Selections from J.J. Bowden's "Private Land Claims in the Southwest"

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Foreword to this publication of J.J. Bowden's "Private Land Claims in the Southwest"

The New Mexico Land Grant Council presents this abridged volume of the late Jocelyn Jean (J. J.) Bowden's 1969 Southern Methodist University thesis, "Private Land Claims in the Southwest." The essays contained herein derive from Volumes Two through Six of Part Two of Mr. Bowden's original 2,000 page, six volume thesis. In his own words, Mr. Bowden (1927-2010) wrote "an historical account of each of the Southwestern private land claims. While source material was gathered from coast to coast, a majority of such data was obtained from the microfilm records of the Surveyor General's office and Court of Private Land Claims, which are contained in the Bureau of Land Management, Santa Fe, New Mexico." (from the Abstract from 1969 thesis)

The sections published herein include Mr. Bowden's essays on forty-four land grants / mercedes that are active or have been active in the recent past. Spanish accents have been added where appropriate. Also included as appendices to this volume are land grant maps by county from Bowden's thesis, as well as the laws establishing the Office of the Surveyor General of New Mexico (July 22, 1854) and the Court of Private Land Claims (March 3, 1891). The New Mexico Land Grant Council presents this volume free of charge to land grant boards of trustees to help them retain their history and better understand the processes that adjudicated land grant claims made under the Treaty of Guadalupe Hidalgo (February 2, 1848).

Preferred Citation

J. J. Bowden, "Private Land Claims in the Southwest." Masters of Laws Thesis. Southern Methodist University, 1969.

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ANTON CHICO GRANT

Manuel Rivera, on behalf of himself and thirty-six others, petitioned the Ayuntamiento of San Miguel del Vado for a grant covering a tract of land situated about 30 miles south of San Miguel del Vado on the Pecos River, which was known as Anton Chico. The President of the Ayuntamiento, Manuel Baca, notified the petitioners that the Ayuntamiento did not have authority to issue the grant since the requested lands were located beyond its jurisdiction, but he had referred the matter to the Provincial Deputation of New Mexico for further action. The Provincial Deputation apparently approved the request and referred the matter to Governor Facundo Melgares for his consent. On May 2, 1822, Melgares granted the land to petitioners and directed Baca, who was also an Alcalde, to place them in possession of the grant. In compliance with the Governor's instruction, Baca immediately went to the town of Anton Chico and proceeded to survey the grant which was described as being bounded:

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

Following the completion of the survey, Baca gave the grantees legal possession of the premises subject to the conditions that the grant be held in common for the benefit of the grantees and all future settlers who might move to Anton Chico, that each colonist equip himself with fire-arms and arrows for the defense of the colony and be able to pass muster before settling upon the grant, and that each settler must perform his share of any labors necessary for the general welfare of the community, such as digging ditches.[1]

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

[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 143-144 (1860).
[2] Ibid., 145.

agriculture ever to become extensive. The town had a population of about 500 persons, a church, and one fandango saloon.[3]

David Steward, for himself and in behalf of the heirs and legal representatives of the original grantees and then ten inhabitants of the town of Anton Chico, filed a claim on April 10, 1859 in Surveyor General William Pelham's office seeking the confirmation of the grant. The claim was contested by the heirs of Preston Beck, Jr. insofar as it conflicted with the Ojito de las Gallinas Grant. The contestants called attention to the fact that the grant was made by Melgares, a Spanish official, after Mexico had declared its independence, and, therefore, the grant was invalid due to a lack of authority in the granting official. Two highly reputable witnesses for the claimants, Juan Bautista Vigil y Alarid and Donaciano Vigil, testified the officials in New Mexico did not receive word of the Declaration of Independence until December 21, 1822, and that the Mexican Government approved all of the public acts performed by Spanish officials from the date of the declaration up to the time the declaration was promulgated or published in New Mexico.[4]
In a decision dated July 15, 1859, Pelham held:

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

Congress, by act approved June 21, 1860,[6] confirmed the grant as recommended by Pelham.

An official survey of the grant was made by Deputy Surveyors William Pelham and Reuben E. Clements during the months of September and October, 1860. Although this survey was approved by Surveyor General A. P. Wilbar on December 14, 1860, it was subsequently rejected when it was discovered that it failed to close by a large variance. The grant was resurveyed in June and July of 1878, by Deputy Surveyors John T. Elkins and Robert G. Marmon. Their survey showed that the grant contained 378,537.5 acres.[7]

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[3] Stanley, *The Anton Chico Story*, 3 (n.d.).
[4] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 146-149 (1860).
[5] Ibid., 150-151.
[6] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).
[7] The Anton Chico Grant, No. 29 (Mss., Records of the S.G.N.M.).

On August 30, 1881, Rivera requested the grant be patented to him individually. By a decision dated August 30, 1881, N. C. McFarland, Commissioner of the General Land office, held that the grant had been confirmed to the several grantees and inhabitants of the Town of Anton Chico, and, therefore, it could not be patented to Rivera individually. Pursuant to this decision a patent was issued on March 27, 1883, to "Manuel Rivera and others, being the thirty-six men to whom the grant was made."[8] Since the patent was ambiguous and it was not clear whether title was vested in the thirty-seven original grantees or in all of the inhabitants of the grant as a community grant, an ejectment suit was brought in the United States District Court of New Mexico to settle the question. The trial court held for the defendant and the plaintiff appealed. Upon appeal, the Circuit Court of Appeals held that the character of the grant must be determined from the confirmatory act and that the court was precluded from going behind the act. The Court stated that the act should prevail over the patent in the event there was a conflict between the two. It then proceeded to explore the nature of the title represented by the act and concluded that it confirmed title as a community grant and not as an individual grant to the thirty-seven grantees.[9]This decision cast a cloud on title to the unallocated lands within the grant. To remove this obstacle, the New Mexico Legislature passed an act which provided that a person who by purchase or lease had acquired an interest in a particular tract or parcel of land within the grant would not thereby acquire any interest in the commons or unallocated lands.[10] This statute cleared the way for the general management of the commons of the Anton Chico Grant by a Board of Trustees under the statute relating to the supervision of community grants.[11]

In 1876, a suit was commenced in San Miguel County, New Mexico for the partitioning of the Preston Beck, Jr. Grant. The Board of Trustees of the Anton Chico Grant intervened in this suit in 1907, claiming title to approximately 120,000 acres of land which were embraced within the Anton Chico Grant as patented but conflicted with the Preston Beck, Jr. Grant as patented. Based on the precedent established in the Jones Case,[12] the trial court held for the intervenors since the Anton Chico Grant was the senior grant. The owners of the Preston Beck, Jr. Grant appealed to the Supreme Court of New Mexico which reversed and remanded the case to the trial court for dismissal. The New Mexico Supreme Court's opinion was based on the theory that since the Anton Chico Grant was a community grant, the unallocated lands covered thereby, which included among others, all of the lands in dispute, remained the property of the Mexican government and passed to the United States when it acquired New Mexico. Therefore, the act of June 21, 1860[13] insofar as it confirmed title to the portion of the Anton Chico Grant in dispute amounted to a grant *de novo* or "American Titled Lands." Therefore, on June 21, 1860,[14] the

[8] Ibid.
[9] Reilly v. Shipman, 266 F. 852 (8th Cir. 1920).
[10] 2 New Mexico Statutes 337 (1954).
[11] 2 New Mexico Statutes 328 (1954).
[12] Jones v. St. Louis Land & Cattle Company, 232 U.S. 355 (1912).
[13] Supra note 6.
[14] Ibid.

titles to the lands in question were confirmed to the respective grantees on a co-equal basis. However, since the owners of the Preston Beck, Jr. Grant secured a survey and patent prior to the date of the survey and patent of the Anton Chico Grant, it became the senior grant. Thus, title to the lands in the overlap area was recognized as being vested in the owners of the Preston Beck, Jr. Grant.[15]

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

ANTONIO MARTÍNEZ GRANT

Antonio Martínez appeared before Governor Felix Martínez 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 Martínez granted him the tract on December 26, 1716 according to the boundaries originally held by Godoi. Since the Alcalde of Taos, Cristóbal 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 Martínez in possession of the premises. Due to the great distance and hardship Antonio Martínez 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 Martínez would let them use. However, they made it clear that they expected to be compensated for their damages. Thereupon, Terrorio delivered royal possession 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 Río Grande and Taos Rivers; and on the west, the Río Grande; save and except th portion thereof located south of the Lucero River.[2]

The heirs of Antonio Martínez 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

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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. Chávez, *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 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 year period prior to 1716, it could be denounced and regranted to Antonio Martínez.

[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.).

Grant but took no action on it. His successor, 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 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 a 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 December 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

[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] *Martínez v. United States,* No. 9 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] 1 *Journal* 92-98 (Mss., Records of the Ct. Pvt. L. Cl.).

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]

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

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, José 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 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 Martín, 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 Córdova; 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, Martín 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. Martín 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

[1] The petitioners were in error as to this data 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).

> 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]

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,

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

[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 Peña 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 by the grant. Therefore, the claimants filed a certified copy of another "Act of Possession" by Alcalde Martín which was also dated April 10, 1815. This instrument contained the above description of the grant and was certified by Juan Antonio Lovato and José 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 Cristóbal River; on the east, the upper little Cañón 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 José 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.

1887. A hearing on the claim was held on the first and second of 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 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. Martínez, for himself and sixty-nine other lineal descendants or assigns of the original grantees, sued[6] the United States on February 3, 1891 in the Court of Private Land Claims in an

[5] The Arroyo Hondo Grant No. 159 (Mss., Records of the S.G.N.M.). On June 7, 1861, Jesús María 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 Martínez 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 services. 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] *Martínez v. United States,* No, 5 (Mss., Records of the Ct. Pvt. L. Cl.). Juan N. Martínez filed a suit on March 2, 1893 seeking the confirmation of "1,000 varas" on both sides of the Arroyo Hondo which his grandfather, José Ignacio Martín had been given by order of Governor José Antonio Vizcarra Martín 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. *Martínez v. United States*, No. 174 (Mss., Records of Ct. Pvt. L. Cl.). 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 Martín 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 Fernández Grant, This claim was based on the testimonio of an Act of Possession dated December 20, 1823 wherein Alcalde Lovato placed Fernández in possession of that tract. *Espinosa v. United States,* No. 176 (Mss., Records of the 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:

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, 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 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

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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 José 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 Martínez, 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.).

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

[8] 3 *Journal* 321 (Mss., Records of the Ct. Pvt. L, (21).

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 sovereign 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, overruled 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".

The decision fixed the east boundary as a line running north from Station 29 on the south boundary across the mouth of the Cañón of the Arroyo Hondo to Station 19 on the north boundary. Martínez 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]

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

BARTOLOMÉ SÁNCHEZ GRANT

On July 27, 1707, Bartolomé Sánchez, a sergeant in the militia, petitioned Governor Francisco Cubero y Valdes for a certain piece or parcel, of land described as being bounded:

> On the north, by the ancient Pueblo of Quemada; on the east, by the Mesa de San Juan on the south, by the boundaries of Santa Clara on the other bank of the Río Grande and on the west, by the Santa Clara Grant.

Sánchez stated that he did not own any land and the purpose for his requesting the grant was to secure sufficient land to support his family. Envisioning the benefits which Sánchez and his family could derive from the requested lands, Cubero granted his prayer and ordered the Alcalde of Santa Cruz to place him in royal possession of the premises. Alcalde Juan Roque Gutiérrez, in compliance with Governor Cubero's order, delivered royal possession of the grant to Sánchez on August 8, 1707.[1]

Under Spanish Law, it was necessary to actually settle on the premises within three months from the date of delivery of possession and, thereafter, continuously occupy it for four years. Since he had failed to comply with this provision, Sánchez petitioned Governor Joseph Chacón on November 25, 1711, stating that as a result of his duties as a soldier, he had been unable to settle upon the premises and was in danger of having his sitio denounced by a third party. Therefore, he requested the governor to reward him for his services by revalidating the concession and grant a moratorium on the requirement that he occupy the land as long as he remained in the service of the Crown. Chacón acted favorably on the request and, on November 25, 1711, ordered the Alcalde of Santa Cruz to redeliver possession of the grant to Sánchez. Alcalde Roque de la Madrid performed this ceremony on February 20, 1712.[2]

The grant was apparently still unoccupied on May 27, 1714, when Catalina Griego, widow of Diego Trujillo and her son, Antonio Trujillo, appeared before Governor Juan Ignacio Flores Mogollon and produced the papers to a grant which had been made to Diego Trujillo by Governor Pedro Rodríguez Cubero in 1701, covering a tract of land "sufficient for planting four *fanegas* of corn." This tract was located within the Bartolomé Sánchez Grant. They advised

[1] Archive No. 824 (Mss., Records of the A.N.M.). The call in the description for the grant to be bounded on the north by the ancient Pueblo of Quemado undoubtedly refers to the old pueblo at the foot of Black Mesa and not the Pueblo of Quemado, whose title was litigated in *Pueblo of Quemado v. United States*, No. 212 Records of the Ct. Pvt. L. Cl.).

[2] Archive No. 827 (Mss., Records of the A.N.M.). Sanchez was probably prompted to seek the revalidation of his grant as a result of the issuance of the Juan de Ulibarri Grant on February 22, 1710. The Juan de Ulibarri Grant covered approximately the same lands as the Bartolomé Sanchez Grant. However, it apparently was recalled when the Bartolomé Sanchez Grant was revalidated. Archive No. 1020 (Mss., Records of the A.N.M.).

Mogollon that possession of the grant had not been given to Trujillo because of his sudden and untimely death. Continuing, the petitioners announced that they had assigned all of their interests in the tract to their near relatives, Salvador Santistievan and Nicolas Valverde, in whose favor they requested the grant be confirmed. After examining the merits of the petition, Mogollon revalidated the concession and ordered the Alcalde of Santa Cruz to give the assignees possession of the grant. Royal possession of this Concession was delivered on August 8, 1714, by Alcalde Sebastián Martín.[3] Later during the same month, the balance of the lands covered by the Bartolomé Sánchez Grant were included in three additional grants made by Mogollon. These were the Bartolomé Lovato, Antonio de Salazar, end Cristóval Crispin Grants.[4] Late in the fall of 1715, Bartolomé Sánchez gave Captain Joseph Trujillo permission to pasture livestock on the grant. Trujillo moved his herds to the grant and built a number of corrals. On November 25, 1715, Bartolomé Lovato and Cristóbal Crispin each petitioned Mogollon requesting the revalidation of their respective grants and a one year extension of time within which to settle upon such lands. Both of the petitioners sought to justify their requests by pointing out that their failure to occupy their grants hid been caused by illness. They also requested the governor to order Trujillo to "vacate the land and take down the corrals he may have built." Both of the grants were subsequently revalidated and Trujillo ordered to tear down his corrals. However, he was not ordered to move his livestock off the premises since they were classified as commons.[5] The restriction of his tenant's use of the grant caused Sánchez to become appraised of the four adverse claims for the first time and he acted swiftly to protect his interests. On January 13, 1716, he appeared before Governor Felix Martínez complaining that such grants had been illegally issued. Martínez, on the same date, ordered all the interested parties to present a copy of their title papers within three days in order that he might fully investigate the circumstances and condition of each of the conflicting claims.[6] Nothing appears to have been done in the matter at that time for later in the year Bartolomé Lovato complained to the Inspector General of New Mexico, Juan Páez Hurtado, that he and other grantees were being embarrassed in the settlement of their lands as a result of the order of January 13, 1716, and requested a swift decision in the matter. Hurtado, after investigating the matter, recommended[7] that the governor distribute the lands so that each of the interested parties could reap the benefits of his labor. Hurtado also made the following entry[8] at the foot of the Antonio de Salazar Grant:

> Having examined all of the grants, it will be decided with justice and the considerations to which it is entitled will be given it.

[3] Archive No. 926 (Mss., Records of the A.N.M.). The Diego Trujillo Grant was located in the Cañada de Yunque and included the ancient Pueblo de Yunque.
[4] Archives No. 167, 433 and. 829 Records of the A.N.M.).
[5] Archives No. 167 and 436 (Mss., Records of the A.N.M.).
[6] Archive No. 834 (Mss., Records of the A.N.M.).
[7] Archive No. 437 (Mss., Records of the A.N.M.).
[8] Archive No. 829 (Mss., Records of the A.N.M.).

This is the last piece of documentary evidence bearing upon this controversy. It is not known whether a new distribution of the land was ordered as mentioned by Hurtado, whether Sánchez's claim to all the land was recognized, or whether all of the grants were subsequently recalled by the Spanish officials. The latter possibility appears to be the most probable when it is realized that the choicest portion of the lands in controversy was granted by Governor Juan Domingo Bustamante to Antonio Trujillo on June 8, 1724.[9]

On March 3, 1893, Bartolomé Sánchez, a great-grandson of the original grantee, filed suit[10] in the Court of Private Land Claims seeking the confirmation of the Bartolomé Sánchez Grant. In his petition, Sánchez alleged that the grant was good and valid when the United States acquired jurisdiction over the area, the claim had never been presented to the Surveyor General for his consideration, and the grant covered approximately 10,000 acres. In response to a motion filed by the government, Sánchez filed an amended petition naming the United States and the claimants of the Juan de Ulibarri, Cristóbal Crispin, the Pueblo of San Juan, the Black Mesa, and the Antonio de Salazar Grants as co-defendants. In their answers, the defendants asserted that even if originally valid and revalidated the Bartolomé Sánchez Grant had been forfeited due to the grantees' failure to timely comply with the conditions of settlement and had been regranted to third parties. The case came up for trial on September 30, 1897. The documentary evidence introduced by the parties was quite voluminous and wholly from the archives and records of the Surveyor General's Office. The plaintiff offered oral testimony by two witnesses tending to show that the grant had been occupied by the original grantees and his descendants continuously after 1716. In its closing argument, the government contended that the 1716 concessions by Governor Mogollon raised a powerful presumption that Sánchez had lost his right to the land and that even if Governor Mogollon had illegally deprived Sánchez of his vested right, the Court of Private Land Claims was not the forum to correct such injustice. In support of this contention, the government's attorney cited the following language from the Supreme Court's decision in the Cessna case:[11]

> It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession, but it is no part of the duty to right the wrongs which the grantor nation may have heretofore committed.

Continuing, the government's attorney argues that the record indicated that the grant had probably been recalled by Martínez in 1716 as evidenced by the regranting of the choicest portions of the grants in 1724. He asserted that the regranting of such land shortly after its ownership had been thoroughly adjudicated was inconsistent with the contention that the grant was still valid and subsisting in 1724. He stated:

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[9] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 241-242 (1860).
[10] *Sanchez v. United States,* No. 264 (Mss., Records of the Ct. Pvt. L. Cl.).
[11] *Cessna v. United States,* 169 U.S. 165 (1898).

> The very most that can be contended for by the claimant on the evidence is that the rights of Bartolomé Sánchez were, at the date of the treaty, still *sub judice*.

In closing, the government's attorney stated that he even doubted the good faith of the claimant in filing the action. He believed that the claim probably would never have been presented to the court except for the discovery of the expediente in the archives, the fortuitous coincidence of the plaintiff's having the same name as the original grantee, and his living in the *locus in quo*.

In its decision[12] dated October 2, 1897, the court found that a valid grant had been made to Sánchez in 1707 and that it had been revalidated and the condition of the settlement waived by the 1711 decree as long as Sánchez was in military service. Since the plaintiff had satisfactorily established the validity of the grant, the burden was then upon the defendants to show something which would defeat the claim. The court held that the efforts by the defendants to prove that the grant had been abrogated, revoked, or set aside in either 1716 or 1724, were based merely upon presumption and supposition. Therefore, it confirmed the grant in accordance with the boundaries set out and described in the grant papers. During its January term, 1898, the court reconsidered the question of boundaries, with the result that on February 16, 1898, a decree[13] was entered which materially reduced the area confirmed. The government appealed this decision to the Supreme Court, but on March 5, 1900, the appeal was dismissed[14] on the motion of the appellant.

Deputy Surveyor William McKeon was instructed to survey the grant. His instructions directed him to commence the survey:

> … at a point where a line running from east to west thrJugh the old Pueblo of Quemado intersects the west boundary line of the Pueblo of San Juan Grant; THENCE south along the west boundary line of the Pueblo of San Juan Grant to the Río Grande; THENCE south along the Río Grande to the north boundary line of the Santa Clara Grant; THENCE west alone the north boundary line of the Santa Clara Grant to the west boundary line of the Santa Clara Grant; THENCE north to an intersection of an east-west line through the old Pueblo of Quemado; and THENCE east: to the point of beginning.

McKeon, in attempting to follow these instructions, found that the west boundary of the Pueblo of San Juan Grant did not intersect the Río Grande. Therefore, he ran east along the southern boundary of the Pueblo of San Juan Grant from its southwest corner to the point where it intersected the river. The field notes were returned to the Surveyor General on December 19,

[12] 3 *Journal* 290 (Mss., Records of the Ct. Pvt. L. Cl.).
[13] 3 *Journal* 378 (Mss., Records of the Ct. Pvt. L. Cl.).
[14] *United States v. Sanchez,* 20 S. Ct. 1027 (1900) (mem.).

1901, and were subsequently approved by the court. A patent was issued on November 27, 1914, for the 4,469.828 acres described in the McKeon Survey.[15]

[15] The Bartolomé Sanchez Grant, No. F-247 (Ms., Records of the S.G.N.M).

CAÑÓN DE CARNUÉ GRANT

On November 1, 1818 Juan Duran, a resident of the Town of Albuquerque, presented a petition to Governor Facundo Melgares asking that a tract of land in the Cañón de Carnué be granted to him and twenty others. As consideration for the grant, the petitioners stated that they would give the government a third of their crops for a period of two years. Two days later Melgares referred the matter to Pedro Pino and directed him to "decide what was proper." On the same day, Pino asked the Alcalde of the Villa of Albuquerque, José Maríano de la Pena, for a report concerning the merits of the petition. In response thereto, Pena, November 4, 1818 advised that the proposed settlement of the land would be beneficial to the jurisdiction; and, since the Apaches who previously had forced the abandonment of the tract which had been settled under a grant[1] made in 1763 were at peace, he saw no reason why the request should not be granted. Before any further action was taken on the petition, Juan Ignacio Tafoya, together with twenty-six other residents of Albuquerque, petitioned Melgares and advised him that there were additional or surplus lands at Carnué which were beyond those which recently had been settled and requested him to grant them the lands from the Quistecito to San Antonio. They also offered on third of their crops for two years as consideration for the lands. This petition was also referred to Pena for a report. On January 29, 1819 he advised Melgares that this was one of three requests for land at Carnué and that many of the petitioners already had land of their own. The report caused Melgares no little concern, and he ordered Pena to advise him of the names of the parties who did not have any land. Peña sent a list to the governor on February 5, 1819 in which he set forth the names of thirty-five persons who needed land for their support and recommended that a grant be made to them. Five days later Melgares referred the matter, together with all the papers in connection with the prior proceedings, to Francisco Madariaga, Assessor of New Mexico, for his comments. On the same day Madariaga also recommended that a grant he made to the landless petitioners. As a result of the favorable reports by Peña and Madariaga, Melgares granted the lands "with justice among the petitioners under the established rules." He also directed Peña to appoint local officials to maintain the peace at the new settlement and collect the revenues promised the king as consideration for the concession.

The alcalde was further ordered to allot each of the grantees an individual farm tract. Before Peña was able to carry out the governor's instructions, Antonio Chaves and seven other residents of the Town of Padillas advised Peña that there was enough agricultural land at Carnué to satisfy the needs of the grantees, with enough to spare to give each of them a farm tract. Therefore, they requested Peña to grant and distribute the surplus lands to them on the same terms. Peña requested the Alcalde of Padillas to advise him as to whether or not the petitioners were free to

[1] The Cañón de Carnué was granted to certain persons by Governor Tomas Vélez Cachupín in 1763, but was abandoned in 1771 as a result of the hostilities of the Apaches. When the inhabitants of the grant refused to return to the grant, Governor Pedro Fermin de Mendinueta revoked it. Archive No. 202 (Mss., Records of the A.N.M.).

join the new settlement and if they had any land elsewhere. Alcalde Luis Padilla answered on March 6, 1819 stating that the eight petitioners met all qualifications necessary to join the colony. Upon receipt of the report, Peña referred the matter to Melgares for his further action. Melgares, in turn, ordered Peña to allocate the surplus lands to the new settlers. On March 24, 1819 Peña went to the grant and placed the several grantees in royal possession of a tract of land comprising the valley from the entrance of the Cañón of San Miguel de Carnué to a cross set up on an arroyo two hundred varas north of San Antonio. The next two days were occupied with the allotment of a narrow strip of land to each of the seventy-three families who had moved to the grant. Most of the individual tracts were 150 varas wide. [2]

A claim was presented[3] to Surveyor General T. Rush Spencer by the heirs and legal representatives of Duran and the other grantees on March 15, 1871 seeking the investigation and confirmation of the grant under Section 8 of the Act of July 22, 1854.[4] By decision[5] dated May 11, 1886, Surveyor General George W. Julian found the grant papers to be genuine and that the tract had been occupied continuously since the date of the issuance of the grant. He also found that the grant ran from the entrance of the Cañón de Carnué to the ruins of the Pueblo of San Antonio and extended to the foot of the hills on both sides of the Cañón. Therefore, he recommended the confirmation of the claim by Congress to the legal representatives of the original grantees subject to the reservation of all minerals by the United States since the oral testimony in the case indicated that the land contained valuable natural resources.

As a result of Congress' failure to act upon the claim prior to the creation of the Court of Private Land Claims, Pedro Crespín, who claimed to be the legal successor in interest of one of the original grantees, filed suit[6] against the United States in that court seeking the confirmation of the grant. He alleged that the grant contained about 90,000 acres and was bounded:

> On the north and northwest by the summit of the mountain on that side of the Cañón and the ridge known as El Bardo; on the east, by the Puertecito del Eje and the Ceja de los Vacunos; on the south, by the Puertecito do los Llares and the summit of the mountain on that side of the Cañón; and on the west, by the Serró Huerfano.

He asserted that Julian was mistaken when he found that the grant covered only the land within the Cañón between the hills on each side. He also contended that a confirmation to such extent would be of no practical value since it would exclude nearly all the sources of water, fuel,

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[2] Archive No. 1008 (Mss., Records of the A.N.M.).
[3] The Cañón de Carnué Grant No. 150 (Mss., Records of the S.G.N.M.).
[4] 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).
[5] The Cañón de Carnué Grant, No. 150 (Mss., Records of the S.G.N.M.).
[6] *Crespín v. United States*, No 74 (Mss., Records of the Ct. Pvt. L. Cl.).

timber, and pasture and would leave the owners of the grant at the mercy of evil disposed persons who might appropriate the uplands on both sides of the Cañón. The government filed a general answer putting in issue the allegations contained in Crespín's petition.

The case came up for trial on August 20, 1804 at which time Crespín offered in evidence a copy of the *expediente* of the grant[7] and oral evidence which tended to show that the original grantees and their heirs and legal representatives had claimed the tract of land described in the petition, notwithstanding the fact that such natural objects were not mentioned in the grant pacers. The government, on the other hand, contended that the grant was confined to the lands lying within the Cañón de Carnué between its entrance and the cross situated north of San Antonio. The Court, in its decision[8] dated September 29, 1894 sustained the government in its contention and confirmed the claim to the extent of the lands in the bottom of the Cañón. The grant was surveyed in January, 1901 by Deputy Surveyor Levi S. Preston for 2,000.59 acres and patented on February 2, 1903.[9] The United States Attorney, in his report[10] to the Attorney General on the grant states:

> This case is interesting from the fact that it shows the method of procedure in the matter of making grants more clearly than any other which has been presented to the court. It also supports the contention of the government that the fee in the lands granted which were not actually partitioned to the grantees remained in the crown with the right of disposal to future settlers and did not vest in the grantees.

[7] Archive No. 1008 (Mss., Records of the A.N.M.).
[8] 2 *Journal* 251 (Mss., Records of the Ct. Pvt. L. Cl.).
[9] The Cañón de Carnué Grant, No. 150 (Mss., Records of the S.G.N.M.).
[10] Report of the United States Attorney dated November 5 1894 in *Crespín v United States* (Mss., Records of the General services Administration, National Archives, Washington, D.C.), Record Group 60, Year File 9865-92.

CAÑÓN DE CHAMA GRANT
SAN JOAQUÍN DEL RÍO DE CHAMA GRANT

Francisco Salazar, together with his two brothers and twenty-eight poor and needy citizens, petitioned Joaquín Alancaster, the governor of New Mexico, seeking a grant covering a tract of vacant land situated on the Chama River for agricultural and pastoral purposes. Alencaster, under date of July 6, 1806, ordered the Alcalde of Santa Cruz to personally examine the lands solicited by the petitioners and give him a full report on the property before acting upon the request. In response to Alencaster's order, Alcalde Manuel García de la Mora inspected the area and, on July 14, 1806, reported that the requested tract was unoccupied and situated:

> … one league from the last grant (that of the Martínez's), to the side on which the sun rises, and that thence to the western boundary, which divides the said Chama River Cañón from the Gallina River, there are about two leagues, somewhat more or less, of cultivable lands, and, the town being placed in the center, the thirty-one families applying for it may be accommodated, and land enough remain for the increase that they may have in the way of children and sons-in-law and the section of the country is a very desirable one, and the settlers may therefore proceed with their building, and for the other two boundaries there is assigned them on the north and on the south one league for pastures, for on these two sides no injury can result, as there is neither a settlement nor a grant now made … and the said Cañón is distant from Abiquiú about five leagues.

After carefully studying the report, Alencaster granted. the land to the petitioners on August 1, 1806, and ordered García to place the colonists in possession of the grant and allocate to each of the settlers a lot of land capable of growing three cuartillas of wheat, three almudes of corn, another three of beans, and having a site for a small house and garden. On March 1, 1808, García placed Salazar and the twenty-four other colonists, who finally elected to participate in the project, in legal possession of the grant and allocated an individual farm tract to each of them except Salazar, who received a double allotment. A town site was also set aside and named San Joaquín del Río de Chama. The following natural objects were designated as the exterior boundaries of the grant:

> On the north, the Cebola Valley; on the east, the boundaries of the Martínez Grant; on the south, the Capulin River; and on the west, the Segita Blanca.[1]

In 1832 Juan de Jesús de Chacón filed a petition in Governor Antonio Chaves' office asking him to enjoin the Alcalde of the Town of Abiquiú from evicting them from the lands upon which they had settled in 1830. It seems that Alcalde José María Ortiz had allocated and placed Chacón and two associates in possession of certain tracts located within the Cañón de Chama Grant as

[1] S. Exec. Doc. No. 45, 42d Cong., 3d Sess., 5-8 (1873).

colonists under the Colonization Law. However, the original grantees had protested and the then Alcalde of the Town of Abiquiú, Juan Antonio Gallago, had taken the position that such action was illegal and that they were trespassers and intruders. The question was referred by the governor to the attorney general of New Mexico, Antonio Barreiro, who made an extensive investigation into the matter, and, on May 6, 1832, held that the Cañón de Chama Grant was valid and that distributions made by Alcalde Ortiz should be annulled.[2]

The grantees continuously occupied and used the grant except for a number of occasions when it was temporarily abandoned due to Indian hostilities. In spite of the immense size of the grant, only a narrow strip of land lying within the Cañón de Chama was cultivated but livestock was pastured upon the adjoining mesas. By 1861 the grant was owned by more than four hundred persons who claimed under and through the original grantees. On January 3, 1861, the claimants submitted a petition[3] to the Surveyor General seeking the confirmation of their title to the 184,320 acres which they estimated to be embraced within the boundaries of the grant. Surveyor General James K. Proudfit, after carefully considering the record, recommended[4] to Congress on December 17, 1872, that the grant be recognized and confirmed as a community grant. A preliminary survey of the grant was made by Deputy Surveyor Stephen McElroy in May, 1878. The McElroy Survey, to the surprise of everyone, showed that 472,736.95 acres were embraced within the boundaries set forth in the grant papers.[5]

A bill was presented during the last session of the 46th Congress for the confirmation of the grant. This bill was referred to the House Committee on Private Land Claims for its recommendations. The Committee, in turn, requested the Secretary of Interior to furnish it with more information concerning the grant. In a letter[6] dated May 20, 1880, Commissioner J. A. Williamson traced the history of the grant and concluded by recommending that it be confirmed subject only to the reservation of mineral rights.

No further action was taken on the grant until June 28, 1886, when Surveyor General George W. Julian submitted a Supplemental Report[7] to Congress. He found that the grantees had failed to establish a legal title to the grant and, if they had acquired an equitable title, it was limited to the individual allotments located within the Chama River Canyon, which covered only 166.22 acres. Next, Julian viciously attacked McElroy stating that his survey was manifestly and shockingly

[2] The Cañón de Chama Grant, No. 71 (Mss., Records of the S.G.N.M.).
[3] Ibid.
[4] S. Exec. Doc. No. 45, 42d Cong., 3d Sess., 9-13 (1873).
[5] The Cañón de Chama Grant, No. 71 (Mss., Records of the S.G.N.M.).
[6] H. R. Report No. 131, 47th Cong. 1st Sess., 1-2 (1882). Since the Cañón de Chama Grant was made during the Spanish Colonial Period, it was not bound by the eleven league limitation placed on Mexican Grants, but would not cover minerals, which after 1783 were reserved as a prerogative of the sovereign.
[7] S. Exec. Doc. No. 21, 50th Cong., 1st Sess., 26 (1887).

incorrect. He asserted that the surveyor had "no right to wander out of the canyon from ten to fifteen miles in search of the natural objects named as the boundaries of the tract but should have sought them within the canyon."

Meanwhile, the original village of San Joaquín had been abandoned and most of the inhabitants of the grant had moved to Abiquiú, Santa Cruz, or Tierra Amarilla. Speculators and "earth hungry monopolists" quietly began to purchase scores of outstanding interests under the Chama Grant. After the formation of the Court of Private Land Claims, the new owners instituted suit[8] in that forum for the confirmation of their title. After receiving a great deal of oral and documentary evidence, the court, on September 24, 1894, held the grant to be valid but covered only the individual farm tracts situated in the Chama River Canyon which had been allotted to the settlers prior to the signing of the Treaty of Guadalupe Hidalgo. The plaintiffs promptly appealed the decision to the United States Supreme Court which, based on its decision in the Sandoval Case,[9] held[10] that the grant was a community grant and all unallotted lands within its exterior boundaries belonged to the government. A resurvey of the grant was made in accordance with the Supreme Court's decree in September, 1901, by Deputy Surveyor Joseph F. Thomas. His survey showed that the grant covered only a narrow strip of land containing only 1,422.62 acres, of land situated in the bottom of the Chama River Canyon. A Patent based on the Thomas Survey was issued on May 5, 1905.[11]

While the Supreme Court's opinion undoubtedly disappointed the owners of the grant, it was accepted as finally fixing the boundaries of the grant. However, on October 17, 1966, the members of an organization called the Federal Alliance of Land Grants took over the rest camp in the Kit Carson National Forest, which is located within the boundaries of the grant set out in the Act of Possession, and established the Pueblo Republican de San Joaquín del Río de Chama. The leader of the group, Reies Tijerina, claimed that the 500,000 acres covered by the national forest belonged to the "Republic" since it was located on the Cañón de Chama Grant under which members of the organization claimed an interest. Tijerina contended that the government was obligated under the Treaty of Guadalupe Hidalgo to protect the property rights of Spanish Americans and the members of his organization were willing to shed their blood to defend their rights. The organization is attempting to raise enough "furor to get their case before the U. S. Supreme Court."[12]

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[8] *Rio Arriba Land & Cattle Company v. United States,* No. 107 (Mss., Records of the Ct. Pvt. L. Cl.).
[9] *United States v. Sandoval,* 167 U.S. 278 (1897).
[10] *Rio Arriba Land & Cattle Company v. United States,* 167 U.S. 298 (1897).
[11] The Cañón de Chama Grant, No. 71 Mss., Records of the S.G.N.M.).
[12] *The Houston Post,* October 17, 1966.

