of the government by reason of a grant having been made to the inhabitants at some former period. If it were shown or can be presumed that this paper was in the possession of the governor, it would tend to prove a recognition by him of the rightful occupation of the land at Cieneguilla by the settlers....

It would appear that a settlement was founded at Cieneguilla some seventy or eighty years ago at least, and that the original settlers, and those holding under them, have believed they had a grant to the land claimed... (however) in my opinion no legal title is shown in this case. The question of an equitable title is not so clear, but I do not feel warranted in recommending its rejection by Congress It cannot be justified on the mere grounds of long-continued

> possession; but possession, as in this case, under a colorable title, and a claim of right made in good faith, seems fairly to justify the existence of an equitable title.

Session after session continued to pass without any action being taken on the claim by Congress. Meanwhile, Lehman Spiegelberg acquired the interest of the four former owners of the grant. When jurisdiction over the adjudication of Spanish and Mexican land grants in New Mexico was transferred to the Court of Private Land Claims without the Town of Cieneguilla Grant having been passed upon by Congress, Spiegelberg had no choice but to bring suit against the United States in that court for the recognition of the claim. Such action was instituted[6] on February 14, 1893. The United States filed a general answer putting the plaintiff's allegations in issue. When the case came up for trial, Spiegelberg offered as evidence the copy of the Act of Possession, the Spanish Document and mesne conveyances connecting himself to the original grantees. He also offered considerable oral testimony in an effort to prove the long occupation and possession of the grant by the original grantees and their heirs and assigns and to establish that the arable portions of the grant had been under cultivation for more than thirty years. The parties stipulated that the 1822 Spanish Document had been a portion of the Archives of New

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[6]Spiegelberg v. United States, No. 84 (Mss., Records of the Ct. Pvt. L. Cl.).

Mexico prior to its having been filed amongst the papers pertaining to the claim while it was pending before the Surveyor General. However, the government objected to the introduction of the certified copy of the Act of Possession on the grounds it "was a copy and not the original, and was a copy made by one not authorized under the laws of Spain or Mexico to make copies and was not properly authenticated by anyone authorized to do so, and its custody and possession was not shown, and its genuineness was not shown in any way." The court accepted all of the plaintiff's documentary evidence subject to a ruling on the government's objection when it considered the case. In its opinion[7] dated August 19, 1896, the court noted that while the plaintiff claimed a valid grant had been made in 1795, he had never produced any original grant papers but relied solely upon the certified copy of an Act of Possession made in 1826 and the secondary evidence contained in the 1822 Spanish document. Continuing, the court held:

> We have no occasion to go into the question whether we would confirm the claim if the original Act of Possession was before us. We are not furnished with any law or usage which would give to the certificate of the Secretary of the Ayuntamiento of Taos the force and effect of evidence. We are, therefore, compelled at the onset to reject the evidence of title that is offered and we therefore reject the claim and dismiss the plaintiff's petition.

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[7] 3 Journal 53 (Mss., Records of the Ct. Pvt. L. Cl.).

Speigelberg filed a motion for rehearing, but it was overruled on October 4, 1898.[8] No appeal was taken and, thus, the history of the grant comes to an abrupt end.

THE OREJAS del LLANO de los AGUAJES GRANT

Smith H. Simpson, "for himself and other claimants," petitioned[1] Surveyor General Henry M. Atkinson on September 25, 1877, seeking the confirmation of the Orejas del Llano de los Aguajes Grant. In support of the claim, he filed a testimonio which showed that the following proceedings were had in connection with the grant. On April 4, 1826, Juan de Jesus Lucero appeared before Francisco Vigil, the Alcalde of Albuquiu, and requested him to forward his petition for a grant covering the tract of land known as the Orejas del Llano de los Aguejes to Governor Antonio Narbona. In his petition, Lucero designated the following natural objects as the boundaries of the requested tract:

> On the north, the Cerro de Chirisco and the Rio Grande; on the east, the Rio Grande with all of

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[8] 4 Journal 32 (Mss., Records of the Ct. Pvt. L. Cl.).

[1] The Orejas del Llano de los Aguajes Grant, No. 117 (Mss., Records of the S.G.N.M.).

> its banks on the west side; on the south, Los Orejas, Cerrito Huerfano, and the Aguajes to the boundary of the Petaca Grant north of the Tetilla; and on the west; Cerro Montosos of the Aguajes de la Cueva.

Vigil forwarded the petition to Narbona five days later with the notation that he knew the request was just. On July 28, 1826, the governor ordered Vigil to

> ...examine the land and observe that which is ordered relating to said donation in grant according to the boundaries they apply for, and you will place them in possession of the land as it is commanded.