CAÑÓN DE SAN DIEGO GRANT

Francisco García, Jesús Baca, and Pablo Gallego, for themselves and in the name of the settlers of the Town of Cañón de San Diego, petitioned[1] Surveyor General William Pelham on June 4, 1859 seeking the confirmation of the Cañón de San Diego Grant. In support of their claim they filed the *testimonio* of certain proceedings showing that Francisco García de Noriega, his brother, José Antonio, and eighteen associates had petitioned Governor Fernando Chacón for a grant covering a tract of vacant land in the Cañón de San Diego upon which to form a settlement. They described the tract as being bounded:

> On the north, by the Vallecito de la Cueva, which is in front of the waterfall on the east, by the lands of the settlers of Vallecito; on the south, by the lands of the Indians of the Pueblo of Jemez and on the west, by a line from the middle arroyo to the Rito de la Jara.

On March 6, 1798 Chacón acceded to their wishes and granted the requested tract to the twenty petitioners, subject to the condition that each grantee was to be allotted an individual farm tract which could not be sold or conveyed but was to descend from father to son in a direct line. Should any colonist leave the settlement, his tract was to be set aside for the benefit of whomsoever should take his place. Chacón closed his decree by ordering the Alcalde of Jemez. Antonio de Armenta, to place the grantees in royal possession of the premises. Armenta met with the grantees and representatives of the inhabitants of the Pueblo of Jemez eight days later. In order to avoid future disputes between the two settlements, Armenta reestablished the pueblo's north line. He found that the Indians claimed a few trees and certain "surplus lands" lying 2100 varas north of their boundary. Since the king had ordered the settlement of the surplus lands and the grantees had agreed to protect the trees claimed by the Indians from damage, Armenta decided that there was no impediment to his proceeding with the delivery of royal possession of the grant. Therefore, he performed the usual ceremonies necessary to place the grantees in peaceable Possession of the land. Next the Alcalde distributed the individual farm tracts amongst the grantees. Each of these tracts covered 300 varas of land.[2] Pelham held a hearing on June 6, 1859 at which he took the oral testimony of two witnesses, who stated that the town was in existence when the United States took possession of the country and had a population of about 300 inhabitants. Based upon his investigation, Pelham recommended that the grant be confirmed to the original grantees and those claiming under or through them.[3] As a result of Pelham's favorable report, Congress confirmed the grant on June 21, 1860.[4] The grant was surveyed in

[1] The Cañón de San Diego Grant, No. 25 (Mss., Records of the S.G.N.M.).
[2] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess. 87-89 (1860).
[3] Ibid., 90-91.
[4] An Act to Confirm Certain Private Land Claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).

June, 1876 by Deputy Surveyors Sawyer & McBroom for 116,286.89 acres. A patent was issued on October 21, 1881.[5]

Meanwhile, on November 29, 1879 Amado Chaves, for himself and the other heirs of Francisco and José Antonio García de Noriega, petitioned[6] Surveyor General. Henry M. Atkinson for the recognition of a grant also known as the Cañón de San Diego Grant, which was located entirely within the boundaries of the other grant. The claim was based upon a Spanish document showing that the two Garcías had appeared before Governor Fernando de la Concha requesting a grant covering the tract commonly known as the Cañón de San Diego for agricultural and stock raising purposes. In response to their petition, Concha granted them the premises on January 27, 1788 and directed Armenta, as Alcalde of the Queres Nation, to place them in possession of the grant provided the concession did not prejudice the rights of the Jemez Indians or any third party residing in the vicinity. In obedience to Concha's order, Armenta went to the grant on February 6, 1788, and finding no obstacle or reason why he should not proceed, he delivered royal possession of the grant to the two Garcías. He designated the following natural objects as its boundaries:

> On the north, the waterfall; on the east, some high mesas; on the south, the junction of the rivers, the point of a red hill, and the lands of the Indians; and on the west, some high mesas.

The Garcías called Armenta's attention to their prior grant when he placed the grantees of the 1799 grant in possession of their land. Armenta apparently recognized the validity of the prior concession and, in order to protect the rights of the Garcías, gave them a certificate in which he excepted the lands covered by the 1788 grant from the lands covered by the 1798 grant. This certificate also provided that the Garcías should enjoy the lands which they had theretofore cultivated. Chaves introduced this certificate together with a copy of an instrument from the Archives[7] which showed that on December 1, 1808, Alcalde Ignacio Sánchez Vergara had advised. Governor José Manrique of a dispute which had arisen between Antonio García and the inhabitants of the Town of Cañón de San Diego over the lands covered by the 1788 grant. In this instrument Sánchez stated:

> I, deeming that the title claimed by Antonio García is founded in law, he having been the prior settler for the prior ten years with the condition that at the time they were given possession all the new settlers gave their consent, as said Garcías makes appear by a document which the Alcalde executed to the two brothers.…

[5] The Cañón de San Diego Grant, No. 25 (Mss. Records of the S.G.N.M.).
[6] The Cañón de San Diego Grant, No. 122 (Mss., Records of the S.G.N.M.).
[7] Archive No. 379 (Mss., Records of the A.N.M.).

In an unsigned order filed with Sánchez's letter, Manrique held:

> I will state to you that the subject does not require any decision of mine inasmuch as the grant of the Garcías makes their right clear, which grant being the older always has a preference. The last settlers cannot deny to the Garcías a better title.…

Atkinson in a report dated March 22, 1880, held that he evidence indicated that the grant was valid and, notwithstanding the fact that the lands already were patented, recommended the grant be confirmed by Congress. A preliminary survey of the 1798 grant was made by Deputy Surveyor Robert G. Marmon in May, 1880 for 9,752.51 acres.

Since Congress had not acted upon the claim, Chaves presented the grant to the Court of Private Land Claims on February 17, 1893.[8] when the case came up for trial on August 2, 1893, the government asserted as a special defense against the recognition of the grant that since the Garcías had participated in the grant of 1798, and there was no reference to the 1788 grant in the title papers for the 1798 grant, the Garcías had abandoned their prior concession in favor of all the grantees of the larger and junior grant and thus, were estopped to assert their rights under the prior grant. It further alleged that whatever right the United States had in the land had been transferred to the heirs and legal representatives of the original grantees under the 1798 grant. The Court in its majority opinion rejected the grant on August 14, 1893 on the ground that the Garcías and those claiming under them were estopped, as a result of their joining in the petition seeking the grant of 1798, to assert a claim based on the 1788 grant. The majority opinion did not pass upon the effect of the prior disposition of the land by the United States.[9] Justice William W. Murray and Wilbur E. Stone wrote a dissenting opinion in which they stated that the case raised two questions. First, did the grant of 1788 convey to the Garcías a complete and perfect grant? Second, was the grant forfeited and abandoned? Since there was no serious question over the validity of the grant at the time of its issuance, Murray and Stone turned their attention to the answering of the second question. They believed that the grant of 1798, insofar as it covered the lands embraced within the 1788 grant, was invalid since Chacón had no power, to grant occupied land.

Chaves appealed the decision to the United States Supreme Court which affirmed the majority opinion on November 15, 1897. In answer to the point raised by the dissenting opinion, the Supreme Court noted that there was evidence showing that prior to the issuance of the grant of 1798, the Garcías had occupied a tract in the Indian League. In 1798, Armena surveyed the Indian League and found that it contained a surplus of 2100 varas. All of this surplus was situated between the Indian lands and the junction of the two creeks. Since all of the allotments had been made along the San Diego Creek it would mean that the allotments of the grantees

[8] Chaves v. United States, No. 100 (Mss., Records of the Ct. Pvt. L. Cl.).
[9] 1 *Journal* 173 (Mss., Records of the C. Pvt. Cl.).

under the 1798 grant covering at least 3,400 varas would have had to have been made in the area covered by the 1788 grant. Therefore, all of the 1788 grant could not have been excluded from the 1798 grant as suggested by Armenta's certificate for it would have been repugnant to the 1798 grant to deprive many of its grantees of the allotments which had just been made to them. On the other hand, the certificate would have real meaning if the grant of 1788 had been forfeited or abandoned and Armenta issued it to protect the Garcías' equities in two 300 vara tracts located between the junction and the north boundary of the Pueblo league. Continuing, the court stated that it doubted that Armenta's certificate had been executed in 1798, but believed that it had been made in 1808 in connection with the controversy between the Garcías and the other grantees. It also believed that the 1808 proceedings were:

> … entirely *ex parte* and without the knowledge of the other settlers, and was in no respect a judicial action. The reply signified the individual opinion of the governor, not that the new settlers could he driven from their own holdings, but that they could not claim the land actually occupied by the Garcías.[10]

One may wonder why the Supreme Court did not seize upon this opportunity to affirm the decision rejecting the claim, but upon the ground the Court of Private Land Claims, under Section 13(4) of the Act of March 3, 1891[11] had no authority to pass upon the validity of the grant since the land covered thereby previously had been acted upon and confirmed by Congress. The Supreme Court's failure to pass upon this issue created a great deal of confusion which was not settled until 1899, when it announced its decision in the Town of Real de Dolores del Oro case, holding:

> A claim for land within the limits of a grant which has been confirmed by Congress, and for which a patent has been issued to another party, is properly rejected by the Court of Private Land Claims.[12]

[10] *Chaves v. United States,* 168 U. S. 177 (1897).
[11] Court of Private Land Claims Act, Chap. 539, Sec. 13(4), 26 Stat. 854 (1891).
[12] *Town of Real de Dolores del Oro v. United States,* 175 U. S. 71 (1899).

CAÑÓN DEL RÍO COLORADO

José Antonio Laforte presented[1] the Cañón del Río Colorado Grant to Surveyor General T. Rush Spencer on February 10, 1872 for investigation under the eighth section 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, José Victor Sanches, and José Manuel Sanches petitioned the Alcalde of Taos, Antonio José Ortiz "praying for a tract of land in grant for our livestock" at the place known as the Cañón del Río Colorado from the mouth of the Cañón to the source of the river and bounded on the north by the Ridge of the Rito del Cabrosto. 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 Cañón 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 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.[3]

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 boundaries 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

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

[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).

[3] S. Exec. Doc. No. 2, 43rd Cong., 2d Sess., 5-9 (1874). A considerable amount of testimony was given concerning the Town of Cañón 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.

acres of land. This represented quite a reduction from the 115,030 acres which Laforte had estimated on the plat attached to his petition.[4]

Since Congress had not acted upon Proudfit's report, the Cañón del Río Colorado was one of the claims which Surveyor 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 Cañón del Río 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 Mexico, 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 Cañón del Río 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 Martín, pursuant to a grant and instructions from Governor Alberta Maynez, placed fifty families in possession of the lands at Río Colorado on December 23, 1815. Thus, if there was a valid community grant, the Ayuntamiento could, under

[4] The Cañón del Rio Colorado Grant, No. 93 (Mss., Records of the S.G.N.M.).
[5] Ibid.
[6] Reynolds, *Spanish and Mexican Land Laws* 121 (1895).
[7] Ibid., 141.
[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 Río Colorado as well as a recognition of the previous allotment made in 1836 at the Cañón del Río Colorado. Archive 801 shows that Antonio Elias Armenta, Rafael Archuleta, and Miguel Montoya petitioned Prefect Juan Andrés Archuleta for additional allotments of land on January 8, 1842. The prefect, on the same day, granted the request and directed Alcalde Juan Antonio Martín to place them in possession of the requested land. Eleven days later Martín went to the grant and placed thirty-five persons in possession of the following described land:

> 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 Río Colorado; and on the west, by the little canyon where the point of Guadalupe Hill joins the Río 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 Government'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 Río 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 allotments, In conclusion, the Government asserted that the 1842 Act of

[11] Reynolds, *Spanish and Mexican Land Laws* 121 (1895).
[12] Ibid., 141.
[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).

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,[14] the Court announced its decision 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.

[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.).

CRISTÓBAL DE LA SERNA GRANT

Having resigned his commission as captain in the army and position as commander of the garrison at Santa Fe iii order to accept limited duty by performing the functions of a sergeant, Cristóbal de la Serna needed an independent source of income to support his large family. Therefore, he petitioned the Governor of New Mexico, Joseph Chacón Medina Salazar y ViliSeñor, 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 harassing 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 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 do la Mora Pineda, to deliver royal possession of the grant. Pineda was also instructed to summon the Governor, Caciques and War Chief 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 he 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 Sebastián, sold the grant

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

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, Andrés, Francisco and Ana María. In 1796 the Don Fernando de Taos Grant was made. Since this grant conflicted with the northern portion of the Cristóbal de la Serna Grant, the heirs and descendants of Andrés, Francisco and Aria María consented to the issuance of the Don Fernando de Taos Grant and relinquished their claim to any lands lying between the Río Don Fernando and La Cruz Alta.[4] Between 1796 and 1876 the lineal descendants of Andrés, Francisco, and Ana María 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, 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".

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[2] Ibid.
[3] Archive No. 759 (Mss., Records of the A.N.M.).
[4] S. Exec, Doc. No. 125, 50th Cong, 2d Sess., 4-5 (1889).
[5] Ibid., 23-24
[6] The Cristóbal de la Serna Grant, No.158 (Mss., Records of the S.G.N.M.).
[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 provision as a limitation of his authority to recommend the relinquishment of any mineral rights under Section 8 of that Act.

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 Cristóbal 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 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 Cristóbal 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]

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

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 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 Chacón for a grant covering the surrounding lands. Chacón 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 José 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 Cañón of the Río 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 José 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 on defense by arming themselves with firearms or bows and arrows 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 or their irrigated crops, they petitioned Chacón 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

[1] Archive No. 1340 (Mss., Records of the A.N.M.).
[2] Bolton, *The Spanish Borderlands,* 183-184 (1921).
[3] Jones, *Pueblo Warriors & Spanish Conquest,* 162 (1966).

allotments covering the lands upon which they were living and cultivating. To dispel their fears, Governor Chacón ordered the Alcalde of Taos to partition the grant amongst its inhabitants. Pursuant thereto, Alcalde Antonio José Romero 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 was the spawning ground for the uprisings of 1837 and 1846. Despite such festivities 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 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 Cañón of the Río de Fernando de Taos instead of the eastern end or head of the Cañón as contended by the plaintiff. Under the plaintiffs'

[4] Archive No. 883 (Mss., Records of the A.N.M.).
[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 .1A9 (Mss., Records of the Ct. Pvt. L. Cl.).
[9] *United States v. Sandoval*, 167 U.S. 278 (1897).

construction, the grant would contain approximately 38,400 acres, since the Cañón 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 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 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 original 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, he 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 Cristóbal 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

[10] 3 Journal 298 (Mss., Records of the Ct. Pvt. L. Cl.).
[11] 4 Journal 197 (Mss., Records of the Ct. Pvt. L. Cl.).
[12] Archive No. 1354 (Mss., Records of the A.N.M.).
[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).

north line but did not exclude the lands in conflict with the Cristóbal de la Serna Grant. A 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 Grants 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-Indians 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-Indians 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 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-Indians) 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]

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[15] The Don Fernando do Taos Grant, No. 125 (Mss., Records of the S.G.N.M.).
[16] Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes, Chap. 331, 43 Stat. 636 (1924).
[17] Brayer, *Pueblo Indian Land Grants of the "Rio Abajo", New Mexico*, 27-31 (1931).

JUAN BAUTISTA VALDEZ GRANT
JUAN BAUTISTA BALDÉS GRANT

Sometime during the month of January or February, 1807, Juan Bautista Valdez, a loyal Spanish subject and resident of the Town of Abiquiú, presented a petition to the Alcalde of the Town of Abiquiú, Manuel García, requesting that a grant be issued to him and seven companions covering the tract of "perhaps more than two thousand varas of land in the Cañón de los Pedernales which they had cleared." García forwarded the petition to Governor Joaquín de Real Alencaster on February 12, 1807, with a recommendation that the requested grant be made. On December 16, 1807, Alencaster issued the concession and directed García to place Valdez in possession of "the piece of land which the petition of applicant treats." In response to the governor's decree, a party consisting of García, his attending witnesses, Valdez and his nine companions went to the Cañón de Pedernales where the alcalde inspected the premises and, after finding that it contained about one league of land, which could be cultivated and that the grant did not conflict with the vested rights of any third party, he designated the following natural objects as its boundaries:

> On the north, the boundaries of the Martínez lands; on the east, the Pedernales River which reaches the boundary of the Polvadera; on the south, the source of the Pedernales; and on the west, a white mesa.

Following the completion of the survey, García delivered royal possession of the grant to the ten colonists.[1]

On July 5, 1814, the grantees appeared before the Alcalde of the Town of Abiquiú, Pedro Ignacio Gallegos, and asked him to partition the grant amongst its inhabitants. In response to their request, Gallegos went to the grant, surveyed the occupied tracts, and issued a *hijuela* or certificates of possession to each of the interested parties covering the tract which he had been using. Valdez was allotted a tract known as the Encinas Tract, which was described as being bounded:

> On the north, by some permanent stones; on the east, by a mound in the puertecita which faces towards La Joya; on the south, by the tops of the mountains; and on the west, by a small mountain in the Cañada de los Corrales.

The nine other interested parties were in turn given individual lots measuring 550 varas in width along the river northwest of the Encinas Tract. The alcalde noted that in order to give the colonists sufficient lands to support their families, it was necessary to extend the limits of the grant to include some wild lands along the upper part of the grant.[2]

[1] The Cañón de los Pedernales Grant, No. 113 (Mss. Records of the S.G.N.M.).
[2] The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).

At the time the United States acquired New Mexico, there were two small settlements located on the grant. The first was known as the Town of Cañones, and the other was the Rancho del Encinas.

The heirs of Juan Bautista Valdez petitioned[3] Surveyor General T. Rush Spencer on June 12, 1871, seeking the recognition of their title to the Encinas Tract, which they estimated to contain 20,500 acres of land. In support of their petition, they filed the *hijuela* which had been given to Juan Bautista Valdez by Gallegos on July 5, 1814. They contended that the *hijuela* was an Act of Possession, which evidenced the delivery of possession in connection with the issuance of the grant mentioned therein. Luis Valdez, one of the petitioners, gave an affidavit in which he stated that he had made a diligent search for the *expediente* of the grant but he had been unable to locate it. Thus, in order to explain the petitioners' failure to produce any evidence that a grant had been made, he contended that it probably had been either mislaid, lost or destroyed. At the hearing on the matter, a number of witnesses offered testimony to the effect that Valdezes had claimed and occupied the tract since 1807. After considering the petition and proof for some four months, Surveyor General Spencer issued a report[4], dated November 16, 1871, in which he held that in view of the long continuous possession and occupancy of the Encinas Tract by Juan Bautista Valdez, his heirs and successors, "it must be concluded that there was a grant, and that they claimed and held the land thereunder." Surveyor General Spencer concluded his report by holding the claim to be good and valid and recommending its confirmationby Congress. A preliminary survey of the Encinas Tract, which was made in April, 1879, by Deputy Surveyors Sawyer & McBroom, indicated that it covered only 6,583.29 acres.[5]

The claim was still pending before Congress when Surveyor General George W. Julian took office. In response to the Special Instructions[6] from the Commissioner of the General Land Office dated December 11, 1885, Julian proceeded to conduct a re-examination into the validity of the grant. By supplemental Opinion[7] dated June 22, 1886, he pointed out that the only evidence indicating that a grant had been made covering the lands in question was a vague recital in the *hijuela* and that it would be highly unusual to presume that a valid grant had been made based upon such scanty and indefinite evidence. Therefore, he found that the petitioners had failed to establish either a legal or equitable interest in the land and recommended that the claim be rejected by Congress.

[3] Ibid.
[4] H. R. Misc. Doc. No. 181, 42d Cong., 2d Sess., 45-49 (1872).
[5] The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).
[6] S. Exec. Doc. No. 113, 49th Cong., 2d Sess., 2 (1887).
[7] S. Exec. Doc. No. 53, 49th Cong., 2d Sess., 3-4 (1887).

Meanwhile, the *testimonio* of the grant was located and Antonio Valdez and other heirs of Juan Bautista Valdez petitioned[8] Surveyor General Henry M. Atkinson on August 10, 1878, for the confirmation of the grant which they referred to as the Cañón de los Pedernales Grant. On February 1, 1879, Atkinson rendered an opinion[9] in which he stated that he had compared the signatures of Alencaster and García on the *testimonio* which had been found in the possession of one of the claimants prior to its being filed in his office, with the signatures of said officials on other documents in the Archives of New Mexico, and was fully convinced that the grant papers were genuine. However, he had a serious question as to the extent of the grant. He pointed out that there was a vast variance between the 2000 varas of land called for in Juan Bautista Valdez's petition and the approximately 256,000 acres which the claimants contended were contained within the boundaries set forth in the Act of Possession. Atkinson closed by recommending that Congress confirm the grant but concluded (a) that it covered only the lands situated within the Cañón de los Pedernales and referred to in Valdez's petition, since an alcalde had no power to increase the size of a concession; and (b) that it should be confirmed in the name of Juan Bautista Valdez and his heirs and legal representatives in view of the fact that his "companions" were not named in any of the grant papers.

Surveyor General Clarence Pullen executed a contract for the survey of the Cañón de Pedernales Grant on June 10, 1885, and forwarded it to the General Land Office for approval. The General Land Office returned the contract unapproved on June 24, 1885, with the suggestion that Pullen's successor, George W. Julian, cause a most searching inquiry to be made into the validity of the claim. Julian wrote a Supplemental Opinion[10] pertaining to the grant on July 15, 1886, in which he recommended its rejection. Julian stated "a single reading of the unauthenticated title papers can scarcely fail to awaken suspicion and invite scrutiny." He pointed to the several defects and inconsistencies which were readily apparent from merely reading the record in the case. First was the fact that Valdez and seven companions had petitioned for the grant covering 2,000 varas or a tract of land about a mile in length and bounded on both sides by the walls of the river Cañón, which they had previously cleared, but García had placed him and his nine companions in possession of a tract covering some four hundred square miles of land. Next, he called attention to the fact that the date on which possession had been delivered was prior to the date of the grant, which was impossible and could not be presumed to be an error. Finally, he noted that Valdez had stated that the land was needed due to his having a large family, while the record disclosed that he only had four children. Julian then discussed what he termed "the more material considerations". He held that the expansion of the boundaries of the grant by Alcalde García was not only unconscionable and void but

[8] The Cañón de los Pedernales Grant, No. 113 (Records of the S.G.N.M.).
[9] Ibid
[10] Ibid.

> … was an extension of land stealing which would rival the performance of the present day and Surveyor General Atkinson was abundantly justified in branding it in his opinion as "infamous." The whole story is so superlatively preposterous as to justify the suspicion that both the order of the Governor ad the report of the Alcalde are the inventions of a later time and so clumsily planned as to expose their true characters. It is intrinsically improbably, if not morally impossible, that the circumstances of the case could have occurred as stated.

Julian concluded his opinion with the statement that he did not feel warranted in recommending confirmation of the claim or any portion thereof and pointed out that its rejection would work no hardship on the claimants, since they were in possession of the land and could prefect their titles under the homestead laws. Julian later publicly attacked the validity of the grant and even went so far as to venomously assert[11] that there had been no grant or delivery of possession and that the title papers were fraudulent and void. Such adverse publicity undoubtedly deterred any further action on the grant by the wily politicians in Washington.

The creation of the Court of Private Land Claims in 1893 afforded the owners of the grant another opportunity to press their claim. On March 2, 1893, suit[12] was filed in that forum praying for the confirmation of the grant based upon the 1807 proceedings. The United States, in its answer, placed all of the allegations in the plaintiffs' petition in issue.

The case came up for hearing on June 8, 1898, at which time the plaintiffs introduced their title papers and a considerable amount of oral corroborative testimony. The evidence introduced by the United States, while recognizing the validity of the grant, tended to restrict its boundaries to a narrow strip of land in the Cañón de los Pedernales. On December 20, 1898, the court announced its decision[13] confirming the grant to the heirs, legal representatives, and assigns of Juan Bautista Valdez insofar as it covered the tract of land originally requested by Valdez in his petition. Neither party appealed from this decision. The grant was surveyed by Deputy Surveyor William McKean in 1899, and his survey showed that the grant contained only 1,468.57 acres. A patent for said amount of land was issued on June 19, 1913.[14]

[11] Julian, "Land Stealing in New Mexico," 145 *The North American Review,* 20 (1887).
[12] *Valdez v. United States,* No. 179 (Mss., Records of the Ct. Pvt. L. Cl.).
[13] 4 *Journal* 76 (Mss., Records of the Ct. Pvt. L. Cl.).
[14] The Encinas Grant, No. 55 (Mss., Records of the S.G.N.M.).

JUAN JOSÉ LOVATO GRANT
JUAN JOSÉ LOBATO GRANT

Captain Cristóbal Torres was granted a tract of land on the Chama River by Governor Juan Domingo de Bustamante on June 6, 1724. The tract was described as being bounded:

> On the north, by the Sierra de las Grullas; on the east, by the Pueblo de Chama; on the south, by the Sierra Santa Cruz; and on the west, by the hill called Piedra Lumbre.

Torres was placed in royal possession of the premises three days later by Lieutenant General Juan Páez Hurtado. However, before Torres could settle upon the grant, he died. The grant was "upon due proceedings first had" revoked on October 24, 1733, by Governor Gervacio Cruzat y Góngora and the lands listed as *realengos* or crown lands.[1] Later the tract was granted by Governor Gaspar Domingo de Mendoza to Juan José Lovato and Diego de Torres, the son of Cristóbal de Torres. This second grant was subsequently denounced as forfeited and the lands annotated as part of the royal domain when Lovato, in ignorance of the prohibitions contained in the royal land, sold his interest in the grant. Finding himself in a destitute position, Lovato humbly petitioned Mendoza for a new grant covering the same tract and promised this time to comply with the royal laws. On August 24, 1740, Mendoza issued a decree regranting the solicited tract to Lovato and directing the Alcalde of Santa Cruz, Juan García de Mora, to place him in royal possession of the premises. Possession was accordingly delivered on September 11, 1740.

Alcalde José Romo de Verga, who had been appointed by Governor Joaquín Codallos y Rabal to affect a distribution of the lands owned by the Estate of Juan de Mastes, ordered Lovato on May 30, 1744, to vacate the grant within a few months under penalty of a one hundred peso fine. It seems that Mastes, sometime prior to 1724, had received a grant covering a portion of the land contained within the Juan José Lovato Grant. A suit had been instituted in 1725 by Cristóbal Torres against Mastes to clear his title. At the trial of this cause, it was shown that at the time Hurtado delivered possession of the grant to Torres, Mastes had consented to and raised no objections to the delivery of possession of the entire tract to Torres.[2] Lovato promptly protested the action taken by Roma and requested the governor to set the eviction order aside on the ground that the 1725 litigation had extinguished Mastes' title to the lands covered by the Juan José Lovato Grant. On June 15, 1744, Governor Codallas decided that the grant to Lovato by Governor Mendoza on August 24, 1740, was a valid, subsisting and permanent grant and he was entitled to be protected. Thereafter, Lovato and his heirs and assigns occupied and claimed most of the lands covered by the grant.[3]

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[1] Archive No. 943 (Mss., Records of the A.N.M.).
[2] Archive No. 944 (Mss. , Records of the A.N.M.).
[3] The Juan José Lovato Grant, No. 198 (Mss., Records of the S.G.N.M.).

A petition[4] seeking the confirmation of the grant was filed in Surveyor General H. M. Atkinson's office on March 31, 1884. Surveyor General Atkinson considered the claim on April 3, 1884, and decided[5] that it was valid and so reported to Congress. However, Congress took no action upon Atkinson's recommendation.

After the Court of Private Land Claims was established, the owner of the grant turned to that forum for assistance. On February 28, 1893, José Isabel Martínez and forty-seven other heirs of Juan José Lovato filed suit[6] against the United States seeking the confirmation of their title to the 100,000 acres of land which they estimated were covered by the grant. The only defense which the government offered against the recognition of the Juan José Lovato Grant was that it conflicted with three previously confirmed grants. The court in its opinion[7] dated July 9, 1894, found the plaintiffs' title to be good and valid, and conferred the grant to all of the lands within the boundaries except for the portion thereof which conflicted with the Town of Abiquiú, Plaza Blanco, and Plaza Colorado Grants.

To the surprise of everyone, the official survey of the grant which was made by Deputy Surveyor Sherrand Coleman on October 15, 1895, showed that the grant contained 205,615.72 acres. A patent, based on this survey, was issued on January 15, 1902.[8]

The Coleman Survey also showed that thirteen patented homestead entries aggregating 1,856.73 acres were located within the grant. On April 23, 1900, the owners of the grant filed supplemental petition[9] in the Court Private Land Claims under Section 14 of the Act of March 3, 1891,[10] seeking a judgment for the value of the lands covering said homestead entries which the government allegedly had disposed of in violation of the terms of the Treaty of Guadalupe Hidalgo. This was the first suit for a money judgment against the United States under this act. The government in its answers contended that the plaintiffs, in their original petition, had

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[4] Ibid.
[5] Ibid.
[6] *Martínez v. United States,* No. 140 (Mss., Records of the Pvt. L. Cl.). Meanwhile, Juan and Jesús Torres had filed suit in the Court of Private Land Claims seeking confirmation of their claim to the same tract of land based upon the June 6, 1724, grant by Governor Bustamante to Cristóbal Torres. (*Torres v. Unites States,* No. 250 (Mss., Records of the Ct. Pvt. L. Cl.)). The government contested recognition of the Torres claim on the ground that the grant had been revoked by Governor Cruzate. When this case came up for trial the plaintiffs announced that they no longer desired to prosecute their claim and the case was dismissed on June 15, 1898. 3 *Journal* 404 (Mss., Records of the Ct. Pvt. L. Cl.).
[7] 2 *Journal* 45-48 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] The Juan José Lovato Grant, No. 198 (Mss., Records of the S.G.N.M.).
[9] *Martínez v. United States,* No. 140 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] Court of Private Land Claims Act, Chap. 539, Sec. 14, 26 Stat. 854 (1891).

asserted that there were no conflicting or adverse claims and therefore, had waived their right to proceed under Section 14 of the act. In its decision[11] dated May 11, 1900, the court found for the plaintiffs and awarded them damages in the amount of $2,320.91. The government promptly appealed the decision. The Supreme Court, on April 3, 1902, reversed[12] the decision of the Court of Private Land Claims on the ground that the unexplained delay of the plaintiffs in instituting their action for more than four years after the discovery of the homestead entries amounted to an abandonment of their claim.

The Juan José Lovato Grant was the second largest grant conferred by the Court of Private Land Claims and was one of the two grants which was conferred for more than 100,000 acres. Had the Court of Private Land Claims realized that there were so many other conflicting grants located within its boundaries, it is doubtful that it would have confirmed the Juan José Lovato Grant.

[11] 4 *Journal* 171 (Mss., Records of the Ct. Pvt. L. Cl.).
[12] *United States v. Martínez,* 184 U.S. 441 (1902).

LOS TRIGOS GRANT

Francisco Trujillo, for himself, Diego Padilla and Bartolomé Márquez, petitioned the Governor of New Mexico, José Manrrique, on May 26, 1814, for a grant of vacant land located at the place known as Los Trigos for agricultural and ranching purposes. Manrrique referred the petition to the Ayuntamiento of Santa Fe for its further action. In his transmittal letter, he called the Ayuntamiento's attention to the fact that the applicants had made a similar request in 1813, which had been referred to the Chief Military Officer of the District but that no action had been taken on the matter. He also pointed out that the eleventh article of the Royal Order of January 1 4, 1813[1] gave the Ayuntamiento jurisdiction in matters of this nature. On July 30, 1814, the Ayuntamiento of Santa Fe issued the requested grant to the three applicants insofar only as it did not conflict with the grants which had previously been made to the Pueblo de Pecos and the settlement of San Miguel del Vado. Notwithstanding the action taken by the Ayuntamiento of Santa Fe, Governor Alberto Maynez on June 22, 1815, limited the grant by writing on the back of the decree of July 30, 1814, stating that while the grantees had the right to pasture their stock on any of the lands, others could appropriate any lands which the grantees did not cultivate and fence. Since legal possession of the land had not been delivered, Francisco Trujillo petitioned Matias Ortiz, the Alcalde of Santa Fe, on October 20, 1815, requesting that this indispensable step be performed. In response thereto, Ortiz surveyed and gave the grantees legal possession of the lands on both sides of the Pecos River between the places known as Los Trigos and Gusano. The grantees took immediate possession of the land. Márquez and Padilla built a hut, cultivated several fields located in the river bends near the place known as Parjarito, and pastured their stock on the adjoining hills. Trujillo made similar use of the lands near the place known as Gusano. The grantees continuously occupied the grant until 1829 when the Apaches became very troublesome and killed their shepherd, Vincente Villanueva. This incident so frightened the grantees that they decided to move back to Santa Fe until conditions became more settled.[2]

By 1842, vacant agricultural land in the vicinity of Santa Fe became very scarce and young men were forced to settle along the frontiers in order to support their families. A number of these colonists requested the Alcalde of San Miguel del Vado to allot them tracts of vacant land within the Los Trigos Grant. They contended that the Los Trigos Grant covered only the lands which the grantees had cultivated and fenced and that all the rest of the lands covered by the grant were available for appropriation by persons who would actually settle upon the grant. Between 1842 and 1846, twenty-Five families had settled upon and had been allotted individual tracts of land within the boundaries of the grant by the Alcalde of San Miguel del Vado.[3]

[1] Reynolds, Spanish and Mexican Land Law, 83-87 (1895).
[2] H. R. Report No. 321, 36th Cong., 1st Sess., 109-112 (1860).
[3] Ibid., 124-138.

Donaciano Vigil, as agent and legal representative of the original grantees, petitioned[4] the Surveyor General on July 17, 1855, seeking the confirmation of the Los Trigos Grant. On July 10, 1857, Rafael Gonzales, on behalf of himself and the other settlers who in the meantime had settled upon and acquired interests in a portion of the lands covered by the grant, contested Vigil's petition insofar as it covered their tracts on the principal grounds:

> (1) The grant had never been approved by the Provincial Deputation as required by law.
>
> (2) The boundaries described in the grant papers were too vague and indefinite and, therefore, the grant was invalid.
>
> (3) The Los Trigos Grant covered only the lands enclosed and cultivated by the grantees and that the grantees had never occupied the tracts which they claimed.

After a long and extensive hear Inc on the matter, Surveyor General William Pelham, in a decision[5] dated September 17, 1857, held that the Royal Order of January 4, 1813[6] authorized Ayuntamientos to grant land and the requirement that its action be approved by the Provincial Deputation was merely a condition subsequent which in itself would not invalidate the concession. In fact, he noted that there was no Provincial Deputation in New Mexico prior to 1821. Therefore, its approval could not have possibly been obtained. Continuing, Pelham reasoned that if the Ayuntamiento had authority to issue an absolute grant, then the conditions subsequently imposed upon the grantees by Governor Maynez were invalid. He also found that under the laws of Mexico, Alcaldes had no authority to allot public land unless expressly directed to do so by the governor or territorial deputation. Oral testimony presented by the claimants satisfied the Surveyor General that the boundaries of the grant were fixed by permanent landmarks which were well known and could be easily identified. Pelham closed his report by recommending the confirmation of the grant to the legal representative of Francisco Trujillo, Diego Padilla and Bartolomé Márquez. Congress by the act of June 21, 1860, which bears the mark of haste and inconsideration, confirmed the Los Trigos Grant, as recommended by the Surveyor General.

The grant was surveyed in 1860[7] by Deputy Surveyors William Pelham and Reuben H. Clements. However, when it was discovered their survey would not close, a new survey was ordered. The resurvey was made in May, 1877, by Deputy Surveyors Sawyer & McElroy, and

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[4] The Los Trigos Grant, No. 8 (Mss., Records of the S.G.N.M.).
[5] H. R. Report No. 321, 36th Cong., 1st Sess., 150-154 (1860).
[6] Supra., note 1.
[7] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 St. 71 (1860).

was approved by Surveyor General Henry M. Atkinson on June 5, 1877. This survey showed the grant as containing 9,646.56 acres.[8]

When Deputy Surveyor John Shaw surveyed the San Miguel del Vado Grant in December, 1879, he ran its western boundary through the Mesa de Gusano while Sawyer & McElroy had fixed the eastern boundary of the Los Trigos Grant at the Arroyo de Gusano, which was east of the mesa. It was conceded that the two grants had a common boundary, but a question arose as to whether the reference to "Gusano" in the two grants was to the Arroyo or the Mesa. While there was documentary evidence that the Los Trigos Grant extended to the "old watering place of El Gusano" which would tend to indicate that its eastern boundary should be located at the Arroyo, the preponderance of the evidence indicated that the western boundary of the San Miguel del Vado Grant, which was senior and controlling, was located at a little round bill commonly known as Mesa de Gusano.

Meanwhile, Surveyor General George W. Julian recommended the Sawyer & McElroy survey he rejected and the grant be resurveyed in order to cover only the lands which were under cultivation on February 2, 1848, the date of the signing of the Treaty of Guadalupe Hidalgo. By decision dated March 13, 1893, Acting Commissioner of the General Land Office, W. W. Rose, overruled Julian's contentions and held that the grant had been confirmed to the full extent of the boundaries set out in the grant papers, but that the eastern boundary was located at Mesa de Gusano instead of the Arroyo de Gusano. Surveyor General E. F. Hobart notified the owners of the grant o this decision and advised them that if they would accept the western boundary of the San Miguel del Vado Grant as their eastern boundary, resurvey of the grant would not be necessary. They so agreed and a patent for the grant was issued on January 21, 1909, for 7,342 acres.

[8] The Los Trigos Grant, 8 (Mss., Records of the S.G.N.M.).

MESITA DE JUANA LÓPEZ GRANT

Domingo Romero together with his two half-brothers Miguel and Manuel Ortiz, petitioned Governor Juan Bautista de Anza for a grant covering a tract of vacant land at the foot of the Mesita de Juana López. They advised the Governor that they needed the grant as a pasturage for their cattle and sheep and designated the following natural objects as its boundaries: -

> On the north, by the brow of the mesa; on the east, by the lands of the Ortegas; on the south, by the surplus lands from the Cañada de Juana López; and on the west, by the lands of Juan Antonio Fernández.

On January 18, 1782, Anza, being cognizant that the Issuance of the grant would afford greater protection to the vicinity of the capital, made the requested concession to the three petitioners in the name of the King for the sole purpose of pasturing stock. The decree also directed Carlos Fernández to give notice of the grant to the adjoining landowners and if they had no objection thereto, commissioned him to place the grantees in possession of the premises. By virtue of this decree, Carlos Fernández met with the interested parties and examined their title papers. He found that the Ortegas and Bernardo de Sena owned the lands lying east of the grant and that their western boundary lines were located on the east side and along the foot of the Mesita de Juana López and the mouth of the Cañón known as Las Bocas. Thus, the entire mesa was public land, The Cieniguilla Grant adjoined the grant on the north, and its owners claimed the brow of the mesa and the Cañón de las Bacas as their southern boundary. Next he noted that the lands south of the grant were vacant and, therefore, there was no adjoining landowner in that direction. He attempted to contact Juan Antonio Fernández, who owned the lands west of the grant, but was unable to locate him or examine his title documents. However, he was advised that his eastern boundary was located at the Peñasco Blanco which was located near the western end of the Cañón. At the conclusion of his investigation into the boundaries of the grant, Carlos Fernández remarked:

> Nature herself has placed immovable landmarks, as on the west it terminates with said Cañón, also on the east it terminates at a short distance from the lands of Bernardo de Sena, and on the south it is a rugged rock and having measured said mesa of Juana López, from east to west, which is its length, it contains six thousand five hundred *varas*. I did not measure from north to south because no correct measurement could be made for the reason that on the south there are innumerable gulches which widen and narrow according to the ruggedness which either extends to the south or to the north.

Since he encountered no opposition to the grant, Carlos Fernández placed the three grantees in royal possession of the grant in the usual manner by performing the customary ceremonies.[1]

[1] Archive No. 1261 (Mss., Records of the A.N.M.).

The three grantees promptly commenced using the grant as pasturage for their livestock and cultivated small portions. Domingo Romero inherited the entire grant following Miguel and Manuel Ortiz's deaths without issue. The heirs of Domingo Romero filed the *testimonio* of the grant and petitioned Surveyor General James K. Proudfit seeking its confirmation on September 30, 1872. They stated that while the grant had never been surveyed they believed that it measured about six miles from east to west and fifteen miles from north to south. In connection with his examination of the claim, Proudfit took the testimony of two witnesses which tended to support the petitioners' allegations that the lands described in the *testimonio* had been occupied by the grantees or their heirs since the inception of the grant and that Romero had inherited the interests formerly owned by the Ortiz's. As a result of this cursory investigation, Proudfit announced a decision on November 29, 1872 in which he found the grant papers to be genuine and recommended the confirmation of the grant to Domingo Romero, Miguel Ortiz, and Manuel Ortiz and their legal representatives.[2] He estimated the grant to contain 69,000 acres.

The grant was surveyed in October, 1876, by Deputy Surveyor Rollin J. Reeves for 42,022.25 acres instead of the 69,000 acres as originally estimated. The survey was approved by Proudfit's successor, Henry M. Atkinson, on February 28, 1877, and forwarded to Congress. The claim was referred to the Committees on Private Land Claims of both houses of Congress. The Committees on Private Land Claims reported that the facts seemed to authorize the confirmation of the grant.[3] Based upon this favorable recommendation, Congress, by act approved on January 28, 1879, confirmed the grant which had been designated as claim number sixty-four and duly surveyed by the United States…" This act further provided that such confirmation was to be construed only as a quit claim or relinquishment of the right of the United States and it was not to be liable to make compensation for any part of said land to which there are or may he any adverse rights or claim." [4]

On September 30, 1882, Elian Brevoort, who claimed an interest in the Ortiz Mine Grant, petitioned the Commissioner of the General Land Office seeking an investigation of the Reeves Survey which he alleged extended the southern boundary of the grant at least ten miles too far south and thereby causing it to conflict with about 12,000 acres of land embraced within the Ortiz Mine Grant.

By decision dated March 31, 1883, Commissioner N. C. McFarland noted that the Act of Possession called for the grant to be 6,500 *varas* in length or a fraction over three and a half miles and that it is inconceivable that Carlos Fernández would have described the grant as being

[2] H. R. Exec. Doc. No. 128, 42 Cong., 3d Sess., 14 (1873).
[3] S. Report No. 149, 45th Cong., 2d Sess., 2 (1878).
[4] An Act to confirm a certain private land claim in the territory of New Mexico, Chap. 31, 20 Stat. 592 (1879).

6,500 *varas* in length if its north-south measurement was three times longer. Since he had grave doubts as to the correctness of the survey, he instructed Surveyor General Atkinson to fully investigate the matter. Atkinson wrote McFarland on April 16, 1883, calling his attention to the language in the Act of January 28, 1879, which confirmed the Mesita de Juana López Grant as having been "duly surveyed." He interpreted this provision as a confirmation of the grant as surveyed by Reeves, and therefore, an investigation would be useless for it could effect no change even if it proved that the allegations contained in Brevoort's petition were true. McFarland apparently concurred with Atkinson's interpretation of this language for he cancelled the investigation on May 10, 1883.[5]

Surveyor General George W. Julian, by letter dated June 19, 1886, called Commissioner William A. J. Sparks' attention to Brevoort's petition and stated that if the allegations contained in the petition were true the grant contained not only portions of the Ortiz Mine Grant and the Pueblo of Santo Domingo Grant, but also a considerable quantity of public lands upon which were located a number of valuable coal beds. Pursuant to an order dated July 7, 1886, by Sparks, Julian proceeded to conduct an exhaustive investigation which indicated that the southern boundary of the grant should have terminated at some rough rocks lying north of the Galisteo River and that its western boundary was about a quarter of a mile too far west. Based on the findings of this investigation, Sparks' successor, S. M. Stockslager, held that the Reeves Survey had exaggerated the grant to more than three times its proper size and ordered a resurvey of the grant. He stated that he did not believe that it was the intention of Congress to confirm a mere preliminary survey and thus preclude the government from investigating the true boundaries of the claim or detecting fraud. In connection with the "duly surveyed" clause contained in the act of confirmation, he contended it "was interpreted as merely giving a history of the claim and for the purpose of closer identification."[6]

The owners of the grant appealed this decision to the Secretary of Interior. By decision dated May 13, 1893, Secretary of Interior Hoke Smith reversed Stocksiager's decision, stating:

> It seems that these objections to the survey are made so late that your office and this Department are precluded from inquiring into them by the terms of the act of confirmation, supra. About the construction of that act I have no doubt. In my opinion Congress confirmed the grant in accordance with the survey which had been made and was then as much as any other part of the record, before that body... Congress having thus taken final action on the grant, and the confirmatory act not requiring the issue of patent to the confirmees, this Department is absolutely without further jurisdiction in the premises. The Supreme Court has said in relation to these claims, "The final action on each claim reserved to Congress of course, conclusive, and therefore not subject to

[5] The Mesita de Juana Lopez Grant No. 64 (Mss., Records of the S.G.N.M.).
[6] Ibid.

review in this or any other form." Astiazaran v. Santa Rita Mining Co., 148 U.S. 80 (1893).[7]

[7] Mesita de Juana Lopez Grant, 16 L.D. 445 (1893).

NUESTRA SEÑORA DEL ROSARIO, SAN FERNANDO Y SANTIAGO GRANT
NUESTRA SEÑORA DEL ROSARIO, SAN FERNANDO Y SANTIAGO DEL RÍO DE LAS TRUCHAS GRANT
TRUCHAS GRANT

Armed with Archive No. 771,[1] Pedro José Gallegos, for himself, and in behalf of the other claimants of the Nuestra Señora del Rosario, San Fernando, Santiago Grant, filed suit[2] in the Court of Private Land Claims on August 13, 1892, seeking the confirmation of their interest. Archive No. 771 consisted of the five ancient documents which formed the expediente of the grant. The first is an instrument dated March 3, 1754, wherein Nicolas Romero and ten other residents of the town of Chimayó petitioned Governor Tomas Vélez Cachupín for a grant covering the tract of land situated on the Río de las Truchas, upon which they previously had settled and improved. The tract was described as being bounded:

> On the north by the ridges which formed the southern boundary of the Las Trampas Grant; on the east, by Oso Mountain; on the south, by the boundaries of the Pueblo of Quemado Grant and the lands owned by José Manuel Gonzales; and on the west, by the main road which leads to Picurís.

The second document is a decree by Cachupín dated two days later ordering the Alcalde of Santa Cruz, Juan José Lovato, to report on the merits of the request. The third document is a report by Lovato, In this instrument, which is dated March 6, 1754, Lovato advised the governor that the applicants had cultivated a small portion of the lands described in the petition for a period of two years with the government's consent and that the tract contained sufficient land to adequately support them. In closing, Lovato recommended the issuance of the concession since a settlement

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[1] Archive No. 771 (Mss., Records of the A.N.M.).

[2] *Gallegos v. United States,* No. 28 (Mss., Records of the Ct. Pvt. L. Cl.). Isabel Jaramillo de Romero filed suit on March 3, 1893, against the United States in the Court of Private Land Claims, seeking the approval of the Rancho de Las Truchas Grant, which had been made to Juan de Dios Romero and ten others on March 18, 1854, by Governor Tomas Vélez Cachupín. Possession was delivered to the grantees six days later covering a tract bounded on the north by the Cuchilla of the Truchas River; on the east by an acequia and Sierra del Oso; on the south by the Alto between the Pueblo of Quemado and ____(torn)____ ; and on the west by the road to the Pueblo of Picurís. In support of her allegations, Jaramillo filed a copy of Archives 1136 and 771. *Jaramillo v. United States,* No. 225 (Mss., Records of the Ct. Pvt. L. Cl.). The government, in its answer dated December 29, 1896, pointed out that this obviously was an additional claim of the Nuestra Señora del Rosario, San Fernando, y Santiago Grant, which previously had been confirmed by the court. The government asserted that such confirmation was a bar to the further prosecution of the plaintiff's claims, and prayed for a dismissal of her suit. On May 12, 1897, Jaramillo announced that she no longer wished to prosecute the action, whereupon, the court dismissed her petition and rejected the claim. 3 *Journal* 197 (Mss., Records of the Ct. Pvt. L. Cl.).

on the tract would "impede the hostile enemy who continuously harassed the town of Santa Cruz." The next document was a decree by Cachupín dated March 15, 1754, granting the requested lands to the applicants subject to their establishing a fortified settlement on the tract to be known as "Nuestra Señora del Rosario San Fernando y Santiago" and directing Lovato to deliver royal possession of the premises to the grantees. Lovato was also instructed to allot each of the colonists an individual farm tract and a residential lot subject to the condition that they could not be sold or encumbered for a period of four years. The next instrument is an Act of Possession which states that on April 24, 1754, Lovato, pursuant to the governor's decree, placed the grantees in possession of the grant and distributed farm tracts, most of which measured 150 varas each to the grantees. Alcalde Lovato first set aside a square or plaza measuring 70 varas on each side and laid out four roads measuring six varas in width for ingress and egress. He then proceeded to survey the individual farm tracts. In conclusion, the alcalde noted that he had permitted two families headed by José Manuel Gonzales and Juan Luis Romero to join the colony and placed each of them in possession of a tract of land located along the south side of the grant. The final folio is a decree by Cachupín dated May 29, 1754, wherein he approved and confirmed the Act of Possession, except insofar as it pertained to the tracts allotted to Gonzales and Romero. In connection with those tracts, the governor held the alcalde's actions to be null and void since they were among the four families who had been granted land up the river from the grant in 1751, but had forfeited their rights due to their failure to occupy such lands within the specified time limits.

In his petition, Gallegos alleged that the grant was a valid Royal Spanish Grant made for the purpose of settlement and cultivation. He pointed out the claim had never been presented to the Surveyor General's office for investigation but it had been continuously occupied by the original parties and their lineal descendants since the date of its issuance. No explanation was offered for the delay in the prosecution of the claim which was asserted to contain approximately 20,000 acres.[3]

When the case came up for trial, the government offered no special defenses but merely put the plaintiff to his proof. The testimony introduced by the plaintiff at the trial showed that the expediente was genuine and there was no question as to the bona fides of the possession held by the more than fifty families who then resided upon the grant. Therefore, the court had no alternative but to approve the grant. Pursuant to the court's decree[4] of December 10, 1892, the grant was surveyed by Deputy Surveyor Albert F. Easley. The survey shows that the grant contained 14,786.58 acres. A patent, based on the Easley Survey, was issued to the original grantees and their heirs and assigns on May 5, 1905.[5]

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[3] Ibid.
[4] 1 *Journal* 75-78 (Mss., Records of the Ct. Pvt. Cl.).
[5] The Nuestra Señora del Rosario, San Francisco, y Santiago Grant, M.C.D. 28 (Mss., Records of the S.G.N.M.)

OJO CALIENTE GRANT

In 1790 eighteen residents of Bernalillo received permission from Governor Fernando de la Concha to settle upon the site of the abandoned Pueblo of Ojo Caliente provided they formed "a well ordered and regular settlement on the outskirts of the Cañada de las Comanches." It was to be heavily fortified, otherwise it could not hope to prevail against the forays of the hostile Indians. Three years later Luis Duran and fifty-two other colonists, who had united in the establishment of the new Town of Ojo Caliente, petitioned the governor for a grant covering the lands upon which they had settled. On September 11, 1793, Concha granted the request and directed the Alcalde of the Pueblo of Santa Cruz to survey and deliver possession of the premises to the fifty-three grantees. The alcalde was also ordered to return a full report of his proceedings to the governor in order that the expediente might be filed in the archives as perpetual evidence of the grantees' title. In compliance with the governor's decree, Alcalde Manuel García de la Mora, with his assistants and witnesses, proceeded to Ojo Caliente on October 5, 1793, where he designated and surveyed the following as the boundaries of the grant:

> On the north, the Cañada de los Comanches; on the east, the foot of the hills; on the south, a monument constructed of stone and mortar with a holy cross made of cedar placed in the center, just below the tower of José Baca; and on the west, the foot of the other hills on the opposite side of the river.

After the survey of exterior boundaries of the grant was completed, García distributed individual farm tracts, each measuring 150 varas in width and fronting upon both sides of the Ojo Caliente River, among the fifty-three grantees. Next, he delivered royal possession of the grant and lots in accordance with the formalities required by law. An *expediente* was then forwarded to the governor, who on October 8, 1793, approved the alcalde's actions and ordered the instrument filed among the Archives of New Mexico and directed that a copy or *testimonio* thereof be given to the grantees for their protection and security.[1]

The hearty colonists were able to successfully overcome the adversities presented by the harsh life on the remote frontier and form a permanent settlement. Major Zebulon M. Pike, after his arrest by the Spaniards near Taos, passed through Ojo Caliente, which he describes thus:

> The difference of climate was astonishing; after we left the hills and deep snows, we found ourselves on plains where there was no snow and where vegetation was sprouting.
>
> The village of Warm Springs or Aqua Caliente (in their language) is situated on the eastern branch of a creek of that name, at a distance, and presents to the eye a

[1] Archive No. 664 (Mss., Records of the A.N.M.).

> square enclosure of mud walls, the houses forming the wall. They are flat on top, or with extremely little ascent on one side, where there are spouts to carry off the water of the melting snow and rain when it falls, which we are informed, has been but once in two years previous to our entering the country.
>
> Inside of the enclosure were the different streets of houses of the same fashion, all of one story; the doors were narrow, the windows small, and in one or two houses there were talc lights. This village had a mill near it, situated on the little creek, which made very good flour.
>
> The population consists of civilized Indians, but much mixed blood ... This village may contain 500 souls. The greatest natural curiosity is the warm springs, which are two in number, about ten yards apart, and each affords sufficient water for a mill seat. They appear to be impregnated with copper, and were more than 330° above blood heat.[2]

Félis Galbis, one of the inhabitants of the grant for himself and in behalf of all other owners, petitioned[3] Surveyor General James K. Proudfit on February 28, 1873, seeking the confirmation of the premises as a community grant. A hearing was held on the petition on February 28, 1873, at which time the testimony of two witnesses for the claimants was presented. Dionisio Vargas testified that the grant extended about seven or eight miles from north to south and approximately twenty miles from east to west. Vargas further testified:

> I do not know of any coal or mineral substance on the tract, unless the latter be found in the hot springs, which are said to have mineral quantities in the water they furnish, which is quite hot in temperature. The river bottom is cultivated annually; the balance of the land is pasture, with timber. The land is held by many peoples as a community grant.

The plat attached to the petition indicated that the grant contained 92,160 acres. Based upon the evidence before him, Proudfit issued an opinion[4] dated January 2, 1874, in which he held that the "record is full and fair, the continued possession undoubted, and I recommend the Congress do confirm the title to the legal representatives of the fifty-three original grantees named in the papers, and according to the boundaries set forth in the Act of Possession". A preliminary survey of the grant was made by Deputy Surveyors Griffin & McMullen in September and October, 1877, which showed that it contained 38,490.20 acres. On July 20, 1878, Antonio Joseph, who claimed to have purchased the interest of most of the original grantees, protested the approval of

[2] Pike, *An Account of Expeditions to the Sources of the Mississippi*, 206-207 (1810).
[3] The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).
[4] H. R. Exec. Doc. No. 148, 43d Cong., 1st Sess., 4-8 (1874).

the survey on the grounds that the west boundary of the survey was located about six miles too far east. He claimed that the surveyors had located the west boundary at the foothills just west of the river instead of along the summit of the Cuchilla Parda, which was a ridge running north and south about seven miles west of the Ojo Caliente River. The Cuchilla Parda forms the watershed or divide between the Ojo Caliente and Colorado River valleys. It also formed the east boundary of the Juan José Lovato Grant, which in at least one of its title documents called to adjoin the Ojo Caliente Grant.[5] No further action was taken by the Surveyor General or Congress concerning the grant.

Two suits were filed in the Court of Private Land Claims seeking the recognition of the grant. The first was filed[6] on February 14, 1893, by Jesús María Olgyin, who had inherited an interest in the grant from his grandfather, Juan Olgyin, one of the original settlers. The second suit was instituted[7] three days later by Antonio Joseph, for himself and on behalf of the heirs, legal representatives and successors of the other original grantees. The two cases were consolidated by order of the court[8] and tried under Cause No. 94. At the hearing, the government conceded that the title papers were genuine and that the use and occupancy of the premises had been continuous, open and notorious since the date of its issuance. However, it contended that the true east boundary of the grant should be located about eight miles west of the location established therefore by the Griffin and McMullen Survey. This would fix the east boundary at the foot of a low range of foothills situated just east of the river. After considering all the evidence, the court, on April 28, 1894, confirmed[9] the grant but found from a preponderance of the evidence that both its eastern and western boundaries were located at the foot of the first row of hills located on each side of the Ojo Caliente River. Neither party appealed from this decision and a resurvey of the grant was made in September, 1894, by Deputy Surveyor Sherrard Coleman. The survey depicted the grant as containing 2,244.98 acres. A patent for this amount of land was issued on November 2, 1894.[10]

[5] The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).
[6] *Olgyin v. United States,* No. 88 (Mss. , Records of the Ct. Pvt. L. Cl.)
[7] *Joseph v. United States,* No. 94 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] 2 *Journal* 69-70 (Mss., Records of the C. Pvt. L. Cl.).
[9] 2 *Journal* 130-135 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] The Town of Ojo Caliente Grant, No. 77 (Mss., Records of the S.G.N.M.).

PETACA GRANT

On January 29, 1836, José Julian Martínez together with his father, Antonio Martínez, and Francisco Antonio Atencio and his sons petitioned the Ayuntamiento of the Town of Ojo Caliente asking for a grant covering a piece of vacant land, known as the Petaca and situated upon the Ojo Caliente River, for agricultural purposes. The Ayuntamiento forwarded the petition to the Departmental Deputation on February 22, 1836, stating that the lands had been granted some twelve years previously but the former owners had forfeited same because they had failed to settle upon and improve the premises as required by law. It also recommended that the grant be made, but only to José Julian Martínez, Antonio Martínez, and Francisco Antonio Atencio since Atencio's sons were minors and thus had no authority to join, in the petition. The Departmental Assembly, in turn, referred the matter to Governor Albino Pérez, who, on February 25, 1836, granted the request and ordered the Alcalde of Ojo Caliente to designate the boundaries of the donation and place the applicants in legal possession of the land. Pursuant to and by virtue of the authority delegated to him, Alcalde José Antonio Martínez on March 25, 1836, together with the interested parties went to Petaca where he pointed out the following natural objects which he designated as the exterior boundaries of the grant:

> On the north, the hill commonly called Tío Ortiz Hill; on the east, the Arroyo de la Aguaje de Petaca; on the south, the entrance to the Cañóncito and lands of José Miguel Lucero; and on the west, the Vallecito Grant.

The alcalde then proceeded to allot individual lots, each with 150 varas of river frontage, to the three original grantees and thirty-three associates, who had joined them in the formation of the new colony. The lots commenced at the Cañóncito de Petaca and extended northward. A lot, 250 varas in width, was also designated as a plaza and for other public purposes. Once the survey and allotments had been made, the colonists were placed in legal possession of their individual lots.[1]

The settlement was in existence when the United States conquered the area in 1846 and had been continuously occupied and used since its inception except for short periods when Indian hostilities forced its inhabitants to seek safety at Ojo Caliente. The heirs and legal representatives of the original grantees filed a petition[2] on February 12, 1875, in the Surveyor General's Office seeking the confirmation of the grant. Eight days later Surveyor General James K. Proudfit issued his decision[3] in which he stated that he had no doubt concerning the validity of the grant papers and, therefore, recommended it be confirmed to José Julian Martínez and the thirty-five other colonists named in the Act of Possession. A preliminary survey of the grant was ordered by Proudfit in 1878 at the request of the claimants. Between May and October, 1878 Deputy

[1] S. Exec. Doc. No. 31, 44th Cong., 1st Sess., 5-9 (1876).
[2] The Petaca Grant, No. 105 (Mss., Records of the S.G.N.M.).
[3] Ibid.

Surveyors Griffin & McMullen made the survey. It showed that the grant contained 186,977.11 acres.[4]

On July 28, 1883, S. S. Farwell wrote Surveyor General Henry M. Atkinson stating he had acquired the interests formerly owned by a number of the original colonists, and that his attorney, after having examined his title, had advised him that title to the entire grant, except for the individual tracts which had been allotted to the thirty-six settlers, was vested in José Julian Martínez, Antonio Martínez, and Francisco Antonio Atencio. Therefore, he requested Atkinson to re-examine the grant with a view of determining if Proudfit had made a mistake and, if an error in fact had been made, should it be reported to Congress in order that the grant might be confirmed to the proper persons. Surveyor General Atkinson reviewed the case and wrote a Supplemental Report[5] on August 1, 1883. He stated:

> I question whether the right to review the acts of my predecessors exists, except in instances where the case is remanded back by Congress for rehearing or review, but as that body has the final action and decision in these cases, with entire discretionary power to make grants, or confirm those made by the Spanish and Mexican Governments, it is presumed that if error exists in the record of the case, there could be no objection to pointing out to Congress such error, in order that its action may conform to the requirements and obligations of the Treaty of Guadalupe Hidalgo and the rights of persons thereunder.

Briefly stated he found that Pérez had granted the premises to José Julian Martínez, Antonio Martínez, and Francisco Antonio Atencio but Alcalde Martínez had no authority to inject new grantees into the concession or alter in any manner the terms of the grant. He concluded by holding that legal and equitable title was vested in the three parties who had applied for and received the grant and recommended that it be confirmed to them. In support of this position, he pointed out that:

> It was a custom in those days, on account of the danger existing from hostile Indians in some localities, for persons receiving concessions to take with them for protection or assistance as herders employees to whom they gave small parcels of land to cultivate, and to which they may have acquired a prescriptive right as against the grantees, but such persons held no interest in the general commons of the grant and were not beneficiaries thereunder.

Congress still had not acted upon the claim when George W. Julian was appointed Surveyor General. The Petaca Grant was one of the grants which were re-examined by Julian under

[4] Ibid.
[5] S. Exec. Doc. No. 45, 48th Cong., 1st Sess., 2-4 (1884).

instructions [6]from the Commissioner of the General Land office dated December 11, 1885. In a Supplemental Report[7] dated April 17, 1886, he stated that the record before him presented three important questions. First, was there a valid grant? Second, did the evidence show the existence of any party having an interest in the land? And, third, had the grant been surveyed correctly? In answer to the first question, Julian asserted that:

> … written documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands and there is nothing in the public records of the country to show that such evidence ever existed ... The equity of the claim is a different question. The genuineness of the grant is sufficiently established ... The strictness of the law of 1824 as to the record evidence of grants was never followed in New Mexico, where grant claimants were too much accustomed to hold the evidence of their titles in their private custody, although they frequently deposited them in public archives. When the United States took possession of those archives, they were, therefore, necessarily incomplete, and some of them in all probability were scattered and lost in the year 1870 through the reckless conduct of William A. Pile, who was then Governor of New Mexico. In the light of these facts, I think it would be a great hardship to reject altogether the claim now made and that justice will be best served by recognizing an equitable title to the land granted.

Julian avoided answering his second question by holding that the problem could best be settled by another tribunal. In connection with the third question, he held the Griffin & McMullen Survey obviously was erroneous for it covered almost twice the area originally claimed by the petitioners. He pointed out that since the governor had made the grant to José Julian Martínez, Antonio Martínez, and Francisco Antonio Atencio, it could not under the Colonization Law of 1824 exceed 33 square leagues. Since he had no way of knowing the true area covered by the grant, he recommended that the equitable title of the "proper claimants" be confined to the "land actually covered by the grant." Commissioner William A. J. Sparks reviewed all three reports which had been filed in connection with the grant in an effort to reconcile the conflicting views and recommendations. On January 21, 1887, Sparks notified Secretary of Interior L. Q. C. Lamar that in his opinion the claimants had failed to prove that they had legal title to the lands in question. He specifically called attention to the fact that the grant had never been approved by the Departmental Deputation and the expediente had not been filed as required by the Colonization Laws. He concluded by holding that since "the record was the grant," the claimants had no legal title to the land. However, since the claimants had entered upon, occupied and cultivated the allotted lands and were in possession of the premises in 1848, they had an

[6] S. Exec. Doc. No. 113, 49th Cong., 2d Sess., 2 (1887).
[7] S. Exec. Doc. No. 52, 49th Cong., 2d Sess., 4-6 (1887).

equitable claim. He, therefore, recommended the confirmation of the claim as a community grant for an area not to exceed four square leagues.[8]

With so many divergent views on its merits, it is no wonder that Congress failed to act upon the claim. This confusion led to the institution of three separate suits in the Court of Private Land Claims for the recognition of these various interests. The first was filed[9] on February 17, 1893, by Antonio Serafín Peña and thirty-two other persons for themselves and on behalf of all others who claimed to be the heirs and legal representatives of the thirty-six parties who were named in the Act of Possession. The second suit was filed[10] on March 3, 1893, by L. Z. Farwell, who had purchased the interests of most of the heirs of José Julian Martínez, Antonio Martínez and Francisco Antonio Atencio. Farwell contended that they owned an undivided interest in all of the grant, except for the individual lots distributed to the other 33 colonists named in the Act of Possession. The third suit[11] was brought two days later by José A. García, who had purchased the interest formerly owned by Juan José Jacques, one of the original colonists listed in the Act of Possession. The three suits were consolidated[12] by the court for purposes of trial. The consolidated case came up for hearing on June 7, 1895, and was continued from time to time for the purpose of taking testimony, until the trial was concluded on March 20, 1896. The record raised four principal questions to be passed upon by the court. The court noted that while the grant papers were genuine and the governor had the power to issue the concession, it had to interpret the testimonio in order to determine to whom the grant had been made. The second question pertained to the government's contention that the grant had been abandoned prior to the time that the United States had acquired New Mexico. The government's testimony which was somewhat vague and inconclusive but tended to prove that the grant had not been permanently settled until 1848, when the original grantees and a number of new colonists petitioned for and were placed in possession of the grant and additional allotments made to the new settlers. The next question concerned the boundaries of the grant. The government pointed out that someone had altered the description in the *testimonio*. It was obvious that its eastern call originally had read "on the east the mesa de la Trilla de la Petaca" but had been erased and rewritten to read "the Arroyo de las Aguaje de Petaca." The final question concerned the question as to whether the court had authority to confirm an equitable title since no legal title could be established without some record of the grant being found in the Archives of New Mexico. In its opinion[13] dated September 5, 1896, the court found (a) the grant was a community grant made in favor of all the thirty-six grantees to whom possession had been delivered under the Act of Possession; (b) the grant had been occupied by the grantees since its inception except for short periods when

[8] Report of the Secretary of Interior for the Fiscal Year Ending June 30, 1887, 281-283 (1887).
[9] *Peña v. United States,* No. 99 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] *Farwell v. United States,* No. 153 (Mss., Records of the Ct. Pvt. L. Cl.).
[11] *García v. United States,* No. 233 (Mss., Records of the Ct. Pvt. L. Cl.).
[12] 2 *Journal* 72 (Mss., Records of the Ct. Pvt. L. Cl.).
[13] 3 *Journal* 108 (Mss., Records of the Ct. Pvt. L. Cl.).

Indian hostilities rendered living on the land too hazardous; (c) that the east boundary of the grant was located at the Mesa de la Trilla; and (d) the evidence showed that the Archives of New Mexico had been "poorly kept" and that operating at a distance of 50 years since the grant was originally made, it would be unfair to hold that it was invalid merely because the expediente could not be found in the public records, especially in view of the fact that the testimonio had been recognized as being genuine. Therefore, the court held that a preponderance of the evidence showed the grant to be good and valid and should be confirmed in favor of all those placed in possession by Alcalde Martínez on March 25, 1836, to the extent of the natural boundaries described in the testimonio but not to exceed eleven square leagues.

The government appealed the decision on the ground that the confirmation should be limited to the area covered by the thirty-six original allotments. On December 18, 1899, the United States Supreme Court issued its decision[14] reversing the Court of Private Land Claims and holding that the Petaca Grant was in severalty to the thirty-six original colonists for the tracts of which they were given possession. The case was then remanded to the Court of Private Land Claims in order that additional testimony could be taken to identify such parties and the extent of their lands.

The case was reopened and additional evidence was taken during the months of July and August, 1900. The evidence showed that there was no controversy as to the extent of the lands from north to south, but a question arose as to how far the lots extended from east to west. The claimants contended that the lots extended to the exterior boundaries of the grant, thus making the tracts several miles wide. The government, on the other hand, contended that the lots simply extended across the valley proper. Thus, the lots would be only two to three hundred yards in width. The court, on August 9, 1900, held[15] that the individual lots extended only across the valley and that the 250 vara lot set aside for public purposes was owned by the original thirty-six colonists as joint tenants. An official survey of the grant was made by Deputy Surveyor Jay Turley on June 29, 1901, which disclosed that the Petaca Grant contained only 1,392.10 acres. A patent for such land was subsequently issued to the Board of Commissioners for the Petaca Grant.[16]

In his paper[17] concerning the activities of the Court of Private Land Claims, Justice Wilbur F. Stone says:

> Another case was the Petaca grant. This was claimed to be about thirty miles long and twenty in width, embracing 100 square miles of pine forest. It had been bought by one of

[14] *United States v. Pena,* 175 U.S. 500 (1899).
[15] 4 *Journal* 183 (Mss., Records of the Ct. Pvt. L. Cl.).
[16] The Petaca Grant, No. 105 (Mss., Records of the S.G.N.M.).
[17] Stone, "A Brief History of the Court of Private Land Claims," *New Mexico Bar Association Proceedings,* 17 (1904).

the Farwells of Chicago, who established sawmills and lumber camps in the pineries and for ten years shipped lumber by rail from Tres Piedras to the markets of Colorado and New Mexico, but had reserved the best portion of the pineries for future use. The court found that the original grant comprised only a paltry strip about five miles long and a few rods wide, embracing the little garden batches on the Cañón of Petaca Creek, belonging to some poor Mexicans, who were made all the poorer by having the ownership decreed to them by court. The great pineries yet untouched were turned over to the Public Domain of Uncle Sam, to be gobbled up by lumber poachers, who will take care that they cut off the best part first.