This decree was executed by "A. Narbona." Vigil, in compliance with the governor's order proceeded to the grant on September 9, 1826 and placed them in legal possession of the grant according to the boundaries they applied for as a place "for rearing animals," subject to the customary duties and conditions "and without prejudice to the royal treasury nor of any third party." The Act of Possession closes with the statement:

> In testimony whereof, I sign the same acting as special justice on this common paper for lack of the sealed paper in this jurisdiction of my command and also in lack of a royal notary, there being none in this jurisdiction of Santa Fe, now jurisdiction of Abiquiu, N. M. and this I sign with my attending witnesses, with whom I act and do act to which I certify.

These proceedings were reviewed and approved by Narbona on September 21, 1826. The decree recited that it was made on common paper since there was no sealed paper "in this

Department nor any royal notary..." It also was signed by "A. Narbona."

Atkinson received oral evidence pertaining to the grant from time to time between September 25, 1877, and January 19, 1878. Five witnesses were heard. This testimony showed that Lucero and his family had promptly moved to the grant and built a stone house near the confluence of the Arroyo Aguaji with the Rio Grande. It also showed that Lucero had pastured livestock upon the grant up to the time of his death in 1837 or 1838. Lucero was killed by Paiutes while on a commercial trip to California. Thereafter, Geronimo Gallego managed the ranch for Lucero's widow until her death in 1874. Deeds were also filed showing that Smith H. Simpson and William A. Kittridge had purchased the grant on September 14, 1877 from Nemisio Lucero, the son and only heir of Juan de Jesus Lucero.[2]

In an unfavorable decision[3] dated March 31, 1879, Surveyor General Atkinson rejected the claim. He found that the several instruments comprising the testimonio had been written by the same person and a different colored or shade of ink was used in each instrument. Upon comparing the signatures of Nabona on the muniments of title,

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[2] Ibid.

[3] Ibid.

with his signature on other documents in the Archives of New Mexico, Atkinson noticed that the signatures in question had the appearance of having been traced for they were made with a slow and painstaking motion and trembling hand. Atkinson also noted that the expression contained in the Act of Possession, "I gave him possession and without prejudice to the royal treasury" and recitation in the governor's decree approving the proceedings "nor any royal notary" were not consistent with a grant from the republican government which was in existence in Mexico at the time of the alleged grant. He also pointed out that several erasures and suspicious alterations appeared to have been made in certain expressions in the testimonio. For instance, the word "seis" and the figures "18" in 1826 in the petition had been written over some other word or figures which previously had been erased. He also expressed concern over the fact that during the hearing of the case "another set of alleged grant documents was discovered covering the same tract and which was admitted to be forgeries, but it is insisted that these papers are genuine." As a final lampoon, Atkinson stated:

> [Jose Vivian] Montoya swears that Lucero left one [Geronimo] Gallegos in charge of his stock and land when he started for California in 1838, although there was a son [Nemesio Lucero] living at the time who does not appear to have interest enough there to demand his attention as the evidence shows that he moved to Colorado in 1840 and remained there since. Nineteen years elapsed after Lucero's death before

> [Refugio] Sanchez who claimed to have taken the title papers from the effects of Lucero when he was killed before he gave them to [Pablo] Jaramillo to deliver to Sanchez's son who had no apparent interest in the grant. Jarimillo held possession of the document from the date of his return from California in 1857 'til he delivered them to Simpson in 1875. For a document that had been carried to and from California and had been handled for so long a period, it is remarkably well preserved and free from wrinkles, folds, wear and is also very clean. Were the grant a good and valid one, the same would be limited to eleven square leagues but from all the circumstances in the case and the appearance of the document, I am firmly of the opinion that the alleged muniments of title are forgeries.

On June 22, 1880, over a year after the issuance of Atkinson's adverse decree, Simpson requested Atkinson to re-open the investigation in order to permit him to offer certain new and important evidence to establish the genuineness of the grant. Atkinson, over the protest of the United States' attorney, in a decision[4] dated June 30, 1880, granted the request in order to permit the claimants "the fullest opportunity to produce testimony in support of their claim." In answer to the government's contention that he did not have the power or authority to reopen the case, Atkinson pointed out that, while his decision had been forwarded to the General Land Office, the transcript had not been transmitted to Congress. He contended that as long as the claim was pending in the Department, he had authority to reverse or review his

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[4] Ibid.

decision. Therefore, he ordered the suspension of the opinion he had rendered on March 31, 1879, and granted the claimants a period of ninety days to take depositions. The government was given sixty days thereafter to offer rebuttal evidence. Pursuant to this decree, the claimants proceeded to take Nemesio Lucero's deposition on the 16th and 17th of December, 1880. Little, if any, new or important evidence was adduced thereby. Lucero merely reiterated the oral testimony which previously had been given the claimants' witnesses to the effect that the grant papers were valid and the grant had been occupied as a ranch by Lucero continuously up until the time of his death, and thereafter, by his mother through her agent, Geronimo Gallegos. However, the government, on March 17, 1881, offered a considerable amount of new and damaging evidence. Anthony Joseph, a merchant from Taos and candidate for the United States House of Representatives, testified that in 1875, Jesus Maria Gomez y Lopez had offered to sell him a Spanish document which purported to be the testimonio to the Orejas del Llano de los Aguajes Grant. Upon examining the document, he noted that it was:

> Somewhat irregular in one very particular point - that the act of concession by the Mexican Government was dated 1818 - that time being previous to the Independence of Mexico. Consequently, I returned the paper and refused to have anything to do with it. A few days after I returned the papers to this man Gomez, he posted a notice in front of my store at Fernando de Taos representing in

> said notice he had lost said papers and offering a reward. A day or two later Gomez left town, and about the time he disappeared, a man by the name of Eduvigen Miera came to me with the same paper for which Gomez offered the reward and offered to sell the same. I told him the papers were valueless to him but might be of some importance to the claimant or the man who offered the reward.