PIEDRA LUMBRE GRANT

Lieutenant Pedro Martín Serrano petitioned the Governor of New Mexico asking for a grant covering a tract of land in the valley known as Piedra Lumbre, in order that he might build a home thereon for his large family and a pasturage for "his extensive herds of cattle, sheep and horses." He stated that the lands he solicited were located about three or four leagues west of the Pueblo of Abiquiú and had originally belonged to José de Riaño. It seems that Governor Gervacio Cruzat y Góngora had granted Riaño a league of land at Piedra Lumbre and possession thereof had been delivered to him by Lieutenant Governor Juan Paez Hurtado. Antonio Montoya, who in the meantime had traded Riaño a house at Santa Fe for the grant, discovered that the rancho covered much more land than the recited one square league. Title to the grant was later acquired by Lieutenant Domingo de Luna, who in about the year 1760 authorized Serrano to use it as pasture for his stock. Early in 1766, Luna sold his interest in the grant to Serrano. Since none of its prior owners had settled upon the grant and, under Spanish law, it might have been abandoned, and in order to avoid any future confusion as a result of the grant containing so much excess land, Serrano requested a grant *de novo* covering all of the land within the following boundaries:

> On the north, some red bluffs; on the east, a stony hill; on the south, Pedernal Hill; and on the west, the mesa adjoining the Cañón de la Piedra Lumbre.

On February 11, 1766, Governor Thomas Vélez Cachupín requested Serrano to advise him of the number of livestock he possessed and the distance between the boundaries set forth in his petition. In response to this request, Serrano, on the same day, advised the governor that he had 480 head of cattle, 164 horses and mules, and 2,700 sheep. He also stated that the grant was three leagues from east to west and about the same distance from north to south. After fully considering the matter, Cachupín, on February 12, 1766, granted Serrano the requested tract and ordered the Alcalde of Santa Cruz, Manuel García Paraja to deliver royal possession thereof to the new grantee. Paraja met with the adjoining land owner, Gerónimo Martín, the officials of the Pueblo of Abiquiú and the grantee on February 18, 1766, and since no one objected to the issuance of the concession, he proceeded to survey and place Serrano possession of the premises.[1]

The grant papers were filed for record in the Kearny Land Register after the United States acquired jurisdiction over New Mexico.[2] After the office of the Surveyor General was created, the owners of the grant requested[3] that their claim be inquired into and confirmed. On February

[1] S. Exec. Doc. No. 50, 42d Cong., 3d Sess., 4-7 (1873).
[2] B. Record of Land Titles 160-162 (Mss., Records of the S.G.N.M.).
[3] The Piedra Lumbre Grant, No. 73 (Mss., Records of. the S.G.N.M.).

3, 1873, Surveyor General James K. Proudfit issued a decision[4] wherein he held that the testimonio which had been filed in the case by the petitioners was genuine beyond doubt and, therefore, he approved the grant and recommended its confirmation by Congress. A preliminary survey of the grant was made in November, 1877, by Deputy Surveyor Charles H. Fitch for 48,336.12 acres. The claim was still pending before Congress when the Court of Private Land Claims was established.[5]

On August 19, 1892, Aniceto Martín and fifteen other parties claiming to be the heirs of Maríano Martín filed suit[6] in the Court of Private Land Claims against the United States, seeking the confirmation of the Piedra Lumbre Grant. In support of their claim, the plaintiffs filed a *testimonio* which showed that Maríano Martín for himself and the other heirs of Pedro Martín Serrano, who was sometimes known as Pedro Martín, petitioned the governor of New Mexico, Joaquín Alencaster, seeking the re-validation of the grant which had been given to their grandfather in 1766. Such a re-validation was necessary because the hostility of the Navajos had forced the owners of the grant to abandon the grant for a number of years prior to 1806. On July 15, 1806, the governor directed the Alcalde of Santa Cruz to report on the merits of the petition. Alcalde Manuel de la Mora on July 16, 1806, reported that all of the allegations contained in the petition were true. On August 10, 1806, Alencaster issued a decree re-validating the grant and ordering the alcalde to give the petitioners possession of all of the tillable lands which they had under cultivation and belonged to them as a result of their ancient rights. In compliance with the governor's order, the Alcalde of Santa Cruz, Manuel García, delivered possession of the grant to the petitioners. A number of persons claiming interests in the grant under the 1766 concession intervened as cross-defendants. The government in its answer contended that the 1766 grant undoubtedly had been forfeited and that the 1806 grant was limited to the land which was under cultivation in 1806.

The case came up for hearing on August 25, 1893 at which time a considerable amount of evidence was introduced. Five days later, the court handed down its decision[7] which held both the original grant in 1766 and the proceedings held in 1806 were genuine; that, if the original grant had been forfeited, the 1806 proceedings revalidated the entire grant; and that such revalidation inured to the benefit of the heirs of Pedro Martín Serrano. The government appealed the decision to the United States Supreme Court. Matthew C. Reynolds, the government's attorney, among other things contended that the court had erred in confirming the grant to the heirs of Pedro Martín Serrano. He believed that if the grant was to be confirmed, it should be confirmed "only to the plaintiffs for the interests which they might prove they held in the property." He pointed out that the evidence of ownership in this case was vague, indefinite, and

[4] Ibid.
[5] Ibid.
[6] *Martínez v. United States,* No. 30 (Mss., Records of the Ct. Pvt. L. Cl.).
[7] 1 *Journal* 208 (Mss. , Records the Ct. Pvt. L. Cl.).

depended on a mass of verbal testimony pertaining to the geneology of a large number of persons whose names were the same. He asserted that the Act of March 3, 1891,[8] which created the court, did not contemplate abstract confirmations. He felt that if the court's practice of confirming grants to the original grantee and his heirs and legal representatives was continued:

> … then where old papers can be found in possession of private individuals, or among the archives, although the grantee may never have taken possession of the property, may have abandoned it a century and a half ago, yet if some irresponsible Mexican can be found to swear he is the great-grandson of the original grantee named in the papers the Court will confirm a grant to an unlimited quantity in the abstract on the original grantee, his heirs and legal representatives. The danger of perpetration of frauds upon the government under the present construction of the act is very much greater than it ever has been from the forgery and the manufacturing of title papers and deeds.[9]

For some unexplained reason, the government decided not to further prosecute its appeal and it was dismissed on February 1, 1897.[10]

The grant was surveyed by Deputy Surveyor George H. Pradt between the 14th and 28th days November, 1897. The survey covered 49,747.89 acres. The grant was patented on July 21, 1902.[11]

[8] Court of Private Land Claims Act, Chap. 539, 26 Stat. 854 (1891).
[9] Report of the United States Attorney dated October 9, 1893 in *Martínez v United States* (Mss., Records of the General Services Administration, National Archives, Washington, D.C.), Record Group 60, Year file 9865-92.
[10] *Martínez v. United States,* 17 S.Ct. 1001, 41 L. Ed. 1185 (1897) (mem.).
[11] The Piedra Lumbre Grant, No. 73 (Mss., Records of the S.G.N.M.).

PLAZA DE 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 Cañón of the Río Grande.

Levy granted the request and appointed a commission comprised of Francisco Martine, Miquel Ortiz and 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 Martínez 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 José 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]

A claim for the confirmation of the grant was presented[2] to Surveyor General T. Rush Spencer on July 17, 1872, by José Ignacio García, José S. Martínez, 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

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

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...

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, 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]

[4] *Leitensdorfer v. Webb,* 1 N.M. 34 (1853).
[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).
[7] *Crespin v. United States,* 168 U.S. 208 (1897)
[8] Court of Private Land Claims Act, Chap. 539,. Soc. 6, 26 Stat. 854 (1891).

SAN ANTONIO DE LAS HUERTAS GRANT

In 1765 Juan Gutiérrez appeared before Governor Tomes Vélez Cachupín, for himself and on behalf of eight other families, registered a tract of vacant land situated at the foot of the Sandia Mountains, which was commonly known as Las Huertas. As justification for their request, Gutiérrez advised the governor he once had owned a rancho at the Pueblo of Santa Ana but was forced to sell it in order to pay his debts. Since then he had no place to raise the food necessary for the support of his large family or to pasture his animals. The sale of his rancho also had left the other eight families, who were his tenants, without a place to support their equally large families and livestock. He assured Cachupín that the tract had sufficient agricultural land and water to support the petitioners since "in former times" it had sustained at least that number of persons. The requested tract was more fully described as being bounded:

> On the north, by the brow or edge of the Casa Colorado Mountain; on the east, by the brow of the mountain on the San Pedro Road; on the south, by some red hills; and on the west, by some high hills; near Las Huertas.

Cachupín, on September 28, 1765, ordered the Alcalde of Santo Domingo, Bartolomé Fernández, to investigate and report on whether the granting of the tract to the petitioners would prejudice the natives of any Pueblo. In obedience to such order, Fernández went to the grant and, after fully investigating into the matter, reported that there was no impediment to the issuance of the concession. Owing to the death of Cachupín, no official action was taken on the petition. However, the petitioners settled upon the grant and commenced using and developing the premises.

Following the appointment of Pedro Fermin de Mendinueta as governor, Antonio Aragon and the twenty other families, who then were residing upon the grant, requested him, to proceed with the granting of the land to them. On December 31, 1767, Mendinueta, after reviewing the prior proceedings granted the land to the inhabitants of the Town of San Antonio de Las Huertas and directed Fernández to deliver royal possession of the land to the grantees; designate the boundaries of the grant, and allocate the agricultural lands amongst its residents. The governor noted that the amount of vacant land available for the new settlement was somewhat limited on the north, south, and west by the Pueblo of San Felipe, Town of Bernalillo and Pueblo of Santa Ana. Therefore, he instructed Fernández to extend the eastern boundary of concession so there would be a sufficient quantity of land available for the present settlers, subsequent settlers, and their increase. Pursuant to such instructions, Fernández went to the town thirteen days later and examined the surrounding land.

Finding the lands to be well watered by six springs he allotted the settlers the individual fields which they had opened and ordered them to proceed with their cultivation. He also designated a

town site and gave each settler a lot for the construction of a home. At the conclusion of his visit, he designated the boundaries of the grant and performed the customary ceremonies necessary to place the grantees in royal possession of their property. The boundaries were established as being located at the following natural objects:

> On the north, the ridge close to the town which runs to the crest of the hill near the watering hole called Una del Gatos; on the east, the place commonly called [the name of this natural object has been torn from the instrument]; on the south, the red hills which end in a ridge which is at the point of the Sandia Mountains; and on the west, the high hills near Las Placitos.[1]

The Town of San Antonio de Las Huertas steadily grew. At one time, it had a population of about 500 families but, due to a serious drought, many of its inhabitants moved to Algodones or Socorro. At the time the United States acquired New Mexico, there were approximately 200 persons living on the grant. While the original grant papers were filed in the Surveyor General's office on January 10, 1862, the owners of the grant did not request its investigation and confirmation for nearly twenty years.

On May 12, 1881 the heir and legal representatives of the twenty-one original grantees petitioned [2]Surveyor General Henry M. Atkinson seeking its recognition. Atkinson, in connection with his investigation of the claim, took the testimony of three of the interested parties Lucas Gurulé, José Aragon, and Antonio José Gallegos. Gurulé testified that shortly after New Mexico had gained its independence an Inspector General was sent to New Mexico to investigate the validity of grants made by the Spanish Government. When the Inspector General came to the grant its alcalde ordered him to go with the Inspector General to Santa Fe in order to examine the *expediente* of the grant. Gurulé stated that he saw the *expediente* which was on stamped paper, had a large seal, and had two distinguishing marks. Continuing, he stated that as a result of his investigation, the Inspector General recognized the grant. In an effort to explain the absence of any evidence of the grant in the Archives, Gurulé stated that a dispute had arisen between the, inhabitants and a tribe of hostile Indians who claimed a portion of the grant was their hunting ground. The inhabitants of the grant withdrew their *expediente* from the Archives to show it to the Indians and thereby establish their right to the land. Gurulé stated he had seen the *expediente* on two subsequent occasions. The first time was in 1856 at the home of José Leandro Perea. In 1862, he saw it in the possession of José Serafín Ramirez just prior to his filing it in the Surveyor General's office. In connection with the boundaries, Gurulé stated they wore located:

[1] The San Antonio de Las Huertas Grant, No. 144 (Mss., Records of the S.G.N.M.).
[2] Ibid.

> On the north, at the top of the ridge of the Chupaderos; on the east, the Ojo del Oso and the Cañón del Aqua; on the south, at the boundary of San Pedro and a high ridge; and on the west, by the little Cañón del Agua.

Aragon testified that its boundaries were located:

> On the north, at the Cuchilla del Espinoso; On the east, at the Ojo del Oso or Real de Dolores; on the south, at the Vado de San Pedro; and on the west, at the high hill called Cerro Colorado.

Gallegos described the boundaries as being situated:

> On the north, at the Mesa Blanca del Tunque; on the east, at the Ojo del Oso; on the south, at the Vado de San Pedro; and on the west, at the high mesas of the Huertas.

Since the grant had not been passed upon by either Atkinson or his successor, Clarence Pullen, Surveyor General George W. Julian, upon entering office, wrote the claimants' attorney and asked if he wished to submit any further evidence in connection with the case. In answer to this letter, the attorney advised him that he had withdrawn from the case and intimated that the case could not be made out owing to defects in the proof as to the boundaries. Therefore, Julian proceeded to examine the merits of the claim based on the record before him and, on December 24, 1885, rendered a lengthy unfavorable opinion.[3] First, he noted that the instructions which had been issued by the Commissioner of the General Land Office on August 21, 1854,[4] as a guide to Surveyor General William Pelham for the examination of private land claims, directed him to require the claimants to set forth their names. He pointed out that in this case the claimants had not been named but merely had been identified as the heirs and legal representatives of the original grantees. Next, he noted that even a cursory examination of the grant papers showed that it was not the document described by Gurulé for it had no large seal, no identifying marks, and was not written on stamped paper. However, in fairness to the claimants, he mentioned that a comparison of the signatures on the grant papers with those on contemporary papers in the Archives which were known to be genuine "showed a very strong similarity." Next, he called attention to the great variance in the documentary and oral evidence pertaining to the location of the boundaries of the grant. He especially noted that the boundaries which had been described by the witnesses would cause the grant to embrace the Town of Tejon Grant which had previously been confirmed and Patented. Therefore, he held:

[3] Ibid.
[4] S. Misc. Doc. No. 12, 42nd Cong., 1st Sess., 4 (1871).

> In view of the unsatisfactory n roof as to the existence and where-abouts of the original title papers as shown by the testimony of the witness Gurulé; the fact that such papers were not found in the Archives received from Mexico, and the want of satisfactory evidence that they ever constituted a portion of such Archives; the very great variance and discrepancy in the description of the lands in the petition to the governor, the certification of the Alcalde executed on delivery of possession and on the testimony of the witnesses in the case, and the further fact that 12,801.46 acres of land shown to be within the boundaries claimed by, the petitioners have been confirmed and patented to the inhabitants of the Town of Tejon under a grant claimed to have been made by the Spanish Government, I do not feel justified in recommending the confirmation of this claim by Congress. It is certainly not established under the recognized rule of law that if rights claimed under the Government are set up against it they must be so clearly defined that there can be no question as to its purpose to confer them. I, therefore, recommend the rejection of the claim.

Since Congress had not acted upon the claim prior to the creation of the land court, José H. Gurulé, notwithstanding Julian's unfavorable report, filed suit[5] against the United States asking for the recognition of the grant pursuant to Section 81 of the Act of March 3, 1891.[6] He alleged that the grant covered the lands which had been described on the Act of possession and, although the description of the eastern boundary of the grant had been torn out, he would be able to prove its location by competent testimony. He also stated that he had acquired his interest in the grant by inheritance. A large number of other parties claiming similar interests intervened as parties plaintiff. They claimed that the eastern boundary of the grant was notoriously well known. They especially called attention to the fact that Aragon and the other inhabitants of the grant had requested the governor to extend the grant on all four sides but, due to the proximity of other settlements on the north, south and west, he had authorized the requested extension only on the east side in order to locate that boundary along the brow of the mountain on the San Pedro Road.

Antonio José Gallegos instituted a similar suit[7] on March 3, 1893. On the motion[8] of the United States, the two cases were consolidated. The government, then, filed a general answer putting in issue the allegations contained in the two petitions.

The consolidated case came up for trial on May 18, 1897 at which time the plaintiffs tendered their grant papers and the court received them over the objections of the government. Gurulé offered oral evidence in an effort to show that the east boundary of the grant was located at the

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[5] *Gurule v. United States,* No. 90 (Mss., Records of the Ct. Pvt. L. Cl.).
[6] Court of Private Land Claims Act, Chap. 539, Sec. 8, 26 Stat. 854 (1891)
[7] *Gallegos v. United States,* No. 269 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] 2 *Journal* 70 (Mss., Records of the Ct. Pvt. L. Cl.).

old road from the Pueblo of Santo Domingo to San Pedro, which ran along the Arroyo Una del Gato. It also tended to show that the red hills which fixed the south boundary of the grant were located on the north side of the Sandia Mountains. Gallegos, in turn, offered oral evidence indicating that the San Pedro Road in question was one located fifteen to twenty miles further east and ran between the Real de las Dolores and San Pedro, and that the red hills were the ones located on the south side of the Sandia Mountains. This would cause the grant to contain approximately 130,000 acres and conflict with the Pueblo of San Felipe, Town of Tejon, San Pedro, Ortiz Mine, Real de los Dolores, Cañón del Agua, and Mesita de Juana López Grants. As a result of this variance, Gallegos requested and the court set the consolidation of the cases aside.[9] Thereafter, the trial of Gurulé's case proceeded and was submitted on May 20, 1897, but not decided by the court during that session. On October 2, 1897 Gallegos submitted his cause to the court after a full argument on its merits. The Court decided to reconsolidate the two cases, and on October 5, 1897, confirmed the grant according to the boundaries contended for by Gurulé. However, the entry of a decree was delayed for nearly two years as a result of a difference which arose between counsel for plaintiffs and government over whether the confirmation included the lands covered by the previously confirmed Town of Tejon Grant. To solve this problem, Gurulé, the intervenors, and government stipulated that the Town of Tejon Grant was an allotment under the San Antonio de Las Huertas Grant and the confirmation of the Town of Tejon Grant deprived the court of jurisdiction to approve that portion of the grant. Based on this agreement, the court entered a decree[10] on August 24, 1899, confirming the grant and ordering that it be surveyed as follows:

> The north boundary to be an east and west line through a point due north of the old plaza of Las Huertas, on the crest of the ridge known as the Casa Colorado, said boundary continuing east and west until the same intersects the east and west boundaries of such grant as hereinafter described:
>
> The east boundary of said grant to follow and conform to the west boundary line of the patented survey of the Tejon Grant and to be that portion of said west boundary line lying between the intersection with. said boundary of the north boundary hereinbefore described and the south boundary hereinafter described.
>
> The south boundary to be an east and west line through the center of the most northern of the group of red. hills lying southwest of the plaza of Las Huertas, which group are connected by a ridge with the northern end of the Sandia Mountains. The west boundary to be a line following the crest or highest point of the first range of high hills to the west of the said town of Las Huertas or Las Placitas, commonly known as the Lomas Altas, said line extending due north and

[9] 3 *Journal* 217 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] 4 *Journal* 98 (Mss., Records of the Ct. Pvt. L. Cl.).

south from the extremities of said high hills to its intersection with the north and south boundary lines as hereinbefore described.

Gallegos appealed the decision to the United States Supreme Court, but failed to have his appeal filed and docketed. Therefore, the Supreme Court, on March 19, 1900, dismissed[11] the proceedings. After the Supreme Court's mandate had been returned to the Court of Private Land Claims and the decree became final, an official survey of the grant, as confirmed, was made by Deputy Surveyor Levi S. Preston between December 21, 1900, and January 8, 1901 for 4,763.35 acres. A patent for grant was issued on June 28, 1907.[12]

[11] *Gurule v. United States,* 20 S. Ct. 1027, 44 L. Ed. 1221 (1900) (mem.).
[12] The San Antonio de Las Huertas Grant. No. 144 (Mss., Records of the S.G.N.M.).

SAN ANTONIO DEL RÍO COLORADO GRANT

Rafael Archuleta, Antonio Elias Armenta, and Miguel Montoya petitioned the Prefect of the First District of the Department of New Mexico, Juan Andrés Archuleta on February 8, 1842, requesting a grant covering a tract of vacant public land known as San Antonio del Río 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 Martín 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 Río Colorado.

Following the delivery of possession, Martín 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, José Miguel Sánchez 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 Río Colorado was a substantial community with some 300 families.[1]

Sixty-two of the residents of the Town of San Antonio del Río 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,

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

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 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 reexamined 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]

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 similarly 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

[3] S. Misc. Doc., No. 12, 42d Cong., 1st Sess 1-7 (1871).
[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).
[6] *Montoya v. United States,* No. 4 (Mss., Records of the Ct. Pvt. L. Cl.).

had 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]

[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.).

SAN MIGUEL DEL VADO GRANT
SAN MIGUEL DEL BADO GRANT

Lorenzo Márquez, for himself and fifty-one associates, petitioned the Governor of New Mexico, Fernando Chacón, for a grant covering the lands located on both sides of the Pecos River at the ford known as El Vado. The petitioners acknowledged that they owned a small amount of land at Santa Fe but stated it was not sufficient to support their large families. Therefore, they had mutually agreed to move to the eastern frontier of New Mexico where there was sufficient water and fertile land to start a new life. Since the lands they sought were deep in the heart of the Apache Country, the petitioners agreed to furnish their own firearms and ammunition and fortify the proposed settlement with bulwarks and towers. Chacón granted the land to the petitioners on November 25, 1794, and directed the Alcalde of Santa Fe, Antonio José Ortiz, to deliver legal possession of the grant to the interested parties, subject to the conditions and requisites necessary in such cases. On the following day, Ortiz assembled the fifty-two petitioners at Santa Fe and advised, them that in order to receive the grant, they would have to observe and fulfill the following conditions:

> **FIRST**. The grant was to he held in common, not only in regards to original grantees but also to all colonists who might join them in the future.
>
> **SECOND.** The colonists were to prepare for their mutual defense by equipping themselves with firearms or bows and arrows; provided that within two years each colonist, under penalty of forfeiting his rights, was to be equipped with firearms.
>
> **THIRD.** The colonists were to reside at the Pueblo of Pecos until they had constructed adequate fortifications on the grant for their protection.
>
> **FOURTH**. The colonists were to set aside small separate tracts of land on the grant for the benefit of the Alcalde of the Pueblo of Pecos.
>
> **FIFTH.** Work on the fortifications on the grant and its irrigation system was to be a community project.

The grantees unanimously accepted such conditions. Thereupon, the Alcalde and the grantees went to El Vado and proceeded to survey the grant. The survey covered all land located within the following boundaries:

> On the north, the Río de la Vaca, from the place called the Rancheria to the Agua Caliente; on the east, the Cuesta with the little hills of Bernal; on the south, the Cañón Blanco; and on the west, the place commonly called El Guzano.

Following the completion of the survey, Ortiz placed the grantees in legal possession of the premises with all the formalities required by law.

Pursuant to the terms and conditions of the grant, the grantees formed a settlement on the grant, which became known as the town of San Miguel del Vado. By 1803, the town had developed to the point where its inhabitants were anxious to receive title to the individual tracts which they had improved and were occupying. Chacón, on March, 1803, directed Pedro Baptiste Pino, Senior Alcalde of the Second Precinct of Santa Fe, to distribute all of the land within the grant which was under cultivation, among the fifty-eight families who then resided upon the grant. Pursuant to these instructions, Pino subdivided the arable land into small parcels on March 12, 1803, and caused the heads of families to draw lots for their individual farm tracts. The size of these tracts ranged from 49 to 230 varas in width with 38% of them having only 65 varas. Chacón approved and confirmed the distribution on March 30, 1803.[1]

During the Mexican era, San Miguel del Vado became one of the most important towns in New Mexico. In addition to having its own Ayuntamiento, it was made a Partido under the Central District of New Mexico. It was also a quasi presidio and important waystop on the Santa Fe Trail. Eight additional settlements —San Jose, Las Mulas, Entranosa, Puerticito, Guzano, Bernal, La Cuesta and Pueblo—had been established on the grant prior to the American acquisition of New Mexico and were under the jurisdiction of San Miguel del Vado. In 1853 Cura Ramon Ortiz was able to coax 900 of the 1,000 families who resided on the grant to retain their Mexican citizenship and migrate to Mexico. This loss stunted the further development of the area and to this date San Miguel del Vado has never regained its former prominence as a leading New Mexico town.[2]

Under date of March 18, 1857, Faustin Baca y Ortiz, the Justice of the Peace of San Miguel del Vado, for and in the name of the inhabitants of the settlements of La Cuesta, San Miguel, Las Mulas, El Pueblo, Puerticito, San Jose, Guzano and Bernal, filed a petition in the Surveyor General's office seeking the confirmation of the San Miguel del Vado Grant. On November 13, 1879, Surveyor General Henry M. Atkinson made his report to Congress. He noted that while the grant had been requested by and issued to Lorenzo Márquez for himself and his fifty-one associates, the names of these associate were not listed in any of the grant papers. Atkinson contended that the law was clear that title could vest only in persons who either had been "named or so clearly described as to leave no question as to who they were." Therefore, he recommended that the grant be confirmed to the heirs, legal representatives and assigns of Lorenzo Márquez.[3]

[1] S. Exec. Doc. No. 63, 46th Cong., 3d. Sess., 77-81 (1881).
[2] Bancroft, History of Arizona and New Mexico, 312 (1889).
[3] The San Miguel del Vado Grant, No. 119 (Mss., Records of the S.G.N.M.).

A preliminary survey of this claim was made in November and December, 1879, by Deputy Surveyor John Shaw, which showed that it covered an area of 315,300.80 acres.

Surveyor General George W. Julian reinvestigated the claim and in a supplemental report dated December 6, 1886, recommended the confirmation of the grant to the heirs, legal representatives, and assigns of Lorenzo Márquez for themselves and in trust for the heirs and legal representatives of the other grantees referred to in the grant papers.[4] The Commissioner of the General Land Office on May 13, 1887, advised Secretary of Interior L. Q. C. Lamar that he believed the survey was grossly in excess of the quantity which originally had been granted. He, therefore, recommended that in the event Congress confirmed the claim that it be limited to the land actually occupied by the inhabitants of the grant.[5] Notwithstanding all of these proceedings, no action was taken by Congress in reference to the grant, either looking towards its confirmation or rejection.

Following the creation of the Court of Public Land Claims in 1891, three suits were filed seeking the recognition of three conflicting claims to the grant. The first was filed[6] on August 2, 1892, by Julian Sandoval, Gregario Roybal, Angel Dimas, Calarino Sena, Thomas Gonzales, Juan Gallegos and Ramon Gallegos, on their own behalf and as authorized commissioners and agents of the residents and settlers upon the grant against the United States for the recognition of their claim to the lands covered by the grant. The second suit[7] was filed on January 16, 1893, by Levi P. Marton, who claimed to be the owner of the grant by virtue of conveyance from the heirs of Lorenzo Márquez. The third suit was filed[8] On March 2, 1893, by Juan Márquez and Sylvester Márquez for themselves and the other heirs and legal representatives of Lorenzo Márquez for the recognition of their claim to the grant. Both Marton and Juan and Sylvester Márquez claimed that Lorenzo Márquez took title to the entire grant because the other fifty-one grantees were not named in the testimonio. The three cases were consolidated for purposes of the trial since all three claims covered the same lands and were based on the same grant.

The consolidated case came up for trial on April 18, 1894. The validity of the grant papers was readily recognized by the government, but it denied that the grant covered any lands which had not been allocated prior to 1846. A majority of the court rejected this contention. Next, the court proceeded to resolve the conflicting claims presented by the plaintiffs by holding that the distribution of the individual tracts in 1803 rendered certain the identity of the grantees. Thereupon, the court dismissed the suits filed by Levi Marton and Juan and Sylvester Márquez and confirmed title to the entire grant in the name of Lorenzo Márquez and his co-petitioners and

[4] Report of the Secretary of Interior, 283-284 (1887).
[5] Ibid., 284.
[6] Sandoval v. United States, No. 25 (Mss., Records of the Ct. Pvt. L. Cl.).
[7] Marton v. United States, No. 60 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] Marquez v. United States, No. 198 (Mss., Records of the Ct. Pvt. L. Cl.).

all other persons who had settled upon the grant prior to December 30, 1848.[9] The government appealed the decision to the United States Supreme Court which reversed the Court of Private Land Claims and held that title to the unallocated lands within the exterior boundaries of the grant passed to the United States under the Treaty of Guadalupe Hidalgo. The Supreme Court then remanded the case to the Court of Private Land Claims for further proceedings in order to determine the extent of the allocated lands.[10]

On December 12, 1900, Clayton G. Coleman was approved as a Special Commissioner to go upon the grant and ascertain the boundaries of the allocated lands. Coleman reported that there were approximately 5,000 residents living on the grant, and that the allocated lands, which were owned by 747 claimants, were located in ten tracts and covered, a total area of approximately 3,539.71 acres. The court approved Coleman's report and ordered the grant surveyed in accordance with Coleman's findings. The grant was surveyed by Deputy Surveyor Wendell V. Hall in 1903. Hall's survey showed that the ten tracts contained the following acreage:

Tract No.	Acreage
1	177.65
2	3,570.02
3	141.43
4	205.24
5	185.61
6	225.65
7	555.26
8	6.94
9	14.26
10	125.67
Total	**5,207.73**

A patent was issued on January 6, 1910, to Roman Gallegos and Francisco R. Martínez, the President and Secretary of the Board of Grant Commissioners of the Private Land Claims known as the San Miguel del Vado Grant, for the tracts described in the Hall Survey.[11]

The grant, like the Town of San Miguel del Vado, shrank to a mere shadow of its former grandeur as a result of the American occupation of the area. Today the mountain pockets along the Pecos River hold the vested remains of this once magnificent estate.

[9] 2 Journal 111-117 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] United States v. Sandoval, 167 U.S. 273 (1897).
[11] The San Miguel del Vado Grant, No. 119 (Mss., Records of the S.G.N.M.).

SAN PEDRO GRANT

A group of landless citizens of New Mexico petitioned Governor Facundo Melgares on February 24, 1820, for a grant covering a tract of vacant land at the site called San Pedro which was bounded:

> On the north, by the terminus of the lands of the Pueblo of San Felipe; on the east, by the Ojo de Tuerto and its commons; on the south, by the Cañón del Agua; and on the west, by the bank of the Río Grande.

Two days later Melgares granted the petitioners request. They promptly moved to the grant and formed a new settlement, which was called Los Huertas.

Due to a sudden increase' in the Indian disturbances, Governor José Antonio Vizcarra on April 23, 1823, ordered the Alcalde of Alameda to move all of the inhabitants of Los Huertas to Alameda. In obedience to the governor's decree, Alcalde Pedro Perea resettled the grantees at Alameda and set aside a tract of land for their use. This tract was subdivided into a number of lots distributed among the former inhabitants of Los Huertas. As time went by all of the lands in the vicinity of Alameda were appropriated.

Since there were no vacant lands at Alameda, Jesús de Miera and Ramon Gurulé, for themselves and on behalf of twenty other persons, each of whom was a descendant of the settlers from Los Huertas petitioned the prefect of the Second District of New Mexico, Antonio Sandoval, on August 16, 1839, seeking a grant covering a smaller tract of land at San Pedro. The boundaries of this tract were described as being located:

> On the north, at the outlet of the Arroyo de Chimal; on the east, at the little mountain on a line with Ojo de Tuerto; on the south, at the outlet of the Arroyo de San Antonio; and on the west, at the Sandia Mountain.

Sandoval transmitted the petition to the Alcalde of Bernalillo on the following day, requesting a report upon the merits of the petition. On August 22, 1839, Alcalde Pedro José Perea advised Sandoval that the requested tract was located on the edge of Sandia Mountain and about four leagues east of Bernalillo. He estimated the requested tract to be approximately one and a half leagues in length and about one league in width. He stated that the grant contained all of the conveniences necessary to support the petitioners, each of whom was well behaved and landless and many had large families. Therefore, he recommended the issuance of the grant and assured the prefect that the petitioners needed the land and would not abandon the grant unless they were required to do so by competent authorities or as a result of the incursions of the hostile Indians. Sandoval received the report on the following day, promptly granted the petitioners' request and

directed Perea to place them in possession of the premises on condition that the grant was to be used for agricultural purposes and would in no way cause injury to any third party. Before possession could be delivered, Juan Armijo, who occupied a portion of the property, objected to issuance of the grant and a lengthy suit ensued. In view of this litigation, the alcalde refused to place the grantees in possession of the grant but guaranteed to do so as soon as the dispute had been settled. This controversy was finally compromised on November 26, 1844, when eight of the grantees, who had not abandoned their interests, authorized Armijo to remove certain timber which he had cut in consideration for his acknowledging that he had no legal claim to the premises. Once this obstacle was removed Ramon Gurulé and seven other grantees petitioned Perea for a revalidation of the concession in their favor. On November 7, 1844, Perea re-granted the premises to the eight interested parties on condition they settle upon the land within one year. Each of the eight grantees was given a 300 *vara* farm lot. An area 5,000 *varas* to the north, 5,000 *varas* to the east, 4,000 *varas* to the south and 5,000 *varas* to the west of the eight farm lots (which comprised a 2,400 *vara* agricultural tract) was set aside for pastural purposes. Thus, the grant allegedly covered a "total of 21,400 *varas."*

José Serafín Ramirez y Casanova, for himself and as attorney for the inhabitants of the San Pedro Grant, appeared before Governor Manuel Armijo on November 29, 1845, requesting the extension of the southern boundary of the grant southward to the Lagunitas de Indios and the Caja de los Fecunditas in order to include a full league of pasture land in accordance with the Colonization Law. Armijo sent the petition to the Department Assembly which promptly returned it to him with the recommendation that the request be granted. Whereupon Armijo revalidated the grant and approved the extension of the southern boundary of the grant in accordance with the petitioners prayer.[1]

By mesne conveyances dated between 1846 and 1856, Ramirez purchased or acquired by inheritance the interests of the eight grantees. On January 27, 1857, he petitioned Surveyor General William Pelham asking that the grant be confirmed to him. In support of his claim he filed the *testimonio* of a portion of the grant papers, a certified copy of the balance of the grant papers which had been certified by Acting Governor Donaciano Vigil as being a copy of the originals which were in the Secretary's office and under his charge, and the deeds evidencing his acquisition of the grant. Pelham held a hearing in connection with the claim on the 23rd and 24th of July, 1857, at which time the testimony of five witnesses was taken. This testimony tended to prove that the grant papers and deeds were genuine and that Ramirez had held quiet and peaceful possession of the premises since 1848. Based on this evidence, Pelham announced his decision on August 28, 1857, in which he found the grant to be good and valid.[2]

[1] H.R. Report No. 457, 35th Cong., 1st Sess., 221-228 (1858).
[2] The San Pedro Grant No. 14 (Mss., Records of the S.G.N.M.).

The San Pedro Grant was one of the thirty-two grants confirmed by Congress in the Act of June 21, 1860.[3] The grant was surveyed in August, 1866, by Deputy Surveyor W. W. Griffin for 35,911.63 acres. The survey located the southern boundary of the grant at the Las Lagunitas de Indios and the Caja de los Fecunditas. The survey was rejected by Commissioners of the General Land Office, S. S. Burdett, on October 31, 1874, on the ground that Ramirez's petition dated January 27, 1857, had sought only the confirmation of his claim insofar as it was based upon the grant made by Sandoval in 1839; and therefore, the Act of June 21, 1860, had not confirmed the "extension grant" made by Armijo on November 29, 1845. The grant was subsequently resurveyed for 31,594.76 acres and patented on the corrected field notes on May 20, 1875.[4]

[3] An Act to confirm certain private land claims in the territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).
[4] The San Pedro Grant No. 14 (Mss., Records of the S.G.N.M.).

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 Andrés Archuleta, the Prefect of Río 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 turns, referred the matter to the Alcalde of Taos, José Miguel Sánchez 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, Sánchez went to the grant and made the following survey of its lands.

> Commencing on the east side of the Río 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 Río Grande where the fifth and last mound was erected, from thence in a direct line to the place of beginning.

After completing the survey, Sánchez 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 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

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

were presented against his estate. Therefore, his administrator, Joseph Pley, with the approval of the Probate Court sold Lees 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 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 twenty-two leagues was void. He insisted that inasmuch as the Surveyor Generals 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]

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

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-two leagues.[9] Pursuant to the decision, a contract was entered into with Deputy Surveyor E. H. Kellog to survey the grant. Kellogs 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 o 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 N. 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 land in question to the United States under the Compromise of 1850[11] and therefore, they unquestionably belonged 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]

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

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]

[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).

SANTA BÁRBARA GRANT

Valentn Martín, Eusebio Martín and Juan Olgin, for themselves and thirty-eight associates, petitioned Governor Fernando Chacón for permission to resettle the abandoned Town of Santa Bárbara[1] and grant them the lands formerly belonging to that settlement. In a decision dated January 11, 1796 Chacón noted that the former inhabitants had forfeited their rights by abandoning the Town of Santa Bárbara and 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 García, 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, García placed the grantees in royal possession of the grant, which he described as having the same boundaries as the first settlement of Santa Bárbara, which were:

> From east to west from the boundaries of the Pueblo of Picurís; 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 Bárbara, El Llano, and El Llano Largo - and had a total population of about 200 families.[2]

On May 14, 1878 a petition[3] was filed in the Surveyor General's office by Concepcion Leyva, Prudencio Martínez and José 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

[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.
[2] S. Exec. Doc. No. 63, 46th Cong., 3d Sess., 28-37 (1881).
[3] The Santa Barbara Grant, No. 114 (Mss., Records of the S.G.N.M.).
[4] Ibid.

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, García apparently described the boundaries of the abandoned tract and redesignated the same as the boundaries of the Town of Santa Bárbara Grant. Although García 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 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 Generals 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, 1891.[8] The Easley Survey showed that the grant contained 30,638.28 acres. Thus, the Santa Bárbara 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]

[5] Ibid.
[6] *Martínez 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.).
[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.).

SANTA CRUZ GRANT

During his successful entrada into New Mexico in the fall of 1692, Governor Diego de Vargas subdued twenty-three Indian pueblos and restored the capitol at Santa Fe to the Spanish Empire. Following his return to El Paso del Norte, Vargas quickly formulated plans for the recolonization of New Mexico. While most of the New Mexicans who had been driven out in 1680 expressed a willingness to return to their former homes, they were in such a destitute condition that it was obvious they could not make the move without assistance. Therefore, the Royal Treasury advanced Vargas forty thousand pesos to finance the enlistment of one hundred soldiers to staff the presidio, which was to be reestablished at Santa Fe, and to gather, transport and purchase supplies of the colonists who agreed to join Vargas in the reoccupation of Santa Fe. The Viceroy, Condi de Galve, also agreed to send Vargas a number of families from Mexico City who had volunteered to join in the refounding of the Northern Province.

After several months of preparations, the colonization expedition was ready to start. It consisted of one hundred soldiers, seventy families, some widows, single persons and servants, and seventeen Franciscan friars, in all, over 800 persons. Of the seventy families, twenty-seven were Negroes and mestizos, rounded up by Vargas at Zacatecas, Sombrerete and Fresnillo. The balance were full-blooded Spaniards, most of whom were former residents of New Mexico. On October 4, 1693, the main body of the expedition pulled out of El Paso del Norte amid great pomp and ceremony. After a difficult trip and minor skirmishes at a number of the pueblos, the expedition finally arrived at Santa Fe, which was retaken on December 30, 1693, following a two-week siege. With the recapture of Santa Fe, the Spaniards regained a tenuous foothold in New Mexico. Only four of the twenty three pueblos fulfilled the promises they had made in 1692.[1]

The success or failure of the recolonization of New Mexico hinged upon the colony's success in enduring the terrific hardships which it faced on the isolated frontier. The continuing hostility of most of the pueblo Indians prevented the colonists from planting their fields and they were forced to live off the grain seized from the enemy. Early in June, 1693, Vargas sent the Viceroy a report in which he called attention to the destitute condition of the colonists at Santa Fe. They did not have a single head of livestock and had only 500 horses. Since they were constantly on guard duty, they had little or no opportunity to plant a spring crop or in any way provide for their self-support. Therefore, Vargas requested additional supplies. The immediate economic plight of the city was increased with the arrival, on June 23, 1694, of the sixty-six and a half families consisting of 234 persons who had been sent to Santa Fe from Mexico City by the Viceroy. While the arrival of these reinforcements insured the military success of the reconquest, the additional mouths severely taxed Vargas' dwindling resources. Conditions would undoubtedly

[1] Espinosa, *Crusaders of the Rio Grande* 35-162 (1942).

worsen before they improved for at this very time more immigrants were being recruited in Mexico by Captain Juan Paez Hurtado.

Realizing that the continual supplying of Santa Fe from Mexico would be unreliable and expensive, Vargas decided to risk an immediate offensive campaign to crush the Indians' resistance before winter arrived. After a short, but humane campaign, all of the pueblos, except Picurís and Taos, were pacified. However, once peace was restored, the Spaniards could no longer seize the Indians' grain. Thereafter, the colonists were temporarily totally dependent on Mexico for food supplies. To alleviate this dangerous situation, Vargas decided to reoccupy the ruined and abandoned Spanish haciendas in valleys surrounding Santa Fe, where both land and water were limited, but would also provide a buffer zone between the capitol and Apaches.[2]

On March 18, 1695, Vargas ordered Lieutenant Governor Luis Granillo, Sergeant Juan Ruiz de Casares, and Alcalde Matias Luján to reconnoiter the Santa Cruz River Valley for a suitable place to settle the immigrants from Mexico City. They found the lands in the vicinity of the Pueblos of San Cristóbal and San Lázaro to be ideal.[3] Since the lands upon which these two pueblos were located formerly had belonged to Spaniards, Vargas had no compunction against ordering their inhabitants to vacate the lands and improvements in order that the Mexico City colonists might settle in the comfortable quarters offered by the pueblos. He directed the inhabitants of San Lázaro to return to San Juan and those of San Cristóbal to move to the Cañada de Chimayó. While the Indians raised no objections to Vargas' decree directing them to move, they requested permission to plant and harvest their annual crops of maize before they were required to vacate the premises. On March 20, 1695, Vargas, after carefully reconsidering the matter, held that the inhabitants of San Lázaro could either return to San Juan or join the inhabitants of San Cristóbal. However, the prompt surrender of the lands at San Lázaro was essential in order to give the Mexico City immigrants an opportunity to plant crops that year and thereby become self-sufficient. Since the immigrants being raised by Hurtado, who were to be settled at San Cristóbal, would not arrive in time to plant a crop, Vargas saw no reason why the removal of the San Cristóbal Indians could not be postponed until after harvest time. Therefore, he granted their request to that extent.[4]

On April 19, 1695, Governor Vargas, after having been advised that the Indians had vacated the pueblo of San Lázaro, proceeded with the resettlement of all of the Mexico City immigrants at that San Lázaro in order that they might:

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[2] Ibid., 176-224.

[3] Many of the inhabitants of San Lázaro had lived at the Pueblo of San Juan but had formed a new pueblo at that site after 1680. The San Cristóbal was located about four leagues southeast of San Juan and one league from San Lázaro. It was inhabited by a tribe of Tano Indians who, before the Pueblo Revolt, had lived southwest of Santa Fe, but had moved to the Santa Cruz Valley due to the hostility of the Pecos Indians, *Ibid.,* 78.

[4] Archive No. 882 (Mss., Records of the A.N.M.).

> … be together without the intrusion of any others, in view of their union, and in order that they may be contented, they having come from one place and country .... (and he designated) the said pueblo, its dwelling houses, its cleared agricultural lands, drains, irrigation ditches, and dam or dams which the said native Indians had and did have for irrigation and for the security of raising their crops...[5]

In connection therewith, Vargas granted the new settlers:

> … the woods, pastures and valleys which the said natives had and enjoyed, without prejudice to the farms and ranches which lie within the limits and district, and all of that which it covers and may contain as far as the pueblos of Nambé, Pojoaque Jacona, San Ildefonso, Santa Clara and San Juan de los Caballeros, giving these as the boundaries of the tract which the settlement may enjoy, hold and have, and which I make a seat and town, and also possession of the houses which may be given or assigned to them in person; and furthermore, the honorary title of "Villa Nueva de Santa Cruz de Españoles Mexicanos del Rey Nuestro Señor Carlos Segundo," which in the name of His Majesty, I give to said settlement, and I constitute and grade it as the first new settlement, and as such it shall enjoy priority of settlement, with the understanding that this city of Santa Fe is the first, and in it only shall be held the election of the members of the illustrious council, but each shall have its civil authority, which shall be composed of an alcalde mayor and war captain and lieutenant, with the title of captain of militia, Alferez, and sergeant, the said settlement being limited to four squad corporals and Alguazil de Guerra who shall go out on scouting expeditions with the said captain of militia and other officers alternating every month, and they shall have this type and form of government because of being on the frontier... Since I have given them cleared and broken land and of known fertility, with their drains and irrigation ditches and dams in good condition and with the irrigation secured, and also new houses, because the said pueblo is new, and they have nothing to do but to go and live in them and make use of the lands …[6]

In addition to their grant and ready made homes, it was also agreed that the colonists were to be transported to the grant at government expense and each family would be furnished with beef, half a *fanega* of seed corn, farm tools and implements with firearms. What more could a colonist ask in order to begin a new life? However, it should be remembered that these families were all of "good character" and had been advised by the Viceroy that they were "noble settlers" and would be rewarded with the honors which belonged to them as colonizers.[7]

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[5] Ibid.
[6] Ibid.
[7] Espinosa, *Crusaders of the Rio Grande* 113 (1942).

The Mexico City families left Santa Fe at nine o'clock on the morning of April 21, 1695, and arrived at Santa Cruz on the following day, whereupon Vargas performed the formal ceremony of placing the settlers in possession of the grant without prejudice to the boundaries of the land belonging to the adjoining pueblos. At this time, he also granted the settlers "all the minerals which might be found on the Chimayó Mountain range."[8] At this point, Governor Vargas had to return to Santa Fe to attend to certain business which required his personal presence, but he directed Lieutenant Governor Granillo to allot and distribute a separate farm tract to each family "sufficient for the planting of one-half a *fanega* of maize." On the way back to Santa Fe, Vargas stopped at the Pueblo of San Cristóbal and reconfirmed the permission he had given the Indians to plant and harvest their chops before moving. However, he ordered them to immediately commence the construction of a new pueblo at the Cañada de Chimayó in order to have it ready for occupancy during the month of October of that year.[9]

Captain Hurtado arrived at Santa Fe on May 9, 1695, with forty-four families which he had induced to migrate from Zacatecas to New Mexico. They were temporarily lodged in the quarters vacated by the Mexico City colonists since they could not be settled at San Cristóbal at that time.[10] It would appear that sometime prior to the first of December, 1695, the Indians were moved out of San Cristóbal and the Hurtado colonists replaced them. It also seems that instead of settling the Indians in their new pueblo in the Cañada of Chimayó, which apparently was also called San Cristóbal, Vargas changed his mind and ordered them to move to Galisteo. Whereupon, the Indians rebelled and fled to the Chimayó Mountains with their belongings.[11] Vargas was not able to pacify these Indians until 1697, at which time he forced them to temporarily settle at Galisteo.[12] However, due to the adverse conditions at Galisteo, they were permitted to move back to the upper Santa Cruz Valley a few years later.

On July 2, 1697, Pedro Rodríguez Cubero succeeded Vargas as Governor. During the next six years, there was little progress in New Mexico, It was a period noted for the political bickering between Vargas and Cubero. Much to the dismay of Vargas, Cubero encouraged the settlers at the Villa of Santa Cruz, which by this time included the Spanish settlements at both San Lázaro and the original pueblo of San Cristóbal, to scatter into the outlying sections, thereby causing the virtual abandonment of this strategic bulwark for the defense of the northern frontier of New

[8] Archive No. 882 (Mss., Records of the A.N.M.).
[9] Ibid.
[10] Ibid.
[11] Espinosa, *Crusader of the Rio Grande* 233 (1942). One can certainly understand the Indians not wanting to move to the uninviting Galisteo area. They undoubtedly were resentful over this change in plans for they had agreed to vacate San Lázaro and San Cristóbal only in consideration of Vargas' promise to grant them the lands in the Cañada de Chimayó. 2 Twitchell, *Spanish Archives of New Mexico* 246 (1914).
[12] Espinosa, Crusaders of the Rio Grande 303 (1942).

Mexico. Vargas succeeded Cubero and took over the duties of Governor on November 30, 1703.[13]

Less than a month later the remnants of the Villa of Santa Cruz petitioned Vargas seeking the confirmation of their grant which they described as being bounded:

> On the north, by the lands of the Indians of San Juan; on the east, by the lands of the Indians of San Cristóbal; on the south, by the Mesilla de San Ildefonso; and on the west, by the Río Grande.

They stated that Cubero had refused to recognize the grant on the grounds that there was "no instrument to show that the land had been granted to them."[14] Vargas notified the petitioners on December 1, 1703, that they should present their petition to the Judge of the Court of Inquiry when he arrived. On February 9, 1704, the inhabitants of Santa Cruz again petitioned Vargas stating that the Judge of the Court of Inquiry had not arrived and requesting prompt action on their petition; because they feared that if the grant was not confirmed by planting time, the Indians from the adjoining pueblos would attempt to appropriate the lands. Vargas advised the Alcalde of Santa Cruz to inform all of the interested parties that he would investigate the matter during his next general visit to Santa Cruz. Vargas arrived at the Villa of Santa Cruz on February 13, 1704, and found it depopulated except for six families. However, there were sixteen families living on ranches in the area who had received grants from Cubero. Thirty-eight other persons petitioned the Governor for the recognition of their separate titles to a number of individual farm tracts which had been purchased or inherited from some of the original grantees. After investigating the merits of the petition, Vargas granted the land to the petitioners in accordance with their petition of December 1, 1703, but without prejudice to the new settlers. However, he prohibited the Alcalde of Santa Cruz under penalty of loss of office from authorizing sales made in violation of the law forbidding the alienation of the individual allotments for a period of four years from the date of the grant.[15] Shortly thereafter, Santa Cruz developed into one of the most populace and important cities in New Mexico. At the time the United States acquired New Mexico, it was known as one of the "wildest" towns in the southwest. Joseph Miller states that before railroad times, it was a "holy terror" and that the "only decent folks in it were the French Padre... and a German named Becker," who had the government forage station.[16]

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[13] Ibid., 311-354.

[14] It is difficult to understand this statement for Archive No. 882 was undoubtedly in the Archives at Santa Fe. Perhaps it has reference to the fact that Vargas had not made a separate grant to 44 colonists who had been settled at San Cristóbal or to the fact that the grant covering the lands of San Lázaro did not specify the location of its eastern boundary.

[15] *Becker v. United States,* No. 194 (Mss., Records of Ct. Pvt. L, Cl.). A copy of these proceedings were discovered in the National Archives at Mexico City.

[16] Miller, *New Mexico A Guide to the Colorful State* 296 (1962)

Thus, it is not surprising to find Frank Becker filing suit[17] for himself and on behalf of the other heirs and legal representatives of the original grantees against the United States in the Court of

[17] *Becker v. United States,* No. 194 (Mss., Records of the Ct. Pvt. L. Cl.). Thomas Cabeza de Baca petitioned Surveyor General T. Rush Spencer on April 2, 1872, for the recognition of his claim to a tract of land known as the Rancho de Santa Cruz Grant which he had acquired by inheritance from his great grandfather, Luis María Cabeza de Baca. This tract was described as being bounded:

> On the north, _____: on the cast, the top of the Ceja between the Santa Fe River and the Rio Grande; on the south, a point near the north line of the Cochiti Indian Reserve; and on the west, the Rio Grande.

The tract was described as extending 12 miles from east to west and 8 miles from north to south. No documentary evidence accompanied the petition other than Luis María Cabeza de Baca's will. Baca stated that he believed that a grant had been made by authority of the Spanish crown to his great grandfather sometime prior to 1824, and the original title papers had been lost. The Surveyor General's office took no action on the claim. The Rancho Santa Cruz Grant, No. F103 (Mss,, Records of the S.G.N.M.). It would appear that this claim was either an allotment under the Santa Cruz Grant or out of the individual grant made by Governor Cubero. Baca tiled suit for the confirmation of his claim in the Court of Private Land Claims on March 2, 1893. *Baca v. United States,* No. 181 (Mss., Records of the Ct. Pvt. L. Cl.). He alleged that his claim covered approximately 60,000 acres. On May 14, 1898, the government filed a demur in which it pointed out that the plaintiff's petition did not set forth sufficient facts to show that a complete and perfect grant had been made by Spain or Mexico. Baca filed a motion on July 6, 1898, announcing that he no longer wished to prosecute his claim. Whereupon, the court dismissed his petition and rejected the claim, 4 Journal 16 (Mss., Records of the Ct. Pvt. L. Cl.). Francisco A. Romero filed suit in the Court of Private Land Claims on March 3, 1893, seeking the confirmation of a grant which allegedly had been made to Francisco Xavier Romero by Governor Felix Martínez on October 17, 1716. *Romero v. United States,* No. 262 (Mss., Records of the Ct. Pvt. L. Cl.). The grant was described as being bounded:

> On the north, by the river; on the east, by the lands of Antonio Silva; on the south, by the hills; and on the west, by the ditch of the Mexican river families.

The claim was supported by Archive No. 741 which showed that Romero had petitioned Martínez asking for the revalidation of a grant of one *fanega* of corn planting land and a half *fanega* of wheat planting land which had been granted to him by Governor Pedro Rodríguez Cubero in 1696. The revalidation was requested since the original grant paper was badly "mouse eaten". Martínez found that justice was on the side of petitioners and granted the request. He also directed the Alcalde of Santa Fe to place him in possession of the premises. When the case came up for trial on December 11, 1900, the government pointed out that the grant was apparently merely an allotment since it was located within the Santa Cruz Grant, which had just been confirmed by the Court on that very same day. Whereupon, the plaintiff announced that he no longer wished to prosecute his suit. As a result of his action, the Court dismissed his petition and rejected the grant without prejudice to his rights, if any, under the Santa Cruz Grant. 4 Journal 230 (Mss., Records of the Ct. Pvt. L. Cl.).

Private Land Claims on March 2, 1893, for the confirmation of the Santa Cruz Grant. Becker asserted that the grant contained approximately 64,000 acres and was bounded:

> On the north, by the league of the San Juan Pueblo Indians; on the east, by and including the lands of the ruined Pueblo of San Cristóbal and the upper and lower Cañadas; on the south, by the leagues of the San Ildefonso, Pojoaque and Nambé Pueblo Indians; and on the west, by the Río Grande.

The case came up for trial on November 28, 1896. The plaintiff tendered as evidence their title papers, the genuineness of which was beyond dispute and oral testimony showing that the grant had been occupied and used since time immemorial. The government, in turn, offered oral testimony tending to show that the claim extended no further east than the Cañada de Chimayó. Becker rejoined by arguing that its eastern boundary was located along the ridge of the Chimayó Mountains which were also known as Sierra Mosca. In its closing argument, the government contended that while a grant had been made at an early date, the 1704 proceedings showed that the original settlement had been abandoned and that a large number of persons applied for and received confirmation of only their individual strips of land. In the alternative, the government argued that the grant was a community grant and, therefore, under the Supreme Court's decision on the San Miguel del Vado Grant,[18] any confirmation should be limited to the lands held by the residents of the grant in severalty. Continuing, the government argued that if either of these contentions were correct the claim should be rejected since the plaintiff had failed to allege and prove the extent of such claims or connect themselves with the original grantees.

On September, 5, 1899, the Court announced its opinion confirming the grant[19] as a community grant to the extent of the agricultural or valley lands lying in the valley of the Santa Cruz River as far east as Chimayó and also the lands on the east bank of the Río Grande lying between the patented lands of the Pueblos of San Juan and Santa Clara. Thus, the Court sustained the government's arguments concerning the character of the grant papers and the extent of the claim, but overruled its contentions that the claim should be rejected due to the plaintiff's failure to connect themselves to the original grantees and delineate each of the individual allotments. In its formal decision dated December 11, 1900, the Court confirmed the grant to the plaintiff for the use and benefit of all settlers owning and holding any specific piece or parcel of land within the following described tract of land:

> Beginning on the south boundary of the San Juan Pueblo league as surveyed and patented at its intersection with the east bank of the Río Grande, thence east along the south boundary of the San Juan Pueblo league to the brow of the elevation first east of the Río Grande; thence along said brow to the brow of the elevation first north of the Santa Cruz

[18] *United States v. Sandoval,* 167 U.S. 278 (1897).
[19] 4 Journal 231 (Mss., Records of the Ct. Pvt. L. Cl.).

River; thence in an easterly direction along said brow last mentioned to a point due north of the junction of the Quemado and Santa Cruz Rivers; then due south through said junction to the brow of the elevation next south of Santa Cruz River; thence westerly along the brow of said elevation to the east boundary of the Santa Clara Pueblo league; thence north along said east boundary to the north boundary of the Santa Clara Pueblo league; thence west along said north boundary to the east bank of the Río Grande, and thence north along said east bank to the point of beginning.[20]

The government's attorney in his report on the case to the Attorney General stated that while the decision probably was not technically correct, he did not feel that an appeal would be successful and even if successful, the holders of the lands in question could still secure title under the small holdings section of the Act. As a result of this report, the government did not appeal the decision.[21]

The grant was surveyed by Deputy Surveyor Joseph F. Thomas in May and June, 1901, for 4,567,60 acres. The grant was patented on July 7, 1910.[22]

[20] Ibid.
[21] Report of the United States Attorney dated January 15, 1901, in the case *Becker v United States* (Mss., Records of the General Series Administration, National Archives, Washington, D.C.), Record Group 60, Year File 9865-92.
[22] The Santa Cruz Grant, No. C.D. 194 (Mss., Records of the S.G.N.M.).

SANTO DOMINGO DE CUNDIYÓ GRANT

José Ysidro de Medina, Manuel de Quintana, Marcial Martínez and Miguel Martínez petitioned Governor Gaspar Domínguez de Mendoza for a grant covering about three fanegas of vacant land at the place called Cundiyó. They stated that they were practically landless and had registered the premises in order to support their large families. The requested tract was described as being bounded:

> On the north, by the Pueblo of Quemado; on the east, by the mountains; on the south, by the Arroyo Sarca and the Nambé Pueblo League; and on the west, by the lands of Juan Martín.

In a decision dated August 31, 1743, Mendoza held "the petition cannot be granted because of the prejudice it would cause the neighborhood in the pasturage and because of the smallness of the territory." At the request of the applicants, the Alcalde of Santa Cruz, Juan José Lovato advised Mendoza that he knew of no reasonable objection which could be raised against the granting of the lands at Cundiyó and asked him to reconsider the matter. On September 12, 1743, Mendoza granted the tract to the petitioners and ordered Lovato to place them in possession of the property notwithstanding his former decision. By virtue of this last decision, Lovato proceeded to Cundiyó on the following day where he met with the adjoining landowners. None of the adjoining landowners objected to the issuance of the grant, except a few persons who had settled in a little hollow near the mouth of an arroyo which formed the common boundary between the Pueblo of Quemado and Santo Domingo de Cundiyó Grants. To satisfy the objections of these settlers, Lovato excluded their lands from the grant. Once this obstacle was overcome, Lovato delivered royal possession of the grant to the four grantees. The expediente of the grant was forwarded to Mendoza, who on September 28, 1743, filed it amongst the archives of New Mexico.[1]

The grantees promptly took possession of the grant and a substantial town soon grew up around the original settlement. The grant was never submitted to the Surveyor General's office for investigation, but Juan Antonio Vigil, who had purchased the rights of the heirs of one of the original grantees, instituted suit[2] in the Court of Private Land Claims on March 3, 1893 in an effort to secure its recognition. In support of his claim, he filed the *testimonio* of the grant which he acquired at the time he purchased his interest.

The case came up for hearing on December 5, 1900, at which time the plaintiff offered his muniment of title and oral testimony connecting himself with one of the original grantees and

[1] For some unexplained reason this document cannot be found among the archives of New Mexico.
[2] *Vigil v.United States*, No 211 (Mss., Records of the Ct. Pvt. L. Cl.).

showing that the grant had been occupied by the descendants of the original grantees or their assigns since time immemorial. There was no question about the genuineness of the grant papers, and since the parties had stipulated concerning the proper location of its boundaries, there were no serious questions for the court to consider. Therefore, on December 12, 1900, the court entered a decree confirming title to the heirs and legal representatives of the four original grantees in the following described tract:

> Beginning at the ruins of an old ranch about two miles above the plaza of Cundiyó on the Río Frijoles, which was built by Eusebio Jarmillo of Chemayo about twelve years ago and running thence in a northerly direction to the northern edge or margin of the Cienega Pajarita, which has always been held by the people of the Pueblo of Quemado and those of Cundiyó to be the dividing point between their respective lands; thence westerly by a straight line to the junction of Río Frijoles and Río de en Medio; and thence in a southerly direction by a meandered line along the brow of the elevation immediately southwest of the Río Frijoles to the place of beginning.[3]

The grant was surveyed by Deputy Surveyor Joseph F. Thomas between June 19 and July 26, 1901. His survey showed that the grant covered 2,137.08 acres. A patent for that amount of land was issued to the confirmees on February 11, 1903.[4]

[3] 4 Journal 235 (Mss., Records of the Ct., Pvt. L. Cl.).
[4] The Santo Domingo de Cundiyó Grant, No. 246 (Mss. Records of the S.G.N.M.).

SEBASTIÁN MARTÍN GRANT

Sometime prior to 1703 a tract of land located northeast of the Pueblo of San Juan was granted to Joseph García Jurado, Sebastián de Vargas, and. Sebastián de Polonia. However, when they failed to occupy the grant within the time prescribed by law, Sebastián Martín and his brother, Antonio Martín, appeared before the Governor of New Mexico, Diego de Vargas, and requested him to forfeit the former concession and to grant the lands covered thereby to them. In response to this request, Vargas, in 1703, found the former grantees, in fact had abandoned the grant and were without any rights. Therefore, he re-granted the lands to the petitioners and ordered the former owners never to lay claim to the premises. In 1705 Governor Francisco Cuervo y Valdes ordered Sergeant Major Juan de Ulibarri, the Alcalde of Santa Cruz, to place the new grantees in royal possession of the grant. In compliance with the governor's order, Lieutenant General Juan Páez Hurtado went to the grant and designated the following natural objects as boundaries to the grant:

> On the north, a cross which was erected on the Cañón which ran to El Embudo; on the east, the river which ran between Chimayó and the Pueblo of Picurís; on the south, the north line of the Pueblo of San Juan Grant and on the west, the table lands on the west side of the Río Grande.

Following the completion of his survey, Ulibarri delivered possession of the premises to the grantees.[1]

Sebastián and Antonio Martín, together with three of their brothers, moved to the grant and immediately started improving and developing the property. A number of fields were opened for cultivation, an irrigation system was constructed, and a large four room house with two strong towers was built to protect its inhabitants from the hostile Indians.

Meanwhile, Sebastián Martín acquired his brother's interest in the grant but lost the *testimonio* and deed evidencing his title to the grant. Therefore, in 1712, he petitioned Governor José Chacón Medina Salazar y Villaseñor requesting the confirmation of his title. On May 23, 1712, Chacón investigated the application and concluded that Martín should be protected since he had persistently occupied the promises since 1703, notwithstanding the imminent risk he had taken of losing his life at the hands of the Indians. The governor, therefore, confirmed the grant, declared all other instruments null and void upon which an adverse claim could possibly be established against him and directed the Secretary of the Province, Cristóbal de Góngora, to assign to the grant the boundaries which had been requested and to redeliver legal possession thereof to its proprietor.[2]

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[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 134-135 (1860).
[2] Ibid. 135-136.

In order to insure the formation of a new settlement just east of the grant, Sebastián Martín, on July 1, 1751, deeded a strip of land one thousand six hundred and forty varas wide, off the east side of the grant to the twelve colonists who had proposed the establishment of the Town of Las Trampas. The town was created fifteen days later and received from the governor a grant covering sufficient additional lands to guarantee its success.[3]

Except for the portion of the grant conveyed to the founders of the Town of Las Trampas, Sebastián Martín and his heirs claimed and possessed all of the lands from the date of the delivery of possession down to and including the year 1859. Maríano Sánchez, the sole heir of Sebastián Martín, and owner of the grant, petitioned[4] Surveyor General William Pelham for the confirmation of the grant on June 16, 1859. After he had completed his investigation of the claim, surveyor General Pelham issued a report[5] on July 25, 1859. In this report, Pelham found the grant papers which had been filed by Sánchez to be genuine and the grant to be good and perfect. He also found that the claimant and his predecessors had enjoyed uninterrupted possession of the grant "beyond the point whereof the memory of man runneth not to the contrary." Therefore, he recommended the confirmation of the grant to the legal representatives of Sebastián Martín, deceased, to the full extent of the boundaries set forth in the testimonio except for the portion previously donated to the Town of Las Trampas. The grant was confirmed by Act approved on June 21, 1860.[6]

The lands were surveyed in June, 1876, by Deputy Surveyors Sawyer & McBroom. The survey showed that the grant contained 51,387.20 acres. A patent for that amount of land was finally issued on February 10, 1893.[7]

[3] Ibid., 137
[4] The Sebastián Martín Grant, No. 28 (Mss., Records of the S.G.N.M.).
[5] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 137 (1860).
[6] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat., 71 (1860).
[7] The Sebastián Martín Grant, No. 28 (Mss., Records of the S.G.N.M.).

SEVILLETA GRANT
SEVILLETA DE LA JOYA GRANT

A fancied resemblance to the Spanish town of Seville prompted Governor Juan de Onate to name the most northerly Piro pueblo Nueva Sevilla when he visited it during his Conquest of New Mexico in 1598, Nueva Sevilla was situated on the east bank of the Río Grande about twenty miles above Socorro. Shortly thereafter the pueblo was attacked and destroyed by the Apaches but was resettled sometime prior to 1630, by the Franciscans. The re-established pueblo became the seat of the mission of San Luis Obispo de Sevilleta and was generally referred to as Sevilleta or "Little Seville". During the Pueblo Revolt most of the inhabitants of Sevilleta joined Governor Antonio de Otermin in his flight to El Paso del Norte In 1681 the pueblo was found to be totally deserted and almost in ruin.[1]

The lands surrounding the ruined pueblo were not reoccupied until about 1810, when sixty-seven Spanish families permanently settled at Sevilleta, On May 25, 1819, Attorney Carlos Galvaldon, on behalf of himself and all the other residents of Sevilleta, petitioned the Alcalde of Belen for a grant covering the lands which had been designated for their use. Alcalde Miguel Aragon forwarded the petition to Governor Facundo Melgares on the following day in order that he might:

> decree that the grant prayed for by the citizens of the settlement of Sevilleta be executed to them, and may advise me from which point to designate to them their boundaries inasmuch as the Attorney does not state them.[2]

Governor Melgares directed Aragon on May 29, 1819, to assign the usual land to the petitioners and erect appropriate monuments to mark the boundaries of the grant. The Alcalde was also instructed to prepare title documents evidencing his action and forward a copy thereof to the governor for his records and preservations Six days later, Aragon, pursuant to said order, placed the inhabitants of Sevilleta in possession of a tract of land described as being bounded:

> On the north by the boundary of Sabinal; on the south by the Alamillo Arroyo, on the opposite side of the Arroyo called the San Lorenzo Creek; on the east by a mountain in front of said town; and on the west by the Ladrones Mountains.

The *expediente* of the grant was returned to Melgares and deposited in the Archives of New Mexico.[3]

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[1] Ayer, *The Memorial of Fray Alonso de Benavides*, 216-217 (1916).
[2] Archive No. 214 (Mss., Records of the A.N.M.).
[3] Ibid.

When the United States took possession of New Mexico in 1846, there were two large permanent settlements located upon the grant — Sevilleta and La Joya, In 1874 these towns had a total population of about one thousand five hundred persons.

On October 5, 1874, a petition was filed in the office of the Surveyor General by Samuel Ellison, Attorney for the inhabitants of the town of Sevilleta, seeking the confirmation of the grant. In this petition the Surveyor General's attention was called to the fact that the *expediente* was located in his office and designated as Archive No. 214. Surveyor General James K. Proudfit promptly proceeded to investigate the claim and found that the muniments of title were genuine and beyond question. Therefore, in his opinion dated November 14, 1874, Proudfit stated that he entertained no doubt as to the validity and sufficiency of the claim and recommended its confirmation to the sixty-seven original grantees or their heirs and legal representatives.[4] Congress took no action on the claim and it was still pending when the Court of Private Land Claims was established.

Meanwhile, a preliminary survey of the grant, made in March and April 1878, by Deputy Surveyors Sawyers and White, showed that it covered 224,770.13 acres of land.[5]

Felipe Peralta and Tomas Cordoba, descendants of two of the original grantees, filed suit in the Court of Private Land Claims against the United States on December 15, 1892, praying for the confirmation of the grant to themselves and the other co-owners.[6] The United States was unable to advance any special defense against recognition of the claim. Therefore, the Court on December 4, 1893, confirmed the Sevilleta Grant to the heirs and assigns of the original sixty-seven grantees. The Court in its decree defined the boundaries of the grant as follows;

> The boundaries of said tract as designated by said Alcalde and marked as aforesaid were and are: on the north the boundary of Sabinal, being a portion of the grant to Belen, and more particularly designated by the ruins of the hacienda of Felipe Romero and the point of the Sabinal hill lying due east and west of each other; on the east, the Cerro Montoso, meaning thereby the summit of the mountain; on the south, the Arroyo de Alamillo, on the east side of the Río Grande del Norte, and the Arroyo de San Lorenzo, on the west side of the Río Grande del Norte; and on the west, the summit of the Sierra de los Ladrones.[7]

Shortly after the decree was handed down, the grant was surveyed by Deputy Surveyor Albert F. Easley preparatory to the issuance of a patent. The north boundary line of the Sevilleta Grant, as

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[4] H. R. Exec Doc No. 62, 43d Cong, 2d Sess, 2-8 (1875).
[5] The Sevelleta Grant, No. 95 (Mss., Records of the S.G.N.M.).
[6] *Peralta v United States,* No. 55 (Mss., Records of the Ct Pvt.. L. Cl.).
[7] 2 Journal 49-55 (Mss., Records of the Ct. Pvt, L. Cl.).

surveyed by Easley, was located north of the south boundary of the Belen Grant. The conflict involved a strip of land extending approximately twenty miles from east to west and about two miles from north to south. A protest was filed on July 25, 1896 by Jacinto Sánchez and Alcario Sais, as representatives of the owners of the Belen Grant, objecting to the approval of the survey. The Court of Private Land Claims called a hearing to investigate the merits of the protest. The evidence presented at this hearing showed that the ruins formerly believed to be those of Felipe Romero's house were actually the ruins of the house of Jesús Baca. It was also shown that there was an old stone monument on the side of the Camino Real south of the Baca ruins which marked the common boundary between the Belen and Sevilleta Grants. The court, in its decision dated September 28, 1897, found that the north boundary of the Sevilleta Grant had been erroneously described in its decree of December 4, 1893. Therefore, it modified its previous decree insofar as it described the north boundary of the grant and ordered it to he resurveyed in order to run through:

> ... the old monument situated one mile south of the house of Jesús Baca in the settlement of Pecacho del Sabinal and east of the point of the Loma de Sabinal on the Socorro and Albuquerque road, said monument being the one recognized as the boundary between the Belen and Sevilleta Grants, extending east and west to intersect the west and east lines as surveyed.[8]

The resurvey moved the north boundary line about a mile south of the first line. Notwithstanding this modification, which greatly reduced the area in conflict, the Sevilleta Grant still conflicted with the Belen Grant to the extent of 11,005.98 acres. The resurvey showed that the Sevilleta Grant contained a total area of 272,193.88 acres. A patent was issued to the owners of the Sevilleta Grant based upon the metes and bounds description contained in the revised field notes on February 8, 1907.[9] It is interesting to note that the Sevilleta Grant was the largest grant confirmed by the Court of Private Land Claims. Since it was confirmed prior to the Supreme Court's decision in the Sandoval Case,[10] it was not limited to the area actually occupied by the inhabitants of the grant in 1848.