Joseph also testified that he had heard that Gomez was then in the Messilla jail awaiting trial on a charge of grant forgery.

No further action was taken in connection with the grant until September 26, 1884, when Surveyor General Clarence Pullen issued a notice to all interested parties that the time for presenting testimony in the case would expire on November 4, 1884. Since no further evidence was presented, Pullen proceeded to examine the merits of the claim. After carefully considering all evidence presented by both parties and comparing the signatures on the grant papers with Narbona's signature on some eighty other documents in the Archives, Pullen found the signatures on the grant papers were noticeably different from all those known to be genuine. He also noted that while the governor had signed numerous documents with his full name, "Antonio Narbona", or with the abbreviation "Ant° Narbona" or in a number of cases just "Narbona", there was not a single instance where a document in the archives had been signed "A. Narbona". He also called attention to the fact that the governor's rubric

on the grant papers was different from the ones affixed to documents in the archives. Therefore, in a decision dated January 30, 1885,[5] Pullen affirmed Atkinson's previous decision and rejected the claim on the grounds that the title papers were forgeries.

On the next to the last day on which their claim could be filed under the Act of March 3, 1891,[6] Smith H. Simpson and Alice Kittridge, the daughter and heir of William A. Kittridge, deceased, filed suit[7] against the United States in the Court of Private Land Claims seeking the confirmation of the alleged 150,000 acre grant. The government filed an answer in which it denied that the grant had been signed by the governor or by anyone acting on his behalf or under his authority. Upon the trial of the case the plaintiffs presented the alleged testimonio, which the Court received in evidence over the objections of the government. The plaintiffs also introduced the other evidence taken during the investigations conducted by Atkinson and Pullen. After the plaintiffs rested, the government offered the testimony of four witnesses. The first was a ninety year old neighbor of Juan de Jesus Lucero,

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[5] Ibid.

[6] Court of Private Land Claims Act, Chap. 539, Sec. 12, 26 Stat. 854 (1891).

[7] Simpson v. United States, No. 169 (Mss., Records of the Ct. Pvt. L. Cl.).

the second was Lucero's nephew, and the third was Lucero's adopted son. These three witnesses testified Lucero was a poor man and always lived at the town of El Rito, he never lived on the grant, and he never owned any livestock. The fourth witness was Will Tipton, who qualified as a land grant expert and gave a great deal of impressive testimony supporting the government's contention that the testimonio was a forgery. He also called attention to a number of additional suspicious recitations in that document. For instance he pointed out that in the governor's decree of July 28, 1826, the Alcalde was directed to place them in possession of the land according to the boundaries they applied for, while Lucero was the only applicant. He noted several other instances where plural verbs and pronouns had been changed to the singular. In connection with the recitation in the governor's final decree, that the instrument was written on common paper because there was not sealed paper "in this Department," he pointed out that in 1826, New Mexico was a territory and did not become a Department until 1836. He also asserted that the abbreviation, "N.M." in the Act of Possession was of American origin and not known or used in New Mexico in 1826. Next he went into a lengthy discussion ofhis study pertaining to validity of the governor's signatures in the testimonio. This discussion conclusively demonstrates that Narbona did not sign the grant papers and that the

entire document had been written by one person, who was comparatively unacquainted with the Spanish language, and at a date long subsequent to 1826. During its argument of the case, the government contended that independent of all the questions concerning the genuineness of the grant papers, it could not be confirmed since the governor of New Mexico had no authority to make a valid grant covering public lands in 1826. In support of this argument, the government cited the United States Supreme Court's decision rejecting the Arroyo San Lorenzo Grant,[8] on the grounds that the governor had no authority to dispose of public lands in New Mexico between the enactment of the Colonization Law of 1824[9] and the promulgation of the Regulations of 1828.[10] On November 30, 1896, the court announced its opinion[11] rejecting the claim on the grounds that the governor of the Territory of New Mexico had no authority to make a valid grant of national lands in 1826. Therefore, the court held it was not necessary for it to pass upon the genuineness of the plaintiffs' muniments of title.

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[8]Hayes v. United States, 170 U.S. 637 (1898).

[9]Reynolds, Spanish and Mexican Land Laws, 121 (1895).

[10]Ibid., 141.

[11]3 Journal 157 (Mss., Records of the Ct. Pvt. L. Cl.).