Once the grant had been confirmed and its boundaries finally fixed, the owners of the Sevilleta Grant filed an ejection suit in the District Court of New Mexico against the owners of the Belen Grant to clear their title to the overlapping area. The case was ultimately appealed to the United States Supreme Court where it was held that the Court of Private Land Claims had no power to reduce the area of the Belen Grant, which had been previously confirmed by Congress and patented, or make any decision respecting its boundaries which would affect private rights within such grant. Thus, by confirming the portion of the Sevilleta Grant which conflicted with the

[8] 3 Journal 284 (Mss., Records of the Ct. Pvt. L. Cl.).
[9] The Sevilleta Grant, No. 95 (Mss., Records of the S.G.N.M.).
[10] *United States v. Sandoval,* 167 U.S. 278 (1897)

Belen Grant, the Court of Private Land Claims overstepped its jurisdiction and such action was void.[11] This decision resulted in the reduction of the size of the Sevilleta Grant to a total area of 261,187.9 acres.

It has been contended that the Sevilleta Grant was a community grant as distinguished from a private grant. However, the Circuit Court of Appeals held that title to the grant was confirmed in the original grantees, their heirs and assigns as a private grant.[12]

Since the co-owners of the grant were so numerous and the decree confirming the grant did not provide a procedure for its effective management and control, the New Mexico Legislature passed an act in 1915 creating a board of trustees to supervise its operation. In 1929 this act was partially repealed and all of the provisions of the general lease pertaining to the management of Spanish and Mexican Grants were made applicable to the Sevilleta Grant. This general law, among other things, provides that the management of any grant originally made to individuals for the purpose of founding a colony shall be vested in a five-man board of trustees.[13] Pursuant to these two acts most of the lands in the Sevilleta Grant have been distributed among and deeded to its inhabitants.

[11] *Board of Trustees of the Sevilleta de la Joya Grant V. Board of Trustees of the Belen Land Grant,* 242 U.S. 595 (1917).
[12] *Chadwick v. Campbell,* 115 F. 2d 401 (10th Cir, 1940)
[13] New Mexico statutes 1953, Sec. 8-1-20.

TIERRA AMARILLA GRANT

Manuel Martínez, on behalf of himself, his eight sons and all other persons who might accompany him, petitioned the governor of New Mexico on April 23, 1832 for a grant covering a tract of land called Tierra Amarilla which was situated on the Chama River. He requested that the grant be made for agricultural and ranching purposes and cover all of the lands within the following boundaries:

> On the north, the Navajo River; on the east, a range of mountains; on the south, the Nutrias River; and on the west, the mouth of the Laguna de los Caballos.

Martínez pointed out that while he had a small tract of land at the Town of Abiquiú, it had been depleted by years of constant cultivation. Therefore, in order that he and others in a similar position might continue to support their families, he requested that he and his associates be given the requested tract of fertile land which was located some seven leagues north of the Town of Abiquiú. The petition was referred by Santiago Abreu, the governor of New Mexico, on April 25, 1832, to the Provincial Deputation for its consideration. On the same day, the Provincial Deputation requested the officials of the Town of Abiquiú to fully advise it concerning the propriety of issuing the grant. In compliance with this request, the officials of the Town of Abiquiú on May 15, 1832, reported that the lands which had been solicited by Martínez were of an excellent quality, had an abundance of water and wood, and could support at least five hundred families. However, they recommended that the pastures and watering places located within the requested tract be reserved as a commons for the benefit of the inhabitants of the Town of Abiquiú. Upon learning of the contents, of this report, Martínez protested on the grounds that it would be unjust and work a hardship upon the grantees to exclude the very lands which were so essential to their earning a livelihood on the frontier. He pointed out that such an exception would unquestionably cause endless disputes and difficulties between the grantees and the inhabitants of the Town of Abiquiú. On July 20, 1832, the Provincial Deputation granted Manuel Martínez and his associates the tract of land described in Martínez' petition subject, however, to the express reservation of the pastures, watering places and roads located thereon for the benefit of the general public. The Provincial Deputation also ordered the Alcalde of the Town of Abiquiú to deliver possession of the grant to Martínez and all other persons who associated with him in the formation of the proposed new settlement. The alcalde was further instructed to allot to each of the grantees an individual tract of land sufficient in size to grow four or five *fanegas* of wheat. Due to the hostility of the Indians and the dangers which would be incurred in going to the grant, the alcalde refused to go to Tierra Amarillo and formally deliver legal possession of the grant to the grantees as instructed. However, Martínez moved to the grant and continued to live there during the periods when the Indians were peaceful. After his death, Martínez' children continued to occupy and use the grant up until about 1854.[1]

[1] H. Exec. Doc. No. 1, 34th Cong., 3d Sess., 478-492 (1856).

On August 25, 1856, Francisco Martínez, one of the heirs of Manuel Martínez, filed a petition[2] in the Surveyor General's Office seeking the confirmation of the Tierra Amarillo Grant, which he alleged contained approximately 24 square leagues, or 106,312 acres of land. Surveyor General William Pelham promptly investigated the claim and in a decision[3] dated September 25, 1856, held that he was satisfied that the Provincial Deputation had authority under the laws of Mexico to make donations of land to individuals, that the title papers evidencing the grant had been proven to be genuine, and that the failure of the Alcalde of the Town of Abiquiú to deliver possession to Martínez did not invalidate the grant since such failure had been satisfactorily explained. He concluded by holding the grant to be good and valid and recommended its confirmation by Congress to Francisco Martínez. The grant was confirmed as Private Land Claim No. 3 by an act of Congress approved June 21, 1860.[4]

On June 30, 1875, John M. Isaacs, one of the then owners of the grant, requested the Surveyor General to survey the grant in order that a patent might be issued. In response to his request, the Commissioner of the General Land Office authorized the Surveyor General to make the survey provided the owners would select eleven leagues out of the grant as full satisfaction of their claim. The Commissioner contended that since the area and location of the boundaries of the grant were unknown when Congress confirmed the claim, it should be presumed that it had no intention to confirm title to an amount of land in excess of eleven leagues, which was the maximum which could be granted to an individual under the Colonization Law of 1824.[5] Elias Borvoort, attorney for the owners of the grant, by letter[6] dated May 13, 1876, notified the Surveyor General that his clients would not accept any survey which did not conform with the description contained in the grant. As a result of the decision of the Colorado Supreme Court in the Tameling Case,[7] which had just held that the Act of June 21, 1860,[8] confirmed a number of grants to the full extent of their exterior boundaries, the Commissioner dropped this contention. The grant was surveyed by Deputy Surveyors Sawyer & McBroom in July, 1876. This survey showed that the grant contained a total of 594,515.55 acres, a part of which was located within the State of Colorado.[9] The grant was patented to Francisco Martínez on February 21, 1881.[10] While the patent was in the conventional form it contained a recitation in one of the prefatory clauses stating the pastures, watering places and roads were to be free according to the custom of

[2] The Tierra Amarillo Grant, No. 3 (Mss., Records of the S.G.N.M.).
[3] Ibid.
[4] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).
[5] Reynolds, *Spanish and Mexican Land Laws* 121 (1895).
[6] The Tierra Amarilla Grant, No. 3 (Mss., Records of the S.G.N.M.).
[7] *Tameling v. United States Freehold and Emigration Company*, 2 Colo. 411 (1874).
[8] Reynolds, *Spanish and Mexican Land Laws* 121 (1895).
[9] The Tierra Amarilla Grant, No. 3 (Mss., Records of the S.G.N.M.).
[10] 17 Deed Records 162 (Mss., Records of the County Clerk's Office, Santa Fe, New Mexico).

every settlement. This caused the residents living on the grant to believe that it was a community grant with unrestricted pasturing and wood gathering privileges on the unallocated lands being guaranteed to all of the inhabitants of the grant. This erroneous belief has led to a myriad of litigation. Both the State and Federal Courts have consistently held that the actions of Congress confirming a grant are not subject to judicial review and that regardless of whether or not the grant was a private or community grant, the confirmation of a grant as a private grant by Congress and the patent issued in pursuance thereto vested in the patentee an absolute title to all common and unallocated lands.[11]

Having failed to find satisfaction in the courts, many of the inhabitants of the grant have joined an organization of Spanish Americans known as the "Blackhands," which is using violence to press their claims. The Blackhands are employing guerilla tactics as a protest against the ranchers who have purchased the commons and unallocated lands within the grant. Homes are being burned, machinery riddled with gunfire, cattle killed, and fences cut.[12] These incidents point out that the land problems of New Mexico have not been fully solved even of this late date.

[11] *H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 105 P.2d 744 (1940); *Flores v. Bouesselback*, 149 F. 2d 616 (3d Cir., 1945); *Martínez v. Rivera*, 196 F. 2d 192 (10th Cir., 1952); *Martínez v. Mundy*, 61 N.M. 87, 295 P. 2d 209 (1956); and *Rayne Land & Livestock Co. v. Archuleta*, 180 F. SUPP. 651 (D.N.M.,1960).

[12] Knowlton "Causes of Land Loss among the Spanish Americans in Northern New Mexico," 1 *Rocky Mountain Social Science Journal* 201-211 (1966).

TOWN OF ABIQUIÚ GRANT
(*MERCED DEL PUEBLO DE ABIQUIÚ)*

During the latter part of the first half of the Eighteenth Century the Spaniards mounted a fierce campaign against the hostile Indians who encircled the Northern frontiers of New Mexico. Following a number of successful engagements, the Spaniards secured the release of a number of half-breed Indian captives or Genízaros, who were settled in 1744 on the site of an ancient Yaqui Pueblo. This settlement was called the Pueblo of Santa Rosa de Abiquiú. On August 12, 1747, it was raided by the Utes. A number of its inhabitants were killed and the rest lost heart and moved to Santa Cruz. It was resettled soon afterwards and, in 1748, contained twenty families, hut because of further depredations by the Utes and Navajos, it was again abandoned. When the viceroy learned of the second failure of the settlement, he ordered Governor Tomas Vélez Cachupín to permanently re-establish the pueblo in accordance with Law 8, Title 3, Book 6, of the *Recopilación de Leyes de los Indios.*[1] Pursuant to such instructions, Cachupín, on May 10, 1754, personally escorted the Genízaros back to Abiquiú. Upon arriving at the pueblo, Cachupín, in the presence of Fray Felix Joseph de Ordoñes y Machado and Juan José Lovato, Alcalde of the Pueblo of Santa Cruz, surveyed and granted to the Genízaros a tract of land described as being bounded:

> On the north, by the Chama River; on the east by an arroyo; on the south, by the road of the Tiguas running to Navajo; and on the east, by Sierra Pelado looking towards the Río de los Frijoles.

The Commissary visitor to the Franciscan Missions of New Mexico, Fray Francisco Atanasio Domínguez, described the Pueblo of Abiquiú in 1776 as follows:

> The Pueblo and Mission of Santa Rosa de Abiquiú is 9 very good leagues northwest of Santa Clara over a rough road with small hills and arroyos between them, all sandy, and with an occasional small level place. The pueblo stands on a triangular hill …. It is some 18 leagues from Santa Fe and lies to the northwest of the villa. This mission was recently founded by Don Tomas Vélez for Christian Genízaro Indians.

He had it named the Pueblo and Mission of Santa Tomas de Abiquiú, but the settlers use the name Santa Rosa, as the lost mission was called in the old days.[2]

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[1] This law provided, "The sites on which pueblos and reductions must be formed shall have convenience of water, land and wood, entrance and departure, and lands for cultivation, and an ejido of a league in length where the Indians can have their cattle without their mixing with those of the Spaniards." Hall, *The Laws of Mexico* 61 (1885).
[2] Adams and Chávez, *The Missions of New Mexico, 1776,* 120 (1956).

The Mexican officials undoubtedly recognized the validity of the Pueblo of Abiquiú Grant for its officials frequently passed on problems affecting it. In 1825 its inhabitants petitioned for and secured a distribution of individual farm tracts which they were occupying and using. This distribution was performed during the month of April, 1825, by Alcalde Juan Cristóbal Quintana in obedience with a decree issued by Bartolomé Baca, Governor of New Mexico. The proceedings were promptly reported to Baca, who on May 2, 1825, returned them to Quintana and requested him to clarify certain ambiguities contained in his report. On February 27, 1829, the inhabitants of the Pueblo of Abiquiú petitioned Manuel Armijo, Governor of New Mexico, seeking an official survey of the southern boundary of the grant. In response to this request, the boundary was surveyed as a straight line running from east to west through a point located on the Tigua Highway and near the edge of the Sierra Paladisa. Alcalde Miguel Quintana endorsed his approval on the report pertaining to these proceedings on March 19, 1829. Another document, which was dated October 10, 1831, pertained to the settlement of a boundary dispute between the owners of the Vallecita Grant and the inhabitants of the Pueblo of Abiquiú. In this document the south boundary of the grant was once again described as being located at an old landmark on the Tigua Highway to Navajo or 10,700 varas south of the center of the pueblo. In 1841 the Acting Alcalde of Santa Cruz, María Chávez, made additional allotments of land within the Pueblo of Abiquiú Grant.[3] Also a number of grants, each made subsequent to 1754, contained a call for adjoinder to the Pueblo of Abiquiú Grant or made reference to it by name. As a matter of fact, during the Spanish and Mexican regime, it was one of the best known grants in New Mexico.

Despite the constant efforts by the Mexican Government to stop the depredations of the Utes, Apaches, Navajos, and Comanches, it was never able to effectively stop them from pillaging the frontier settlements. Nor did peace come to the inhabitants of the Pueblo of Abiquiú with the assumption of jurisdiction over New Mexico by the Anglo-Americans. When General Stephen Watts Kearny marched into Santa Fe in 1846, he found that the territory had become callous to the forays of the wild savages. Even before the Treaty of Guadalupe Hidalgo bound the United States to constrain the hostile Indians, Kearny took affirmative steps to alleviate this problem. Colonel Alexander W. Doniphan with a strong detachment of troops was sent into the Navajo country to force them to seek peace. Two companies of the Army of the West were also stationed at the Pueblo of Abiquiú, which had long been recognized as a strategic barrier against the Utes and Apaches.[4]

On January 24, 1883, José M. C. Chaves, for himself and the other claimants of the Pueblo of Abiquiú Grant, petitioned Surveyor General Henry M. Atkinson requesting the confirmation of the concession. No action was taken on the application for nearly two years. In a long and detailed report dated October 28, 1885, Surveyor General George W. Julian advised Congress that the grant raised a number of interesting questions. First, he noted that the instrument

[3] The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).
[4] Stanley, *The Abiquiu Story*, 21 (n.d.); and Spencer, Cycles of Conquest, 170 (1962).

produced and relied upon by the claimants as a *testimonio* of the grant had not been authenticated and, therefore, could not be considered as evidence in determining the validity of their claim. However, in fairness to the petitioners, he stated that the archives showed that the Spanish officials mentioned in the grant papers, at the time of the issuing of the concession, actually held the offices which the grant papers indicated and had authority to issue the grant or deliver possession of the premises. He also called attention to the recitation in the proceedings pertaining to the 1829 boundary dispute between the Pueblo of Abiquiú and the Town of Vallecito showed that an unsuccessful effort had been made to locate the expediente of the grant in the archives at Santa Fe and this could account for its absence from the archives which had been turned over the United States when it acquired New Mexico. Next, he turned his attention to the two documents which pertained to the distribution of farm lots among the inhabitants of the pueblo in 1825 and 1841.[5] He stated that in his opinion those two ancient documents probably were originals but the petitioners had not shown that they were genuine or when they were filed in the archives. Following this he pointed out that in 1754 grants had to be approved by either the King, the Viceroy, or the Audiencia of Guadalajara and there was no evidence that the Pueblo of Abiquiú Grant had been approved. However, he was quick to explain that the decisions of the Supreme Court of the United States applicable to similar grants had held that such confirmation could be presumed. Next, he raised the question as to whether the long continuous possession of the land by the inhabitants of the Pueblo of Abiquiú prefected a title by prescription. In answer to this issue he held that a title by prescription could not be acquired under either the laws of Spain, Mexico, or the United States. After appearing to have debunked the grant, Julian proceeded to build a case for the recognition of the claim. First, he stated that since there was no direct evidence that a valid grant had been issued, the applicants, if they were to prevail, would have to substantiate their claim with circumstantial evidence. He then stated that the only documents which could be found in the Archives of New Mexico pertained to the distribution of the individual lots and while insufficient to prove a valid grant by themselves, they did raise a presumption that the governor, Bartolomé Baca, and José Antonio Chaves had some evidence of and were satisfied that a valid grant previously had been issued; otherwise, they would not have made the allocations. He noted that the Spanish Government had been very lenient towards the Christianized Indians and had issued numerous decrees designed to protect them and their rights, passing then to the oral testimony of the four aged witnesses who had testified that the residents of the Pueblo of Abiquiú had claimed and occupied the lands covered by the grant at all times during their memory. Their testimony also fixed its boundaries. Julian's concluding question was, "On the basis of the documentary and oral evidence presented by the claimants, has a grant been established?" In answer thereto he stated that a careful survey of all papers and proof in the case indicated that the Spanish and Mexican Governments would probably have recognized the grant, and therefore, under the terms of the Treaty of Guadalupe Hidalgo, the United States was bound to confirm the petitioners' claim which he estimated to contain 10,980 acres.[6]

[5] Archive Nos. 61 and 65 (Mss., Records of the A.N.M.).
[6] The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).

Since Congress repeatedly failed to pass upon the grant, the creation of the Court of Private Land Claims afforded its claimants an opportunity to gain the recognition of their title. On December 5, 1892, Reyes Gonzales and José M. C. Chaves, as the owners of the undivided interests in the Pueblo of Abiquiú Grant, filed suit[7] against the United States praying for the confirmation of the grant unto them and their co-owners. The government raised no special defenses at the trial and its attorney, in his Report[8] to the Attorney General, stated:

> The title papers are all genuine and the repeated recognition of it by the Mexican Provincial Authorities under the Mexican Republic all attest to its genuineness. Repeated action was had from time to time in relation to it by the Provincial Authorities down to 1831 growing out of local disputes as to ownership of different parts thereof, all recognizing the validity of same.

After carefully considering the evidence submitted and requirements of both sides, the court issued a decree[9] confirming the grant on April 18, 1894. A survey of the grant was made by Deputy Surveyor Sherrand Coleman and showed the grant covered 16,547.20 acres. Coleman's survey located the north boundary of the grant along the south bank of the Chama River. The claimants protested the approval of the survey on the grounds that the north boundary line should have been located along the Río Chama as it ran in 1754. The court overruled the protest and approved the survey. A patent was finally issued by the Board of Grant Commissioners of the Abiquiú Grant on November 11, 1909.[10]

[7] *Gonzales v. United States,* No. 52 (Mss., Records of the Ct. Pvt. L. Cl.).
[8] *Report of the United States Attorney* dated February 7, 1894, in the Case of *Gonzales v. United States* (Mss., Records of the General Services Administration, National Archives, Washington, D. C.), Record Group 60, Year File 9865-92.
[9] 2 *Journal* 86-88 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] The Town of Abiquiu Grant, No. 140 (Mss., Records of the S.G.N.M.).

TOWN OF ATRISCO GRANT

On March 19, 1881 the heirs and legal representatives of José Hurtado de Mendoza and other inhabitants of the Town of Atrisco filed[1] a petition in Surveyor General Henry M. Atkinson's office seeking the confirmation of a certain grant known as the lands of the Río Puerco, which allegedly had been granted to Mendoza and fourteen other inhabitants of the Town of Atrisco by Governor Pedro Fermin de Mendinueta. In support of their claim, the petitioners filed a copy of the *expediente* [2]of the grant, which consisted of three instruments. The first was a petition wherein Mendoza and his associates asked Mendinueta to grant them the tract of land extending from the Bosque Grande in the Río Puerco to the Cerro Colorado. They called his attention to the fact that, since the Town of Atrisco was very crowded and all the lands to the north, east, and south were appropriated, they had occupied the area west of the town as a pasturage for their livestock. They alleged that, notwithstanding the fact that their settlement had created a bulwark between the Apaches and the Town of San Francisco, the San Franciscans had driven them off the land, and thereby caused them a great deal of hardship. They stated that they believed the premises were public lands; but in the event it was found that they belonged to the Town of San Francisco, it should be held that they had forfeited and abandoned the tract by non-use. The second instrument was a granting decree dated April 28, 1768 wherein Mendinueta, in consideration of the limited amount of land held by the inhabitants of Atrisco and their need for an adequate pasturage for, the increasing herds of livestock and a firewood gathering, granted them a tract bounded:

> On the north, by the Cerro Colorado which is located two leagues south of the Town of San Francisco del Río Puerco; on the east, by the ceja of the Río Puerco mountain; on the south, by a point three leagues south of the Cerro Colorado; and on the west, by the Río Puerco.

However, he expressly excluded any of the Atriscans who had sufficient pasture land to meet his needs. In closing, Mendinueta directed the Alcalde of Albuquerque, Francisco Tribol Navarro, to deliver royal possession of the premises to the grantees. The final instrument is the Act of Possession and contains a description of the proceedings conducted by Navarro in connection with the formal juridical delivery of possession to the grantees. It shows that on May 7, 1768 Navarro notified the inhabitants of the Town of San Francisco of the grant. On the following day the San Franciscans met with Navarro and protested the grant on the grounds that it conflicted with their lands. Thereupon, Navarro ordered them to produce their grant papers. They met again on the ninth, and upon examining their title papers Navarro noted that someone had fraudulently altered the grant papers to fix the south boundary of the grant two leagues from the town at the Cerro Colorado, and he could vaguely see that it had originally read two leagues from the town

[1] The Town of Atrisco Grant, No. 145 (Mss., Records of the S.G.N.M.).
[2] Archive No. 694 (Mss., Records of the A.N.M.).

towards the Cerro Colorado. Since the Cerro Colorado was located a substantial distance south of the town, this change made a material difference in the location of the south boundary of the San Franciscans' grant. The San Franciscans stated that the clerk had made the change in order to correct a scribner's error. However, Navarro held that this was not true, since the practice in New Mexico was for the clerk to draw a line through a mistake and note the error at the foot of the page instead of erasing and making the change without mentioning or referring to it. Therefore, he limited the San Franciscans' grant to a distance two leagues south of their town and, after surveying the distance, fixed the common boundary between the two grants at a point opposite two large cottonwoods standing close together on the west side of the Río Puerco. The southern boundary of the Atriscans' land was then located three leagues farther south at a cottonwood tree standing on the edge of the Río Puerco, which was known as the Alamo Gacho. Following the completion of the survey, Navarro placed "the people of Atrisco" in royal possession of the tract, which he named San José after Hurtado's patron saint. He also allotted the rancho that formerly had been owned by Diego Antonio Duran y Chaves to Hurtado and directed the other settlers to locate their ranchos south of Hurtado's. The concession was described as being a special grant for the benefit of the citizens of Atrisco and not a heritage. The applicants were especially cautioned against introducing new settlers on the grant without the prior consent of the inhabitants of the Town of Atrisco.

A supplemental petition[3] was filed by the inhabitants of the Town of Atrisco in Surveyor General George W. Julian's office on December 31, 1885 in which they also asserted title to a tract of land which allegedly had been granted the founders of the Town of Atrisco by the Spanish government in or about 1700. This tract was described as being bounded:

> On the north, by the Barranca de Juan de Perea; on the east, by the Río Grande; on the south, by the lands of Antonio Baca; and on the west, by the ceja of the Río Puerco.

They stated that the town was in existence at the time the United States acquired New Mexico, and had been peaceably occupied by them and their ancestors for more than two and a half centuries. The claimants also alleged that the original grant papers of 1700 had been lost, and in an effort to sustain the claim, introduced a number of deeds showing there had been a trafficking in ranchos within the grant from an early date, church records indicating the existence of a sizeable settlement at Atrisco early in the Eighteenth Century, and oral testimony tending to fix the boundaries of the concession. They asserted that the facts and circumstances would raise a presumption that a valid grant had been made to the inhabitants of Atrisco in or about 1700, or, in the alternative, that the Atriscans had acquired title to the tract by prescription.

[3] The Town of Atrisco Grant, No. 145 (Mss. Records of the S.G.N.M.).

By decision[4] dated January 28, 1886, Julian held that the circumstantial evidence presented by the claimants warranted the presumption that a grant had bean made to them in or about 1700 under laws, usages and customs of Spain and Mexico, and the papers evidencing the 1768 concession were genuine. Therefore, he recommended the confirmation of both claims by Congress, and estimated that they jointly covered an area eight miles from north to south and. fourteen miles from east to west, or approximately 72,000 acres. Notwithstanding Julian's favorable report, the grant was neither surveyed nor passed upon by Congress.

On February 26, 1892 a petition, signed by over 225 persons who claimed to be the owners of the two grants, petitioned the District Court of Bernalillo County, asking the court to incorporate their interests by creating a body politic and corporation under the name of the Town of Atrisco, as provided by the Act of February 26, 1891.[5] An election was held, and more than two thirds of the voters elected to incorporate, their interests. Therefore, on April 11, 1892, the court granted their request and declared the petitioners and their successors to be a body politic. Less than eight months later, on November 7, 1892, the Town of Atrisco, a municipal corporation, filed suit[6] in the Court of Private Land Claims against the United States and the City of Albuquerque requesting the confirmation of the two grants to it in trust for its inhabitants. It estimated that the first grant contained 41,500 acres and the second contained about 26,000 acres. It was also alleged that a portion of the 1700 grant conflicted with the Town of Albuquerque Grant but that the Town of Atrisco Grant was the senior grant and thus, should prevail. The government filed an answer denying that a grant had been made to the Atriscans in or about 1700 and alleging that the 1768 grant was an individual grant made to the fifteen petitioners and, therefore, the plaintiff had no interest in any of the land upon which to base a claim. Continuing, it asserted that the 1768 concession was not a grant but was merely a life estate or license in favor of Hurtado and his associates. Subsequently, a supplemental answer was filed based upon the discovery of the papers to an old grant covering the lands upon which the Town of Atrisco was situated. This document showed that the Atrisco area probably was owned by Pedro Duran de Chaves prior to the Pueblo Revolt in 1680.[7] On October 7, 1692 Fernando Duran do Chaves petitioned Governor Diego de Vargas asking for a new grant covering a tract known as the Angostura, which he had owned prior to the rebellion, and the Atrisco Tract, which he represented had been occupied by his father, Pedro Duran y Chaves, and covered the lands lying between the bluff rear Juan de Perea's house down the river to Juan Domingues' corrals. After considering the petition, Vargas recognized that the Angostura had belonged to Fernando and that Atrisco had belonged

[4] Ibid.
[5] An Act relating to Community Land Grants, and for other purposes, Chap. 86, *Laws of New Mexico,* 162-174 (1891). This Act provides that such a petition could be filed by the owners and proprietors of a land grant and, if two thirds of the voters voted for incorporation, the court would incorporate the owners of the grant.
[6] *Town of Atrisco v. United States,* No. 45 (Mss., Records of the Ct. Pvt. L. Cl.).
[7] Greenleaf, "Atrisco and La Cirvelas 1722-1769," XLII *New Mexico Historical Review* 5 (1967).

to his relatives. Therefore, he conceded both tracts to Fernando and held that he was entitled to all the privileges of a conquistador and founder. The Town of Atrisco asserted that the lands covered by this grant were not given to Fernando as an individual but rather as a contractor or founder with the privilege to establish a new colony or settlement under the laws of Spain.[8] While there was no evidence that royal possession of the lands at Atrisco was ever delivered to Fernando, it was concluded that there was enough evidence to presume that it actually had been given. Thus, when the case came up for trial on August 16, 1894 issue was joined over the question as to whether or not the grants were individual or community grants. If they were individual grants then the Town of Atrisco had no interest upon which to base a claim to the land. The court, by decision[9] dated September 4, 1894, held that under Spanish and Mexican customs a grant covering a large tract of land to a large number of heads of families was understood to be a community grant. In connection with the conflict between the grants of the Towns of Atrisco and Albuquerque, the court held that there was no evidence that the Villa of Albuquerque had a corporate existence prior to 1788 and, therefore, there could be no presumption that it was entitled to four square leagues of land by operation of law until that date[10]. Thus, the Town of Atrisco Grant should prevail. The government appealed the decision but dismissed it before it came up for hearing.

Once the decision became final, the grant was officially surveyed by the Surveyor General's office. A contract was awarded to Deputy Surveyor George H. Pradt whose work showed that the two tracts covered a total area of 82,728.72 acres. A patent was issued to the Town of Atrisco on May 5, 1905.[11]

Between 1905 and 1943, the inhabitants of the Town of Atrisco entered their names on the town rolls in order to establish their title to a fractional interest in the common lands of the grant. The Supreme Court of New Mexico, on December 14, 1951, held [12] that it was firmly established that the settlers upon a community grant had only the right to the common use of the unappropriated lands within its boundaries and they did not have a beneficial interest in such lands.

[8] *Recopilación de los Leyes de los Indios* Law 11, Book 4, Title 5 (1843).
[9] 2 *Journal* 180-182 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] The United States Supreme Court subsequently held that the Town of Albuquerque had. not received a grant of four square leagues by operation of law. *United States v. City of Albuquerque,* 171 U.S. 683 (1898) (mem.).
[11] The Town of Atrisco Grant, No. 145 (Mss., Records of the S.G.N.M.).
[12] *Armijo v. Town of Atrisco,* 56 N.M. 2, 239 P. 2d 535 (1951).

TOWN OF CEBOLLETA

The only serious attempt by Spain or Mexico to Christianize the Navajo Indians was made in 1746 by Padre Juan Menchero. He induced several hundred Navajos to settle at the place known as Cebolleta, which was located on the Pojuate River about eleven miles north of Laguna. A mission was established there three years later but in 1750 its inhabitants grew tired of their sedentary way of life and abandoned the pueblo.[1]

Fifty years later Francisco Aragon and twenty-nine other residents of Albuquerque petitioned Governor Fernando Chacón requesting permission to establish a new settlement at Cebolleta and for a grant surrounding the proposed town site. Chacón granted the request on January 23, 1800 and ordered the Alcalde of the Pueblo of Laguna to deliver royal possession of the premises to the grantees. On March 16, 1800 Alcalde José Manuel Aragon went to Cebolleta and after examining the surrounding lands, which he found to be "very suitable for the formation of a settlement owing to its good cultivable lands, water for its due irrigation, and excellent pastures and watering places," he placed the thirty colonists in possession of the grant which was described as being bounded:

> On the north, by the San Mateo Mountains; on the east, by the Zia road and Pedro Padilla Valley; on the south, by the Mesa del Gabilan, which adjoins the Paquate ranch; and on the west, by the San Mateo Mountains.

The alcalde also distributed the "best cultivable lands" amongst the colonists, each of whom received 83 varas in the Cañón and 55 varas on the prairie. The grantees were reminded that the grant had been made on the condition that they form a regular settlement and it not be abandoned under any pretext.[2]

During the following year the Navajos, after failing to secure the recognition of their claim to the premises, went on the warpath and finally compelled the colonists to leave the grant. They moved to Chihuahua, but in 1803 were brought back to Cebolleta under military escort and solemnly warned to remain there under penalty of death. Since the grantees voluntarily had abandoned these premises, a cloud was cast upon their title. To finally settle all questions concerning the validity of the concession, Alcalde José Manuel Aragon requested Governor Joaquín del Real Alencaster to revalidate the colonists' title. By decree dated January 16, 1807, Alencaster approved this request.[3]

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[1] Ayer, *The Memorial of Fray Alonso de Benevides,* 268 (1916).
[2] H. R. Exec. Doc. No. 112, 37th Cong., 2d Sess., 16-17 (1862).
[3] Ibid., 18.

In 1805 the Navajos again attacked the village and would have massacred its inhabitants except for the assistance of the Laguna Indians, who rushed to their rescue. In return for this favor, the inhabitants of the Town of Cebolleta recognized the pueblo's claim to a strip of land lying south of the Town of Cebolleta Grant, which was known as the Rancho de Paquate. The strip had been occupied by a number of inhabitants from the Town of Cebolleta. In order to avoid future difficulties, the Laguna Indians purchased the improvements of these settlers and on August 28, 1826 obtained a grant covering the rancho from Governor Antonio Narbona.[4]

After the United States conquered New Mexico, it established a small military post at the Town of Cebolleta for the purpose of maintaining order amongst its inhabitants and protecting them from the incursions of the hostile Indians.[5] This post was occupied until 1862, when it was moved to El Gallo and renamed Fort Wingate. Meanwhile, the inhabitants of the Town of Cebolleta, as the heirs, legal representatives and assigns of the original grantees, on August 15, 1859 petitioned Surveyor General William Pelham seeking the confirmation of the grant. In support of their petition, the testimony of two reputable witnesses, were offered. The first, Juan Bautista Vigil Alavid, stated he personally knew Chacón, who was governor in 1800, Alencaster, who was governor in 1807, and José Manual Aragon, who was the Alcalde of Laguna in 1800, and that their signatures on the petitioners' muniments of title were genuine. The second, Simon Ailgado, stated that the Town of Cebolleta was in existence for many years before the acquisition of New Mexico by the United States. In a decision dated October 5, 1861, Pelham held:

> The papers[6] constituting this claim were, on the organization of this office, in 1855, found among the archives deposited in the State Department of this Territory, and were then transferred thence to the land claim branch of this office . . . . The genuineness of the grant having been established, and the town having been in existence at the time of the acquisition of New Mexico by the United States on the 18th day of August, 1846, it is presumed there can be no question of the validity of the claim. It is therefore the opinion of this office that the grant made to the inhabitants of the Town of Cebolleta, . . is good and valid, and it is recommended that the Congress of the United States confirm the same.[7]

The outbreak of the Civil War caused temporary delay in the recognition of the claim. However, by act approved March 3 1869, Congress confirmed the grant.[8] Section 2 of the act which required the Commissioner of the General Land Office to cause the grant to be surveyed

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[4] 1 Anderson, *History of New Mexico*, 365 (1907); and H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 156-157 (1860).
[5] Frazer, *Mansfield on the Conditions of the Western Forts XVI* (1963).
[6] Archive Nos. 205, 206 and 207 (Mss., Records of the A.N.M.).
[7] The Town of Cebolleta Grant, No. 46 (Mss., Records of the S.G.N.M.).
[8] An Act to Confirm Certain Private Land Claims in the Territory of New Mexico, Chap. 152, 15 Stat. 342 (1869).

"without unreasonable delay" and issue a patent upon the filing of said survey. In response thereto, Deputy Surveyors Sawyer & McBroom surveyed the grant in August, 1876 for 199,567.92 acres. A patent based on their field notes finally was issued to the inhabitants of the Town of Cebolleta on January 27, 1882.[9]

[9] The Town of Cebolleta Grant, No. 46 (Mss., Records of the S.G.N.M.).

TOWN OF CHILILÍ GRANT

Santiago Padilla for himself and on behalf of twenty-six other persons, all of whom were heads of families and were without sufficient land to meet their obligations, appeared before Governor Manuel Armijo on March 8, 1841 and registered a tract of vacant land at the site of the abandoned Town of Chililí.[1] They described the requested tract as extending:

> ... from the upper springs called the springs of Los Casos, which are towards the west, to the brow of the Cibolo, on the east, and from west to south the summit of the sharp-edged hills of the Cañón of Chililí. . . .

On March 20, 1841, Armijo issued a decree in which he granted the petitioners' request in consideration of their "well known poverty". He also directed Antonio Sandoval, Judge of the First Instance of the Third District, to place them in possession of the grant, subject to the conditions that they "remain there without disposing of the land for four years, as required by law". Nine days later Sandoval issued an order delegating to Antonio N. Ruis authority to place the colonists in possession of the grant and to allot each an individual piece of land according to his means for cultivation. Sandoval reminded Ruis to caution the grantees that they must protect the springs and streams located within the grant from becoming polluted by their sheep. Ruis was also directed to return the expediente of the proceedings to Sandoval in order that they might be filed in the archives.[2]

Shortly thereafter the grantees moved to the grant and proceeded to develop its lands. The town was in existence at the time the United States acquired New Mexico.

Ynes Armenta, for himself and the other inhabitants of the grant, petitioned Surveyor General William Pelham on January 3, 1857, seeking the confirmation of the grant. A certified copy of a certified copy of the grant papers[3] obtained from the Registor's office for the County of Bernalillo was filed in support of their claim. Two witnesses appeared before Pelham on March 16, 1857 and gave a limited amount of testimony in support of Armenta's claim. One of the witnesses, J. Serafín Remírez, stated that a written grant had been made to the town and that he had seen it. Continuing, he stated, "It has been searched for in the archives of the county but

[1] The Town of Chililí, an ancient Tiqua Pueblo, was located on the west side of the Arroyo de Chililí and about thirty miles southeast of Albuquerque. In 1630 it was referred to as a mission with a church dedicated to Nuestra Señora de Navidad. The village was abandoned some time between 1669 and 1676 on account of the persistent hostility of the Apaches. Most of its inhabitants resettled in the Tiqua Pueblos along the Rio Grande, but a few joined the Mansos in the El Paso area. 1 Hodge, *Handbook of American Indians North of Mexico*, 267 (1962).
[2] H. R. Report No. 457, 35th Cong., 1st Sess., 184-185 (1858).
[3] A Deed Records 207 (Mss., Records of County Clerk's Office, Albuquerque, New Mexico).

could not be found, and I believe it to have been lost in the frequent changes made of the accountable officers of that county." [4]

By decision dated September 1, 1857, Pelham found that the grant had been made in conformity with the laws, usages and customs of the Government of Mexico, that the loss of the expediente had been duly accounted for, and that the claimants and their predecessors had been in continuous possession of the land from the date of the inception of the grant. He also called Congress' attention to the instructions he had received which provided that whenever it was shown that a town was in existence when the United States took possession of New Mexico, he was to receive such proof as prima facie evidence of a grant to such corporation or to the individuals under whom the lot holders claimed. Therefore, based on the evidence before him, he recommended that Congress confirm the grant to the Town of Chililí.[5]

The grant was among the first group of New Mexico grants to be acted upon by Congress and was confirmed by an Act approved December 22, 1858.[6] It was surveyed in 1860 by Deputy Surveyor R. E. Clements. His survey depicted the grant as a rectangular tract of land containing 38,435.14 acres. The survey commenced at the Ojo de los Casos and ran thence in a northeasterly direction a distance of about eight miles; thence east six and one-half miles to the Cibolo Hills; thence in a southwesterly direction to the Alta de Cuchilla; and thence in a northwesterly direction about seven miles to the point of beginning. The Chililí Arroyo ran through the grant from its northeast corner to its southwest corner. This survey was rejected on February 12, 1875 by Commissioner S. S. Burdett on the ground that it did not correctly locate the boundaries of the grant. He pointed out that while Mexican law gave pueblos four square leagues of land, Congress had confirmed the grant in accordance with the description set forth in the Act of Possession. Continuing, he contended that the Act of Possession described a triangular tract of land with its northwestern boundary being a straight line running between the brow of the Cibolo on the east to the Casos Springs on the west. He ended his decision by ordering a resurvey of the grant. The claimants appealed the decision to the Secretary of Interior's office. The Acting Secretary of Interior, in an opinion dated September 7, 1875, affirmed Burdett's opinion but stated, if the resurvey excluded the Town of Chililí it should be modified to include the town. Pursuant to these instructions, a new survey was made in February, 1877 by Deputy Surveyors Sawyer & White. Their survey showed the grant as covering a 23,626.22 acre triangular tract with the town located about half a mile south of the northwest boundary line. The inhabitants of the Town of Chililí protested the approval of this survey on August 30, 1880, on the ground that it deprived them of a major portion of their agricultural lands. They also pointed

[4] H. R. Report, No. 321, 36th Cong., 1st Sess., 189, (1860).
[5] Ibid, 190.
[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).

out that the description of the grant set forth in the translation of the grant papers had been incorrectly made and it should read:

> . . . . from the upper springs called the springs of Los Casos, which are towards the west, to the brow of the Cibolo, on the east and from north to south the summit of the sharp hills of the Cañón of Chililí.

By decision dated July 28, 1881, Secretary S. J. Kirkwood rejected the Sawyer & White Survey and ordered the Surveyor General to resurvey the grant as an irregular oval and including all of the valley lands between the brow of the Cibolo hills and the Casos Springs. The northwestern and southeastern boundaries were to be drawn along the summit of the sharp-edged hills bordering the Arroyo. Pursuant to these instructions, the grant was resurveyed in August, 1882 by Deputy Surveyor William Mailand for 41,481.00 acres.

A patent, based upon the Mailand Survey, was issued on January 18, 1909, to the Town of Chililí Grant.[7]

[7] The Town of Chililí Grant, No. 11 (Mss., Records of the S.G.N.M.).

TOWN OF CUBERO GRANT

The inhabitants of the Town of Cubero petitioned[1] Surveyor General William Pelham on April 2, 1856 seeking the confirmation of the concession which had been granted and possession given to their ancestors, the founders of the town, by the Mexican government in or about the year 1834. The grant was made to the original grantees, who numbered about seventy heads of family, on condition that they purchase the interest of Francisco Baca, a Navajo Indian who was then living on the premises. The original grantees acquired Baca's interest and established the Town of Cubero on the grant shortly thereafter and, from that time on, it was occupied continuously by the grantees or their descendants and assigns. The petitioners described the grant as being a tract of land bounded:

> On the north, by the San Mateo Hill; on the east, by a long range of hills; on the south, by the stone mountains with crosses on them; and on the west, by the San José Hills.

They alleged that the original grant papers had been lost or destroyed. In order to sustain their allegation that a grant had been made, they filed a Spanish document from the archives of Valencia County dated May 12, 1841 evidencing the settlement of a boundary dispute between the Town of Cubero and the Pueblo of Laguna and establishing their common boundary on top of the hills situated between the Towns of Cubero and Encinal.

Although the Town of Cubero had been in existence for more than twenty years at the time of the filing of the petition, the lack of any documentary evidence clearly establishing the issuance of a grant caused the Surveyor General's office to defer action on the claim. This caused the inhabitants of the Town of Cubero no little concern, and prompted them to file the first suit in the Court of Private Land Claims. Juan Chaves and sixty-one other persons, each of whom was either an heir or legal representative of one of the original grantees, except Juan Antonio Duran, who was the only survivor of such grantees, instituted this suit[2] on November 30, 1891. It was claimed by the plaintiffs that in the year 1833 Governor Francisco Sarracino granted Juan Chaves and about sixty others the above described tract, which they estimated to contain about eleven square leagues of land. They asserted that the grant was perfect and unconditional, except, for the conditions prescribed by the Colonization Law. In an effort to account for their failure to file any documentary evidence of the concession, they alleged that the expediente had been amongst the Archives of New Mexico, but had been lost or destroyed, and the *testimonio* of the grant had been in the possession of Juan Chaves up to the time of his death, but subsequently had been either lost or destroyed. The government, in its answer, put in issue all of the allegations contained in the plaintiffs' petition.

[1] The Town of Cubero Grant, No. F 26 (Mss., Records of the S.G.N.M.).
[2] *Chaves v. United States*, No. 1 (Mss., Records of the Ct. Pvt. L. Cl.).

The case came up for trial on August 22, 1892 at which time the plaintiffs introduced a large amount of oral evidence by a number of witnesses for the purpose of proving the existence of a grant. The testimony of José Antonio Duran, the sole surviving original grantee, is typical. He testified: [3]

> That he was 92 years of age, that he was one of the settlers of the Town of Cubero in the year 1833, and had there resided ever since; that their title was a written title, made to them by Francisco Sarracino, the governor. He gave a description of the boundaries of the land and the names of some of the original settlers of 1833. He stated that Don Juan Chaves and Don Juan García, as Commissioners, put them in possession …. He testified that, when Juan Chaves died, the title paper was missing, and that it was currently reported that one Vincente Margarito Hernandez, who had been his secretary, had carried off the *testimonio* or official copy of the grant; that since 1833 the settlers and their children had lived upon and cultivated the land. He further stated that, when they applied for the grant from the government, an Indian, named Francisco Baca, was on the land, and that it was made a condition that the Indian would abandon it.

They also introduced the document pertaining to the Cubero-Laguna boundary disputes, the petition filed in the Surveyor General's office, and a number of deeds showing sales of parcels of land within the grant dated from 1841 to 1856. The claimants likewise proved, by quite a number of witnesses, that in about 1870 a considerable portion of the Archives of New Mexico had been sold as waste paper by the Territorial Librarian, and never recovered. William M. Tipton, who was in charge of the Spanish Archives in the Surveyor General's office, testified that the books and. records in that office purporting to contain the registry of land grants made by the Spanish and Mexican governments, were in a disconnected, fragmentary form, and that one of the most important books, containing a record of grants made by the Spanish and Mexican governments, was missing and. presumed to have been stolen. He also stated that there was no index of the dates, lists of original *expedientes* or warrants of title to Spanish and Mexican grants. This evidence was adduced to sustain the allegation that governor had granted the premises to the original colonists, that possession had been delivered to them, and account for the loss of the expediente and *testimonio*. The government, in turn, asserted that there was no documentary evidence that a grant had been made and the claim could not he proven by parol evidence. The government cited the case *United States v. Castro,* 24 How. (65 U.S.) 346 (1860), support for its position. It argued that if the oral testimony of interested parties, unsupported by any written document; was sufficient to establish the existence of the grant, without any evidence that it had ever been a matter of record, then, in the language of Chief Justice Tawney in the above mentioned case, It would make the title to land dependent upon oral testimony, and consequently render them insecure and unstable, and expose the public to constant imposition and fraud. The

[3] *United States v. Chaves,* 159 U. S. 452 (1895).

government argued that the only strength the claim had was that the plaintiffs and their predecessors had been in possession of the property since 1833. In closing, it noted that until 1865 no claim was ever made under a Mexican grant, but the inhabitants of the town merely based their title to the land upon the deed from the Indian, Francisco Baca.

On September 26, 1892 the court entered a decree,[4] confirming the claim on the ground that title to the promises had been derived from the Republic of Mexico, and was complete and perfect at the date when the United States acquired sovereignty over New Mexico. The government appealed the decision to the United States Supreme Court, which by decision[5] dated November 11, 1895, held:

> Not only was there evidence of the existence of original grant by the government of New Mexico and of the loss of the original records sufficient to justify the introduction of secondary evidence, but there is the weighty fact that for nearly sixty years the claimants and their ancestors have been in the undisturbed possession and enjoyment of this tract of land.

Continuing, the court stated that as a general rule a grant would be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years.[6]

The grant was surveyed in July, 1896 by Deputy Surveyor George W. Pradt for 16,490.94 acres, and was patented on August 27, 1900, notwithstanding the fact that it covered 10,138.40 acres within the Rancho de Paguate Grant, which had been patented to the Pueblo of Laguna in 1884, and 283.23 acres under the patented Pueblo of Acoma Grant.[7]

Suit[8] was brought by the Lagunans on February 17, 1910 in the District Court for Valencia County to quiet their title to the Rancho de Paguate Grant on the ground that the confirmation by Congress amounted to an adjudication by Congress of their title, which could not be disturbed by any court. It was also pointed out that Section 13(2) of the Act of March 3, 1891,[9] which created the Court of Private Land Claims, provided that "no claim shall be allowed that shall interfere

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[4] 1 *Journal* 54-56 (Mss., Records of the Ct. Pvt. L. Cl.).
[5] *United States v. Chaves*, 159 U. S. 452 (1895).
[6] This *obiter dictum* apparently was sustained by the United States Supreme Court, in *Hayes v. United States*, 175 U. S. 248 (1899), when it held that possession for six or seven years before the Treaty of Guadalupe Hidalgo of land by an alleged grantee, is not sufficient to constitute a title which can be confirmed under the Court of Private Land Claims Act, where a valid grant is not proved to have been made.
[7] The Town of Cubero Grant, No. F 26 (Mss., Records of the S.G.N.M.).
[8] *Pueblo of Laguna v. Candelaria*, No. 1693 (Mss., Records of the District Clerk's Office, Los Lunas, New Mexico).
[9] Court of Private Land Claims Act, Chap. 539, Sec. 13(2), 26 Stat. 854 (1891).

with or overthrow any just and unextinguished Indian title or right, to any land or place." By decision dated September 28, 1914, the court held that the Town of Cubero Grant was valid, and later was sustained[10] by the United States Supreme Court.

The conflicts between the pueblo grants and the Town of Cubero Grant were presented to the Pueblo Lands Board. In connection with the conflict with its Rancho de Paguate Grant, the Board not only upheld the previous decisions, but awarded the owners of the Town of Cubero Grant an additional 420.85 acres on the ground that the Pradt survey was in error.[11] However, in regard to its conflict with the Pueblo of Acoma Grant, the Board held that the Indians' claim had not been extinguished. This finding was sustained in a suit filed by the government as guardian for the Acoma Indians in the Federal District Court for New Mexico, which, by decision dated May 14, 1931, extinguished the claim of the inhabitants of the Town of Cubero to the overlap.[12]

[10] *Pueblo of Laguna v. Candelaria*, 257 U. S. 623 (1921) (mem.).
[11] The Pueblo of Laguna Grant (Mss., Records of the Pueblo Lands Board, General Services Administration, National Archives, Washington, D. C.).
[12] *United States as Gdn. for the Indians of the Pueblo of Acoma V. Arvizo*, No. 2070 (Mss., Records of the United States District Clerk's Office, Los Lunas, New Mexico).

TOWN OF JACONA GRANT

Ensign Ygnacio de Roybal petitioned Governor Pedro Rodriquez Cubero for a rancho on which to raise enough food to support his family and pasture his herds of livestock He reminded the governor that Captain Jacinto Palaez previously had been granted two *fanegas* of corn land at the Pueblo of Jacona[1] and stated that his application covered the "surplus" lands at that site. He described the tract as being bounded:

> On the north, by the road which leads from the new village to Jacona and some bluffs above said road; on the east, by the lands of Juan de Mestas and the lands of Oyu, formerly owned by Francisco de Anaya Almanzan; on the south, by the forest between this village and Jacona; and on the west, by a cañada, which comes down by a house built by Matias Madrid and some red bluffs near the little mesa of San Ildefonso.

Cubero granted all of the tract embraced within the above boundaries to Roybal on October 2, 1702, save and except the two *fanegas* tract which was owned by the minor son of Jacinto Palaez, He also directed the Alcalde of Santa Fe, Roque Madrid, to deliver possession of the grant to Roybal in the customary manner. The grant was entered in the corporation book of Santa Fe on September 7, 1713.[2] Roybal allegedly was placed in royal possession of the concession, and it is generally accepted that he and his family moved to the grant and commenced cultivating the premises. By 1846, there were at least fifty families living at the Town of Jacona.

The inhabitants of the Town of Jacona, as the heirs and legal representatives of Roybal and Palaez, petitioned Surveyor General James K. Proudfit on January 5, 1874, seeking the confirmation of the two ancient grants.[3] After a brief investigation, Proudfit, in an opinion dated June 10, 1874, found the grant papers to be genuine and recommended that the grant be confirmed to the legal representatives of said Roybal by Congress, "according to the boundaries set forth in the petition of said Roybal to Governor Cubero, and as granted by said governor."[4] A preliminary survey of the grant was made in September, 1878, by Deputy Surveyors Griffin & McMullen for 46,341.48 acres.[5]

Notwithstanding Proudfit's favorable report, Congress took no action on the claim. Therefore, following the creation of the Court of Private Land Claims, the inhabitants of the grant turned to

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[1] The Pueblo of Jacona was a small Tewa Pueblo situated on the south side of the Pojoaque River. At the time of the Pueblo Revolt of 1680, it was a vista of the mission of Nambé. It was abandoned in 1696, and its inhabitants settled among the other Tewa Pueblos, 1 Hodge, *Handbook of American Indians North of Mexico* 627 (1960).
[2] S. Exec Doc. No. 2, 43d Cong., 2d Sess., 3 (1874).
[3] Ibid., 2.
[4] lbid., 5.
[5] The Town of Jacona Grant, No. 92 (Mss., Records of the U.S.G.N.M.).

that forum for relief.[6] They filed their petition on September 21, 1892, alleging that a valid grant had been made to Roybal in 1702, and was subsequently confirmed in 1782 by Governor Jun Bautista de Anza. In support of this contention the plaintiffs, referred to Archive No. 1261, which was a copy of the confirmation proceedings. This record showed that Mateo Roybal, a son of the original grantee had requested the confirmation of the entire grant. Anza, in his decree dated September 11, 1782, stated:

> I granted and do grant in the name of his majesty (whom God preserve) that portion of land which he possessed and actually possesses as his own and no more in accordance with what is expressed in the documents relating to the entirety of the grant which was made of the aforesaid Jacona to the Ensign Don Ignacio de Roybal and without prejudice to what may be owned in the same by the other heirs.…[7]

Anza also directed the Alcalde of Santa Cruz, José Campo Redondo, to place applicant in royal possession of "the aforesaid portion of land." In compliance with the governor's instructions, Redondo, on September 26, 1782, delivered to Mateo Roybal possession of a tract of land bounded:

> On the west, the edge of an Arroyo which likewise serves as the boundary of the heirs of Juana Luján, the landmark of which is a rock which is on the edge of said Arroyo on the slope of a hill which also serves as the boundary towards the south, and looking from said rock in a straight line towards the north the boundary in this direction is the hills on the other side of the Nambé River; on the east with the lands of his brother Don Bernardo Roybal.…[8]

The plaintiffs argued that these proceedings were a judicial determination by a proper officer and that the entire grant was valid. The government in its answer asserted that the grant was incomplete since there was no evidence that the original grantees had been placed in possession and that the 1782 proceedings confirmed only the lands actually occupied by Mateo Roybal. It also pointed out that the court had no authority to confirm the portion of the Town of Jacona Grant which conflicted with the previously confirmed grants to the Pueblos of San Ildefonso, Tesuque, and Pojoaque.

By decision dated August 23, 1893, the court held that while there was no documentary evidence that possession of the grant had been delivered to the original grantee, the long continuous possession of the premises raised a presumption that the ceremony had been performed. As an alternative ground, the court found that the recitals in the 1782 proceedings indicated that they

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[6] *Gomez v. United States,* No. 35 (Mss., Records of the Ct. Pvt. L, Cl.).
[7] Archive No. 1261 (Mss., Records of the A.N.M.).
[8] Ibid.

were brought not to cure a defect in the 1702 grant arising from the failure of the grantee to obtain legal possession of the premises, but evidenced a voluntary partition of the grant amongst Roybal's heirs. Therefore, the court believed it was justified in holding that Anza had recognized the entire grant and confirmed the rights all the heirs of the original grantee. However, the court excepted from its confirmation of the grant all lands lying within the Pueblo of San Ildefonso, Tesuque, and Pojoaque.[9]

The government appealed the decision to the Supreme Court on the grounds that the court was not justified in presuming that possession had been delivered and, in the absence of a delivery of possession, the grant to Ignacio Roybal would not be one which the United States was obligated under the Treaty of Guadalupe Hidalgo to recognize. If the original grant was involved, then the confirmation should be limited to the tract described in the 1782 proceedings. For some unexplained reason the Solicitor General of the United States, on February 1, 1897, requested the court to dismiss the appeal. In response to said motion, the court entered a decree dismissing the appeal.[10]

The grant was surveyed by Deputy Surveyor Clayton Coleman in July, 1898. His survey showed that the grant contained 6,952.84 acres after excluding 1,163.64 acres which conflicted with the Pueblo of Tesuque Grant, 901.996 acres lying in the Pueblo of San Ildefonso Grant and 2,775.96 acres situated within the Pueblo of Pojoaque Grant. The grant was patented on November 15, 1909.[11]

[9] 1 Journal 195 (Mss., Records of the Ct. Pvt. L. Cl.).
[10] *United States v, Gomez,* 17 S. Ct. 1001, 41 L.Ed. 1185 (1897) (mem.).
[11] The Town of Jacona Grant, No. 92 (Mss., Records of the S.G.N.M.).

TOWN OF LAS TRAMPAS GRANT
SANTO TOMAS APÓSTOL DEL RÍO DE LAS TRAMPAS GRANT
LAS TRAMPAS GRANT

In conformity with a royal order, Governor Tomas Veles Cachupín 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 Río 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 Sebastián Martín and Santa Bárbara Grants, their interest in the project began to wane. To insure the formation of the settlement in the vicinity of his grant, Sebastián Martín 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, Sebastián Martín 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 Peñasco del Cañóncito on the east and the main road on the west. The deed was not signed by Martín due to an impediment in his sight but was certified to be his free act and deed by Alcalde Juan José Lobato.

Two weeks later Cachupín granted each of the colonists a 180 varas tract of arable land situated n the Cañón of the Trampas River. In addition to said 2,160 varas, he granted them the lands located in the Cañóns 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, Cachupín designated the following natural objects as the boundaries of the grant:

> On the north, the southern boundary of the Pueblo of Picurís Grant; on the east, a narrows made by the river where it joins the mountain; on the south, the summit of the Cañada del Ojo Sarco and on the west, the narrows of the river which marked the eastern boundary of the Sebastián Martín 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 Sebastián Martín. 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, Cristóbal Romero, a Justice of the Peace for Taos County, New Mexico, filed a petition[3] in the Surveyor Generals 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 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 Bárbara Grant. He estimated that the area in conflict represented one half of the Santa Bárbara 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 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, Comrnissioner 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 Picurís Grant.

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

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]

[7] Ibid.

TOWN OF LAS VEGAS GRANT

Juan de Dios Maese, Manuel Archuleta, Manuel Duran, and José Antonio Casacs, for themselves and on behalf of twenty-five other men, petitioned the Ayuntamiento of San Miguel del Vado on March 20, 1835, for the tract of land located about twelve miles northeast of San Miguel del Vado on the Gallinas River which was commonly known as Las Vegas. The petitioners requested this grant for the purposes of "planting a modest crop and to pasture their livestock. They described the tract as being bounded:

> On the north, by the Sapeyo River; on the east, by the Aguage de la Zequa; on the south, by the Antonio Ortiz Grant; and on the west, by the San Miguel del Vado Grant.

The Ayuntamiento of San Miguel del Vado considered the petition on the same day, and, being anxious to encourage colonization by indigent families, referred the matter to the Territorial Deputation with a recommendation that he grant be made. The Territorial Deputation took the matter up during its March 23, 1835, session and decided that the grant should be made with the boundaries requested, not only to the petitioners but also to any landless person who might wish to join the settlement. The grant was made subject to the condition that the pasture and watering places remain free for the use of all. In conclusion, it ordered that the proceedings be forwarded to the Governor for his concurrence. On the following day Francisco Sarracino, as Acting Governor, directed the Alcalde of San Miguel del Vado, José Jesús Ulibarri y Duran, to place the grantees in possession of the grant. Sarracino also instructed the Alcalde to select a townsite and distribute home sites and farm tracts amongst the colonists. Ulibarri went to the grant on April 6, 1835, and after surveying the premises and delivering legal possession thereof to the grantees, proceeded to allot an individual farm tract and residential lot to each of the 31 adult male inhabitants of the grant in accordance with the provisions of the colonization laws. At the conclusion of these proceedings, Ulibarri notified the colonists that all of the watering places and pasture lands contained within the grant were to be reserved for the common benefit of all the town's inhabitants. In regard to the defense of the town, he informed the grantees that each should furnish his own arms and was obligated to perform his fair share of all labor necessary for the common welfare of the community, including working upon a wall which was to be constructed around the town for protection against the Indians.[1] On June 11, 1841, one hundred eighteen additional farm tracts and city lots were allotted to the new colonists, who had moved to the grant after 1835. A similar distribution was made in November 20, 1846, to 29 persons. Subsequently, six tracts which had been abandoned were reallotted to six new colonists.

Dr. Adolphus Wislizenus passed through the town of Las Vegas on June 25, 1846, and described it as being located in an exposed valley about a mile from the Gallinas River and containing

[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 16-36 (1860).

approximately 100 houses. Mention was made that the settlers, who looked poor and dirty, cultivated the field which surrounded the town by means of irrigation and raised some stock.[2]

On the morning of August 15, 1846, Stephen Watts Kearny and his staff galloped into the plaza at the town of Las Vegas where he was met by Alcalde Juan de Dios Maese. From the top of a nearby building, where all could see and hear, Kearny delivered his famous proclamation whereby he formally took possession of New Mexico for the United States. [3]
Francisco López, Henry Connelly and Hilario Gonzales, individually and on behalf of the other inhabitants, petitioned Surveyor General William Pelham on September 11, 1855, for the recognition of the town of Las Vegas Grant. The petitioners carefully called the Surveyor General's attention to the fact that the heirs of Luis Cabeza de Baca also had filed a claim in his office seeking the confirmation of a different grant covering the same lands. After hearing the testimony and reviewing the documentary evidence presented in connection with the two claims, Pelham stated that he did not believe that Congress, when it created the office of Surveyor General, intended to give him authority to adjudicate title disputes arising between private individuals. He was, therefore, of the opinion that his jurisdiction was limited solely to ascertaining whether a claim was of such a nature as to separate the lands embraced therein from the public domain. Having reached this conclusion, Pelham proceeded to pass upon the validity of each of the two claims. He held that the land in question had been lawfully separated from the public domain, and that in the absence of one, the other would he a good and valid grant. Pelham concluded his report, which was dated December 18, 1858, by recommending that Congress confirm both grants and, thus, leave the problem of adjudicating the conflicting claims to the courts.[4] Congress confirmed the Town of Las Vegas Grant by Act[5] approved June 21, 1860. This Act also confirmed the claim of the heirs of Luis María Cabeza de Baca. In order to accommodate all of the interested parties and to avoid the litigation mentioned in Pelham's decision, the Act permitted Baca's heirs to select an equivalent amount of non-mineral public domain elsewhere in New Mexico.

On July 26, 1860, the General Land Office directed the Surveyor General to give the surveying of the Town of Las Vegas Grant priority so its area could be ascertained. The General Land office pointed out that the survey was necessary in order for Baca's heirs to timely select their lands. Pursuant to these instructions, the Surveyor General promptly caused the grant to be surveyed by Deputy Surveyors Pelham & Clements. Their survey was approved by the Surveyor General on December 8, 1860, and showed that the grant contained a total of 496,446.96 acres.[6]

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[2] A. Wislizenus, Memoir of a Tour to Northern Mexico, 17 (1848).
[3] Twitchell, Old Santa Fe, 259-260 (1963).
[4] The Town of Las Vegas Grant, No. 20 (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).
[6] The Town of Las Vegas Grant, No. 20, (Mss., Records of the S.G.N.M.).

The survey also disclosed that the Town of Las Vegas Grant conflicted with a portion of the John Scolly and Town of Tecolote Grants. Since the Town of Tecolote Grant had been confirmed and surveyed prior to the Town of Las Vegas Grant, its title is paramount. The John Scolly Grant, which was also confirmed by the Act of June 21, 1860, also has been recognized as being superior to the extent that its patented portion conflicts with the Town of Las Vegas Grant.

In his report for the year 1887, the Secretary of the Interior discusses the Town of Las Vegas Grant, which he described as being perhaps the most remarkable claim in New Mexico. In a harsh criticism of the previous handling of the Town of Las Vegas and Luis María Cabeza de Baca Grants, he writes:

> The land involved is claimed by two parties, namely, the Town of Las Vegas on the one side and the heirs of Luis María Baca on the other. Of course it was not possible for both sets of claimants to own the same land at the same time, since if the grant to one was valid, the grant to the other could not be. But the Surveyor General decided after carefully examining both cases that under either grant, the land was segregated from the public domain and beyond the control of the Government .... The claims, however, were not conflicting, for the heirs of Baca, after making a formidable showing of their rights, contented themselves with simply asking for scrip, for lands to be located elsewhere of equivalent area in lieu of their claim. This made the way clear for the town of Las Vegas, and revealed the fact that in the friendly interplay at these nominally rival parties, each was willing to help the other to a large share of the public domain. Their interests were made to intersect each other at a point of mutual good will in furtherance of a common design upon the public domain. It is quite remarkable that the Surveyor General did not see this collusion, nor even seem to suspect it, and that although the grant as confirmed to the town of Las Vegas only contained about 20,000 acres of agricultural land, the tract as surveyed by him was made to contain 496,446 acres, being about 475,000 acres in excess of the grant.
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> But I am dealing now with the action of Congress in this strange case. Congress confirmed the grant as recommended for confirmation by the Surveyor General; but the Surveyor General made no recommendations whatever and gave Congress no data on which it could rightfully confirm to the town of Las Vegas any lands except the numerous small allotments set apart to as many holders for agricultural purposes and covering in the aggregate about the 20,000 acres above mentioned. Congress went further, and yielding to the demands of the heirs of Baca, who could have no right to anything if the claim of the town was valid, gave them scrip in lieu of the lands thus unwarrantably asking for, covering the same area; and this illustration of legislative wisdom and consistency had its illuminating touch in the survey of the grant to the town of Las Vegas for 496,446 acres, while the General Land office, assuming gratuitously

> that this monstrous fraud was authorized, proceeded to issue scrip to the Baca heirs for the same quantity of land, by which the Government would be robbed of nearly 1,000,000 acres. Fortunately for the country, in this case the facts have been dragged to the light in time for resurvey of the land claimed according to its true boundaries, and the cancellation of the scrip issued to the Baca heirs in excess of the land actually belonging to the town under its grant.[7]

As a result of this report, a resurvey of the Town of Las Vegas Grant was ordered by the General Land office on November 5, 1887, but due to a lack of funds, the Surveyor General failed to make the survey. Finally, the status quo was broken, On March 1, 1890, Moses Milhiser, assignee of the rights of a number the original grantees, protested the proposed resurvey and demanded that a patent be issued based on the original survey. Secretary of Interior, John W. Noble, conducted a full investigation into the matter, and in a lengthy decision dated December 5, 1891, held that the Act of June 21, 1860[8] confirmed title to the town of Las Vegas to the extent of only the areas covered by the 184 individually allotted tracts and that the balance of the land embraced within the exterior boundaries set forth in this *testimonio* of the grant belonged to the United States.[9] A motion for review of this decision was denied on July 16, 1892.[10] A second motion, filed by the County Commissioners of San Miguel County, New Mexico, asking for the reversal of the decision of December 5, 1891, was denied on May 16, 1894.

Before a survey was made pursuant to the decision of December 5, 1891, Jefferson Raynolds, for himself and the other inhabitants of the town of Las Vegas filed suit in the Federal District Court for the District of Columbia, seeking to enjoin the Secretary of Interior and Commissioner of the General Land Office from carrying out the survey or in any manner interfering with their rights. The defendants filed a demurrer, which was overruled and the injunction granted. The decree also held that the plaintiffs' title to the grant was good and indefeasible. The defendants appealed to the Court of Appeals where the decision of the lower court was affirmed. A further appeal was taken to the United States Supreme Court which was finally dismissed when the defendants retired from office.[11]

The claimants of the Town of Las Vegas Grant tenaciously pursued the prosecution of their claims. On December 17, 1898, they asked that a patent be issued to the town for all of the lands included in said grant as surveyed in 1860. The heirs and assignees of the original grantees also requested a patent. The Department of Interior, after reconsidering the merits the requests,

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[7] Report of the Secretary of Interior, 665 (1887).
[8] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860).
[9] The Town of Las Vegas Grant, 13 L.D. 646 (1891).
[10] The Town of Las Vegas Grant, 15 L.D. 58 (1892).
[11] Smith v. Raynolds, 166 U.S. 717 (1896).

revoked its previous decisions and held that the *Tameling*[12]and *Maxwell*[13] cases clearly established the preposition that the grant was confirmed by Congress for the full amount of land embraced within the boundaries set forth in the petition which had been filed in the Surveyor General's Office in 1855. In conclusion, the decision directed the Commissioner of the General Land Office to issue a patent to the town of Las Vegas since the confirmation was made in favor of the town.[14] The heirs and assigns of the original grantees filed suit in the Federal Court for the District of Columbia to enjoin the issuance of the patent to the town of Las Vegas. They contended that a patent could not be issued to the town of Las Vegas since it had no legal or corporate capacity to hold the grant. The court dismissed the action and the plaintiffs appealed. The Supreme Court of the United States affirmed the lower court's action.[15] To overcome the objections raised by this suit the New Mexico legislature passed an act[16] vesting the management, control and administration of the grant in the District Court of San Miguel County. Thus, the Town of Las Vegas Grant is unique in that it is the only grant under the direct management of the courts. A patent was issued to the Town of Las Vegas for 431,653.65 acres on June 27, 1903.[17] In addition to the land, the inhabitants received a priority to the use of the waters from the Gallinas River under the doctrine of "Pueblo Rights."[18]

[12] Tameling v. United States Freehold & Emigration Co., 93 U.S. 644 (1874).
[13] United States v. The Maxwell Land Grant Co., 121 U.S. 325 (1886).
[14] The Town of Las Vegas Grant, 27 L.D. 683 (1898).
[15] Maese v. Herman, 183 U.S. 572 (1901).
[16] 1 New Mexico Statutes 672 (1942).
[17] W. Earl Thomas to J.J.B., October 1, 1965.
[18] Cartwright v. Public Service Company of New Mexico, 66 N.M. 64, 343 P. 2d 654 (1959).

TOWN OF MANZANO GRANT

The Estancia Valley, with its gentle sloping prairies, was ideal for stockraising. Shepherds from Santa Cruz were grazing their herds in the valley as early as 1703. Later a number of wealthy inhabitants of the Río Abajo area also commenced using the valley as a pasturage for their extensive flocks. In 1829, the Río Grande went on one of its frequent rampages and washed away part of the Town of Tome. Many of its residents, whose lands had been destroyed, moved to a picturesque site at the foot of Manzano Peak and near the Ojo del Gigante.

On September 22, 1829, José Manuel Trujillo and the 172 other citizens of the new settlement, which was called Manzano, petitioned the Ayuntamiento of Tonic for a grant covering the lands which they had appropriated. They described the boundaries of such lands as:

> … from north to south, from Torreón to the old mission of Abo, and from east to west, from the Mesa de los Jamaneos to the mountain.

They also stated that the grant would be utilized as a common pasture ground, crossroads and other uses necessary for every town established on the solid basis of common and private property. As a condition of the grant, the petitioners agreed that they and all subsequent colonists would be entitled:

> to acquire legal property therein, that he shall construct a regular terraced house of adobe in the square where the chapel is to be constructed (for which permission has been granted us), and he shall bring with him his property of every description, contribute to all community labor, procure the increase and prosperity of the town, defending with arms the firesides of his town to the fullest extent against any domestic or foreign enemy and finally, that the person who will not reside in said town with the family belonging to him, and who shall remove to another settlement, shall lose all right he may have acquired to his property.

In conclusion, the petitioners requested the Ayuntamiento to appoint a committee to investigate the merits of their petition, establish the boundaries of the town at the points designated in their petition, and refer their petition to the Territorial Deputation in order that the proper approval may issue therefrom.[1] The Ayuntamiento considered the petition during its regular session held three days later. It was resolved that the matter should be referred to the Territorial Deputation, as requested, together with a report that it knew of no obstacle against the granting of the request except that all the arable land located within the requested premises belonged to Bartolomé Baca, However, it pointed out that each ownership should not prejudice the grant, since Baca had agreed that he would be satisfied with the land which he would receive as a new settler together

[1] H. R. Exec Doc. No. 14, 36th Cong., 1st Sess., 68-69 (1860).

with the lands he had purchased from other settlers provided he was not required to move to the grant but continuously caused his lands to be cultivated and improved. On November 28, 1829, the Territorial Deputation took up the matter and issued a decree granting the petitioners a four-square league of land and directing the Alcalde of Tome, Jacinto Sánchez, to place the grantees in possession of the grant. The decree also directed Sánchez to allot each of the grantees all of the tillable land which he could cultivate, leaving the balance for the benefit of subsequent colonists who might settle upon the grant.[2] In compliance with this decree, Sánchez went to the Town of Manzano on December 24, 1829, and proceeded to survey the grant. Since the settlers requested that the Alto del Pino de la Virgin be established as the central point of the grant, he commenced his survey at that point and measured one league therefrom in each of the four cardinal directions. The boundaries were, thus, established:

> On the north, at two solitary cedar trees in the Cañón del Alto which was also known as the Cañón of the deceased Ulas; on the east, by the red mesa known as the Rancho de Pedro de la Torre; on the south, by the rise on the opposite side of the gulf of the Cienega; and on the west, by the summit of the hill.

Although Sánchez was willing to allocate the tillable lands amongst the settlers, they requested and received his permission to remain in possession of the lands which they were occupying and had already improved.[3]

Ramon Cisneros, for himself and in behalf of the other residents of the Town of Manzano filed the testimonio of the grant on January 9, 1856, in Surveyor General William Pelham's office and presented his petition seeking the confirmation of the concession. Cisneros' petition described the grant as covering the tract of land described in the petition to the Ayuntamiento in 1829. In connection with his investigation of the claim, Pelham received the testimony of two witnesses who stated that the Town of Manzano was in existence in 1846 and that the Decree of the Territorial Deputation was genuine. Based upon his cursory examination, Pelham announced his decision in the case on August 10, 1859, in which he held that the grant was good and valid and recommended its confirmation by Congress to the Town of Manzano to the extent of one league towards the four cardinal points of the compass "as granted by the Territorial Deputation."[4] By Act approved June 21, 1860,[5] Congress confirmed the claim in accordance with Pelham's recommendation.

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[2] Archive No. 1013 (Mss., A.N.M.).
[3] H. R, Exec. Doc. No. 14, 36th Cong., 1st Sess., 70 (1860).
[4] Ibid, 63, 73
[5] An Act to Confirm Certain Private Land Claims in the Territory of New Mexico, Chap. 167, 12 Stat. 71 (1860). It should be remembered that the United States Supreme Court in *United States v. Vigil*, 13 wall (80 US.) 449 (1871) held that a grant by the Departmental Assembly was void.

The grant was surveyed in February, 1877, by Deputy Surveyors Sawyer & McElroy for 17,360,97 acres. This survey stood until May 24, 1886, when, in response to a request by one of the claimants of the grant seeking the prompt issuance of a patent for the grant, Commissioner Strother M. Stockslager ordered Surveyor General George W. Julian to examine the case, and if he found no objectors, to prepare a description of the grant for incorporation into the patent. Julian, upon investigating the record, concluded that the grant was a diamond-shaped tract with its points one league in each of the cardinal directions from the Alto del Pino de la Virgin instead of a four-square league tract. Therefore, he ordered Deputy Surveyor Charles Ratliff to resurvey the grant accordingly. Pursuant to these instructions, Ratliff surveyed the grant for 8,689.74 acres, or one-half the size of the grant depicted by the Sawyer & McElroy Survey. The owners of the grant protested, and by decision dated May 14, 1904, Secretary of Interior, J. H. Timple, rejected the Ratliff Survey. Due to a closing error in the Sawyer & McElroy Survey, he ordered a resurvey of the grant. A new survey of the grant was made in 1904 by W. V. Hall for 17,360.24 acres. A patent, based on Hall's Survey, was issued on February 8, 1907, to the Town of Manzano Grant.[6]

[6] The Town of Manzano Grant No, 23 (Mss., Records of the S.G.N.M.).

TOWN OF MORA GRANT
SANTA GERTRUDIS LO DE MORA GRANT

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

> On the north, by the Río de Ocaté; on the east, by the Aguage de la Yegua; on the south, by the mouth of the Sapeyó River, where it empties into the Río de Mora; and on the west, by the Estillero.

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

Since they were far from any military assistance, the residents of the grant were left to their own devices for the protection of their homes, families and crops. Somehow they managed to overcome all the adversities of the frontier. This isolation may account for the fierce individualism and consuming interest in politics which developed at Mora. Therefore, it is not surprising to find that a number of the citizens of Mora took part in the Rebellion of 1837 which led to the beheading of Governor Pérez and the overthrow of his government less than two years after he had issued the grant to them.[2] Mora was a flourishing loyal Mexican community on August 18, 1846, when Brigadier General Stephen Watts Kearny, in command of the Army of the West, conquered New Mexico. A number of the northern communities, including Mora, refused to recognize the newly established American rule and participated in the Taos Revolt in which Governor Charles Bent and several other territorial officials were killed. Eight Americans were ruthlessly murdered at Mora, and Captain I. R. Hendley rushed there to quell the insurrection. During the ensuing battle which lasted several hours Captain Hendley was killed, and the American forces were compelled to withdraw. On January 29, 1847, Captain Morin with a greatly reinforced force returned to Mora. Upon his approach, the insurgents fled, leaving the settlement to the mercy of the Americans, who inflicted a great deal of damage upon the town and burned its public archives.[3]

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[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 184-185 (1860).
[2] Twitchell, *Old Santa Fe* 200 (1963).
[3] Stanley, *The Mora Story*, 8 (1963)

José María Valdez and Vincento Romero on behalf of themselves and all other inhabitants of the Town of Mora Grant petitioned[4] the Surveyor General, William Pelham, on June 20, 1859, requesting the confirmation of the grant. The petitioners expressly relinquished any claim they might have to the portion of the grant that conflicted with the John Scolly Grant which previously had been approved by Pelham. In support of their claim, the petitioners filed the testimonio of the Act of Possession which recited that the proceedings had been made pursuant to an order issued by Pérez on September 28, 1835. The United States District Attorney, R. H. Tompkins, protested the approval of the claim on the grounds that there was no documentary evidence that a grant actually had been made by Governor Pérez to the inhabitants of the Town of Mora or that Pérez had ordered a partitioning and distribution of the farm tracts. Pelham recognized that the failure of the petitioners to explain why documentary evidence of the grant could not be found in the Archives at Santa Fe tended to show that a grant had not been made; however, he presumed that Sánchez would not have distributed the land unless he was instructed to do so by a duly constituted authority. In support of this contention, Pelham pointed out that the inhabitants of the colony would not have remained on the grant in light of the hardship which confronted them or expended the large sums of money and effort improving the lands unless they were satisfied that a valid grant had been made to them. Several witnesses testified that they had seen a copy of the grant in the Archives at Mora prior to their destruction in 1847, and one even produced a receipt dated in 1836 for a copy of the grant signed by the Alcalde of Mora. Pelham, in his decision[5] dated July 9, 1859, held:

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

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

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

States took possession of the country, it is to be considered as prima facie evidence of the existence of grant to said town or to the persons under whom they claim.

In conclusion, Pelham found the grant to he good and valid and recommended to Congress that it be confirmed to the original grantees and those claiming under them to the full extent set forth in the metes and bounds description contained in the Act of Possession except for the portion which conflicted with the John Scolly Grant. Congress by an act[6] approved June 21, 1860 confirmed the grant as recommended by Pelham in his report.

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

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

[6] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, Sec. 31, 12 Stat. 71 (1860).
[7] The Town of Mora Grant, No. 32 (Mss., Records of the S.G.N.M.).
[8] An act to confirm certain private land claims in the Territory of New Mexico, Chap. 167, Sec. 1, 12 Stat. 71 (1860).
[9] The Town of Mora Grant, No. 32 (Mss., Records of the S.G.N.M.).

TOWN OF TAJIQUE GRANT

Manuel Sánchez, for himself and on behalf of nineteen associates, all residents of the Town of Valencia, petitioned the Acting Governor of New Mexico, Francisco Sarracino, on March 9, 1834, for a grant covering a tract of vacant land which they had discovered at the place known as the Tajique. As justification for the request, Sánchez pointed out that the applicants had only a limited amount of land upon which to grow the crops necessary for the support of their families. They described the tract as being one-half of a league in circumference. Eight days later, Sarracino temporarily granted the premises to the petitioners in order to permit them to proceed with the planting of their crops. However, he expressly provided that the grant was made subject to its subsequent confirmation by the Departmental Assembly. His granting decree concluded with an order to the Alcalde of Valencia, Vicente Otero, to "make the division" asked for, within the boundaries set forth in the petition, provided no injury would result to any third party. In compliance with the governor's directions, Otero, on April 9, 1834, went to the grant and set aside one hundred and seventy-two varas as a townsite. Next, he measured a distance of one-half of a league in each of the cardinal directions from the center of the townsite. These four terminal points were located as follows:

> On the north, at a pine tree marked with a cross in the Cañón de los Migas; on the east, at a lone pine; on the south, at a thicket of cedars a little above the Cañón de los Pinos; and on the west, at a pine marked with a cross on the Mesita de la Cueva.

Due to the absence of seven of the grantees, he decided to postpone the allocation of the individual farm tracts and home lots. He authorized the grantees to proceed with the planting but cautioned them that no one would acquire any right to the land he cultivated excepting those to whom it should fall by lot. However, whosoever received a developed tract would have to develop a like quantity for the first occupant. Otero returned to Tajique on December 24, 1834 and subdivided the tillable lands into seventeen tracts measuring 112 varas from east to west and allotted them amongst the seventeen families who were then residing upon the grant. He also reminded each allottee of his obligation to equally improve the tract acquired by the person who had previously resided upon his tract. He notified them that should any allottee fail to so develop his predecessor's tract by April 1, 1835, the predecessor would not be obligated to vacate the premises and could continue using it until his land had been so improved. The proceedings were concluded with Otero giving the grantees a testimonio of the grant.[1]

The inhabitants of the Town of Tajique filed their testimonio with and petitioned Surveyor General William Pelham on February 3, 1857 for the confirmation of the grant. Pelham held a hearing on the claim on May 6, 1859, at which time two witnesses appeared and in their answer

[1] H. R. Exec. Doc. No. 14, 36th Cong., 1st Sess., 49-51 (1860).

to the three questions propounded by Pelham, stated that they had no interest in the grant, that they personally knew that the grant had been settled prior to 1842 and was in existence when the United States took possession of New Mexico in 1846, and that the town had a population of about 420 souls. Based on this record, Pelham, in a discussion dated May 10, 1859, held that title to the grant was complete, and in view of its existence in 1846, it should be recognized by Congress.[2]

The Thirty-sixth Congress considered thirty-three claims which had been passed upon by Pelham. By Act approved June 21, 1860 [3], Congress confirmed thirty-two of these claims, including the Town of Tajique Grant. The grant was surveyed in February, 1877 by Deputy Surveyors Sawyer & McElroy for 7,185.55 acres. However, a patent for the property was not issued until March 18, 1912.[4]

[2] Ibid. 52.
[3] *An Act to Confirm Certain Private Land Claims in the Territory of New Mexico*, Chap. 167, 12 Stat. 71 (1860).
[4] The Town of Tajique Grant No. 21 (Mss., Records of the S.G.N.M.).

TOWN OF TECOLOTE GRANT

Salvador Montoya, for himself and five associates, petitioned Diego Padilla, the Alcalde of San Miguel del Vado, on October 8, 1824, requesting that they be granted for agricultural purposes a tract of land having the following boundaries:

> On the north, the Cueva; on the east, the Pueblo, on the south, the Puertecito de las Gailinos; and on the west, the Cañada de Tres Hermanos.

The petition was referred on October 9, 1824, to the Territorial Deputation for its further action. Ten days later, the Territorial Deputation forwarded the petition to the Bartolomé Baca, Governor of New Mexico, for a report upon the merits of the request. On the same day, Baca advised that august body that he earnestly recommended the granting of the requested tract to Montoya and his associates. Baca pointed out that there were no obstacles to granting the land to the petitioners. However, in order to avoid any future misunderstandings with the inhabitants of the pueblo which adjoined the land on the east, he recommended that the Alcalde of San Miguel del Vado carefully establish the eastern boundary of the new grant so that it would not overlap or conflict with any lands occupied or claimed as commons by their neighbors. The Territorial Deputation promptly took up the matter on the same date and issued the grant in accordance with Baca's recommendations. On the 23rd of the following month, the grantees were placed in legal possession of the grant by the Alcalde of San Miguel del Vado, Thomas Sena.

The grantees promptly occupied the grant and formed the settlement known as the Town of Tecolote, which was located on the north bank of the Tecolote Creak and about eight miles south of Las Vegas. The town was in existence at the time the United States acquired New Mexico and has continued in existence up to the present time.

On July 26, 1856, the heirs of Salvador Montoya, for themselves and on behalf of the inhabitants of the town of Tecolote, petitioned the Surveyor General's Office for the confirmation of the grant. In response to the petition, Surveyor General William Pelham investigated the claim and in his decision dated December 21, 1856, found the grant to be good and valid. Since no one had contested the petition, he unqualifiedly recommended to Congress that the grant he confirmed.[1] Based on his recommendation, Congress, by act approved December 22, 1858[2] confirmed the title of the Town of Tecolote as reported by Pelham.

The grant was first surveyed in August, 1859, by Deputy Surveyor John W. Garretson, but his survey, which covered 21,636.83 acres, was rejected when it was found that he had inaccurately

[1] H. R. Report No. 321, 36th Cong., 1st Sess., 100-104 (1860).
[2] An act to confirm the land claims of certain Pueblos and towns in the Territory of New Mexico, Chap. 5, 11 Stat:. 374 (1858).

located the eastern and southern boundaries of the grant. The grant was re-surveyed in December, 1881, by Deputy Surveyor William H. McBroom. McBroom discovered that the Puerticito do los Gailinos, which in the meantime had been renamed Puerticito del Jaspe, was located south-southeast of the Town of Tecolote and marked the southeast corner of the grant. The pueblo referred to in the grant as fixing the eastern boundary was found to be an old Indian pueblo located on the south bank of Tecolote Creek about six miles down stream from the Town of Tecolote. The McBroom survey showed that the grant actually contained 48,123.38 acres and was approved on December 9, 1882.[3]

When it was learned that the Land Department proposed to issue a patent to the Town of Tecolote for the lands covered by the grant, the heirs of Salvador Montoya protested on the grounds that the patent should be issued in the name of the original grantees since the Town of Tecolote was not a corporate entity and, therefore, could not legally hold title to the grant. By decision[4] dated August 13, 1886, Assistant Secretary of Interior H. L. Muldrow held that the act of December 22. 1858, confirmed title to the grant to the town and not to the grantees as individuals. A patent was issued to the Town of Tecolote based on the McBroom Survey on June 21, 1902.[5] In 1903 the New Mexican Legislature vested the management and control of the grant in a Board of Trustees.[6]

[3] The Town of Tecolote Grant, No. 7 (Mss., Records of the S.G.N.M.).
[4] The Town of Tecolote Grant, 5 L.D. 61 (1886).
[5] The Town of Tecolote Grant, No. 7 (Mss., Records of the S.G.N.M.).
[6] 6 New Mexico Statutes 690 (1941).

TOWN OF TOMÉ GRANT

Juan Barela and twenty-eight other residents of the Villa of Albuquerque petitioned the alcalde of that town on July 2, 1739 seeking permission to form a new settlement upon the *sitio* of land which originally had been granted to Tomé Domínguez but subsequently revoked due to his failure to fulfill the conditions of settlement. The petitioners stated that they did not have sufficient land or water at Albuquerque and desired to form the new settlement in order to have a place to support their families and stock. Alcalde Juan Gonzales Bas advised the applicants that he did not have authority to grant their request and, therefore, had referred the matter to the Governor of New Mexico. Finding the request to be just and reasonable Governor Gaspar Domingo de Mendoza granted the petitioners the lands which they had requested subject to usual conditions of settlement required by law. The grant expressly provided that it was not being made to the grantees exclusively but was also to run in favor of anyone desiring to join them. At the same time, the governor ordered the alcalde of Albuquerque to place the grantees in possession of the premises, and, in order to avoid future difficulties among the owners, directed Bas to partition the land among the grantees so that each person would receive his proportionate share of the land. Bas met the grantees at the grant on July 30, 1739 and proceeded to place them in possession of the grant, which was described as being bounded:

> On the north, by the point of the marsh at the hill called Tomé Domínguez; on the east, by the main ridge called Sandia; on the south, by the place commonly called Tres Alamos; and on the west, by the Río Grande.

Following the survey and delivery of possession of the grant, Ban proceeded to allocate an individual lot or tract of land to twenty of the original petitioners. These tracts wore large enough to permit the construction of a house, planting of a garden and the cultivation of a fanega of corn and two of wheat within their boundaries.[1] A copy of the proceedings pertinent to the issuance of the grant was duly filed in the Archives of New Mexico.[2]

On August 6, 1856 the inhabitants of the Town of Tomé filed[3] their claim with the Surveyor General William Pelham for investigation and confirmation. Pelham compared the signatures on the *expediente* against the signatures of the granting officers on other documents contained in the Archives and found the title papers to be genuine. Based on this cursory investigation coupled with a finding that the petitioners and their ancestors had peaceful possession of the land for more than a century, Pelham recommended[4] the confirmation of the grant on September 2, 1856.

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[1] H. R. Exec. Doc. No. 1, 34th Cong., 3d Sess., 479-482 (1856).
[2] Archive No. 956 (Mss. Records of the A. N. M.).
[3] The Town of Tomé Grant, No. 2 (Mss., Records of the S.G.N.M.).
[4] Ibid.

Congress confirmed the grant to the Town of Tomé by the Act of December 22, 1858,[5] The grant was surveyed in September, 1860 by Deputy Surveyor John W. Garretson and was certified to contain 121,594.53 acres. A patent was issued to the Town of Tomé for all of the lands described in Garretson's survey on April 5, 1871.[6]

The nature of grants similar to the Town of Tomé Grant worried lawyers in New Mexico for years. The question at issue is whether they are individual grants in favor of the original grantees or community grants under which all of the land embraced within their boundaries, except for the individual tracts which had been allotted to the settlers, is to be held in trust for the benefit of future settlers.

The Supreme Court of New Mexico held[7] that the only title which passed under the Town of Tomé Grant was to the individual allotments and that title to the balance of the grant remained in the crown, subject to its use by the members of the community as a common pasturage. Therefore, when the area passed to the United States, title to the unallocated lands vested in the United States, which, in turn, conveyed the lands in question to the Town of Tomé free of all claims of the original grantees. The case was appealed to the United States Supreme Court which affirmed that judgment.[8]

[5] An Act to Confirm the Land Claims of Certain Pueblos and Towns in the Territory of New Mexico, Chap. 5, 10 Stat. 374 (1859).
[6] The Town of Tomé Grant, Mo. 2 (Mss., Records of the S.G.N.M.)
[7] *Bond v. Unknown Heirs of Juan Barela,* 16 N.M. 660; 120 P. 707 (1911).
[8] *Bond v. Unknown Heirs of Juan Barela,* 229 U. S. 488 (1912).

TOWN OF TORREÓN GRANT

Twenty-seven inhabitants of the Town of Valencia appeared before Acting Alcalde Vicente Otero on February 15, 1841, and advised him that they had appointed Nerio Antonio Montoya as their attorney-in-fact with authority to represent them in soliciting a grant covering a tract of vacant land at the Torreón Spring, Montoya formally accepted the power of attorney and received a *testimonio* of the proceedings from Otero. Three days later Montoya, for himself and on behalf of his twenty-seven principals, petitioned the Prefect for the Central District of New Mexico, Antonio Sandoval, for a grant which he described as being:

> From the spring above mentioned towards the north with the lands of Tajique, a distance of about eight hundred varas; to the south one league; on the east as far as the water reaches, and on the west to the farm belonging to me, being a distance of about five hundred varas,

He advised the Prefect that the petitioners were all "short of tillable land" and needed the requested property for the support of their families. Sandoval referred the petition to the Alcalde of Tomé on February 23, 1841, for a full report as to whether the petitioners had any land from which to obtain their subsistence and the nature of the premises. Alcalde Juan de Jesús Chaves, by Report dated March 1, 1841, advised Sandoval the petitioners did not have sufficient land to earn a livelihood and, while the requested lands offered all of the advantages necessary for colonization, it was then vacant. Since the report raised no obstacle, Sandoval directed Chaves to proceed to give the petitioners national and personal possession of the land which he had granted to them. By virtue of this commission, Chaves met the grantees at the Torreón and, after reading the grant to them, proceeded to survey the premises which measured one league from north to south and one and a half leagues from east to west. He designated the following natural objects to serve as their landmarks:

> On the north, by the boundary of Tajique; on the east by the junction of the Torreón Cañón with that of the Cuero; on the south, by the Cuero Mountains; and on the west by the boundary of the farm of Nerio Montoya.

Next, he allotted each of the grantees one hundred varas of tillable land within the out boundaries of the grant.[1]

Montoya presented the testimonio of the grant to and filed a petition with surveyor General William Pelham on January 8, 1856, requesting an early investigation into the validity of the claim. He also introduced oral testimony proving that the town had been in existence in 1846.

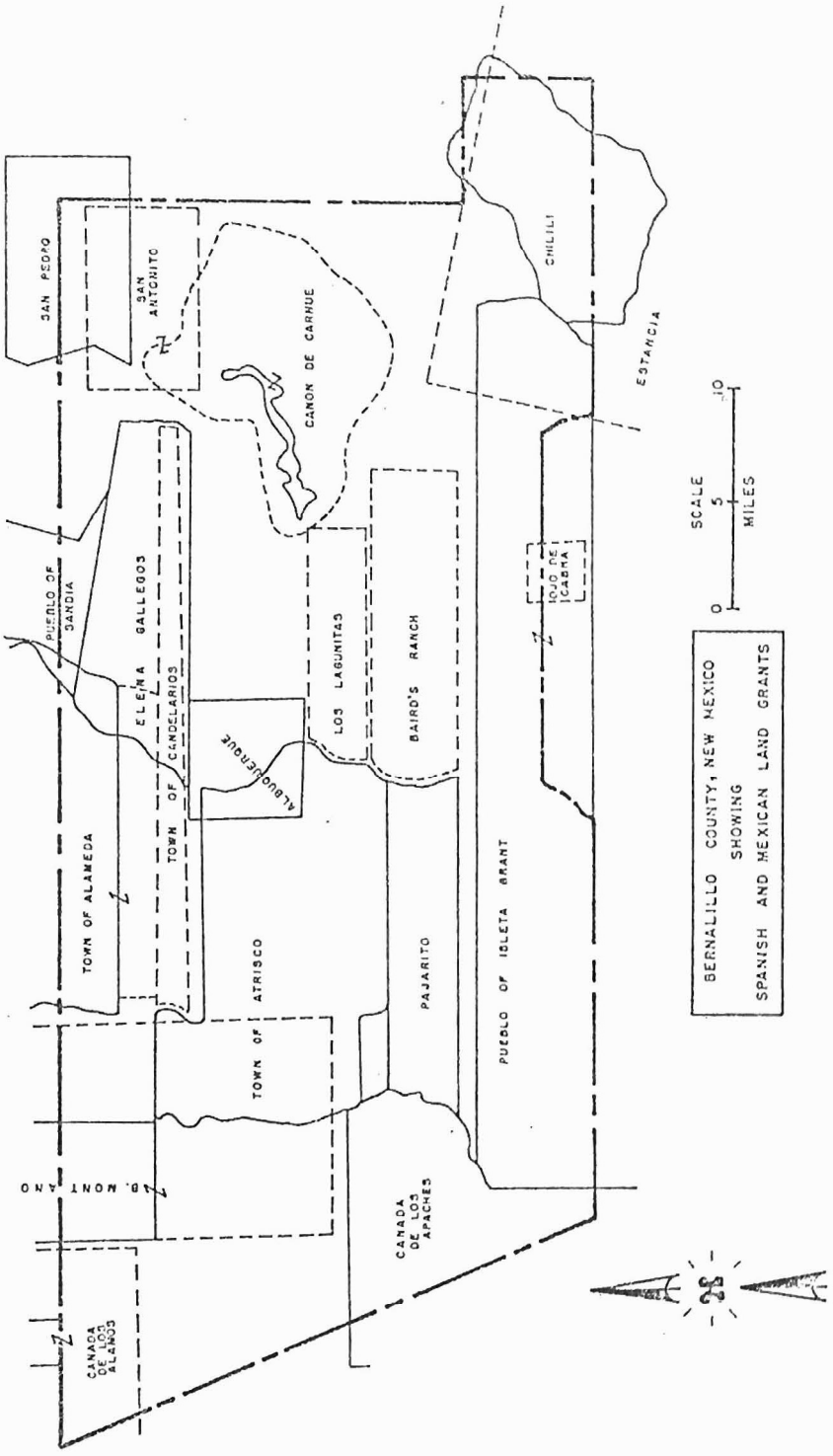
[1] H. R. Exec. Doc No. 14, 36th Cong., 1st Sess., 54-60 (1860).

Based upon a brief inquiry into the background of the grant, Pelham, on May 12, 1859, advised Congress that the claimants title papers appeared to be genuine. Continuing, he noted that while the claimants had contended that Prefects had authority under the laws of January 4, 1813 [2] and March 20, 1837[3], to make the grant, he was of the opinion that the laws of January 4, 1813 had no bearing on the case and that he had been unable to ascertain if the Law of March 20, 1837 gave them any such authority. However, he noted that since the witnesses who had appeared before him clearly established the existence of the Town of Torreón prior to 1846, such existence raised a presumption in favor of the validity of the grant. Since no evidence had been produced indicating that the Mexican Government had disapproved the action of the Prefect, he was of the opinion that the land had been severed from the public domain. As a result of such severance, he believed that under its treaty obligations, the United States was obligated to treat the claim in the same manner. Therefore, he approved the grant and transmitted it to Congress for its further action in the premises.[4]

By Act approved June 21, 1860, Congress confirmed the Town of Torreón Grant.[5] The grant was surveyed in February 1877 by Deputy Surveyors Sawyer & McElroy for 14,14611 acres. The grant was patented on April 9, 1909.[6]

[2] Reynolds, *Spanish and Mexican Land Laws* 83 (1895)
[3] Ibid, 211.
[4] H. R. Exec. Doc. No. 14, 36th Con, 1st Sess., 61-62 (1860).
[5] *An Act to Confirm Certain Private Land Claims in the Territory of New Mexico*, Chap. 167, 12 Stat. 71 (1860).
[6] The Town of Torreón Grant, No. 22 (Mss., Records of the S.G.N.M.).

Appendices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LOS LAGUNITAS
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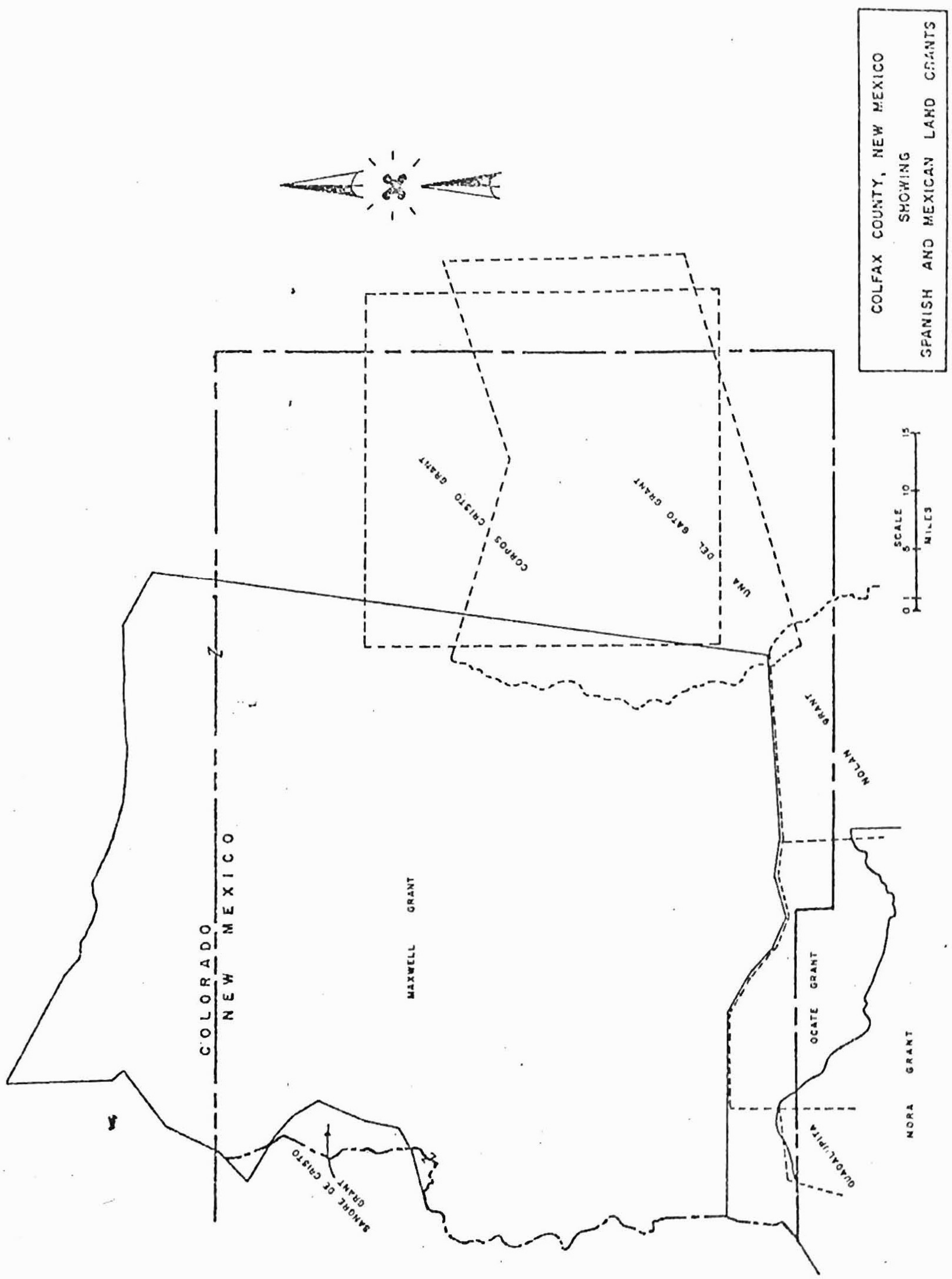
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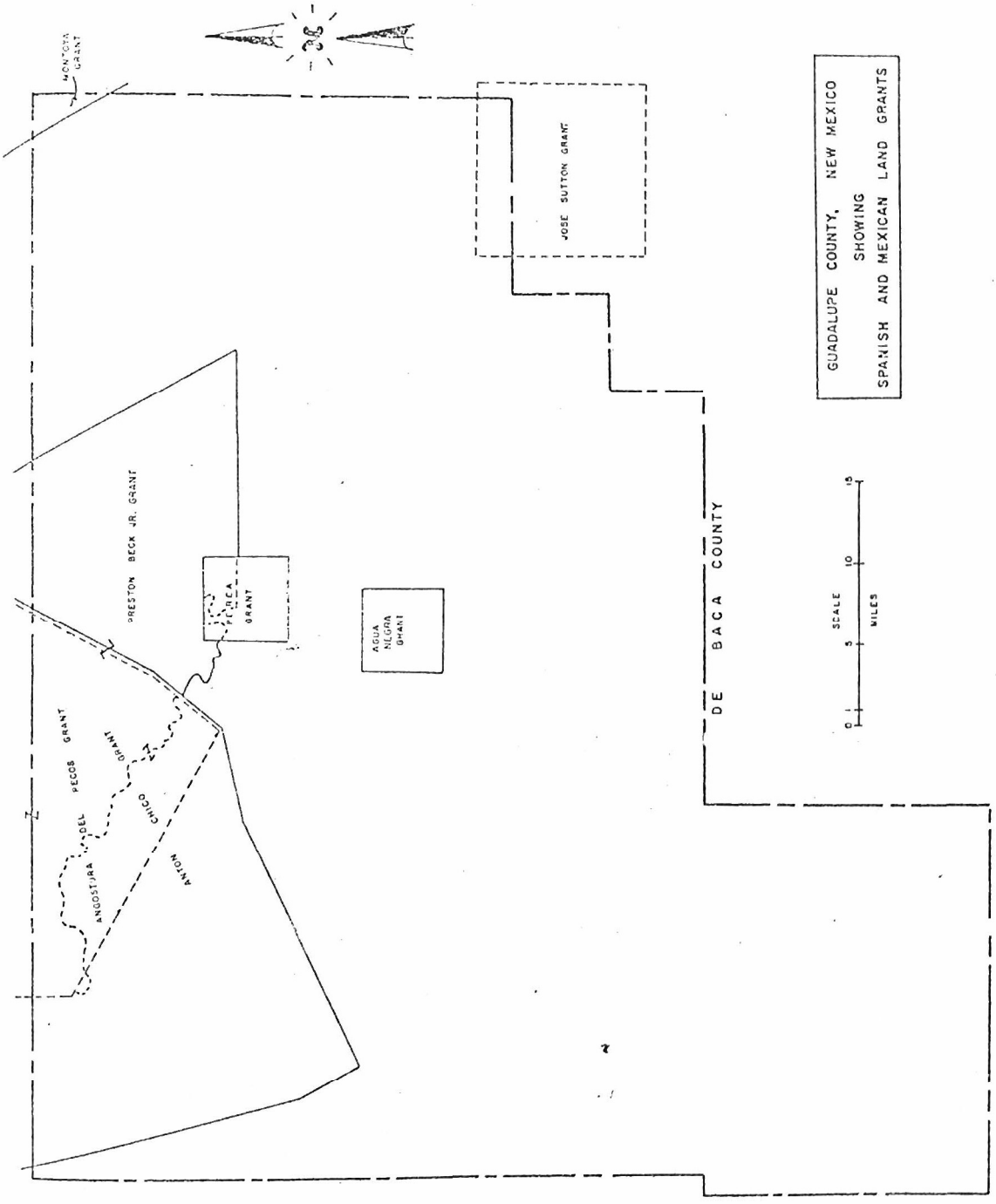
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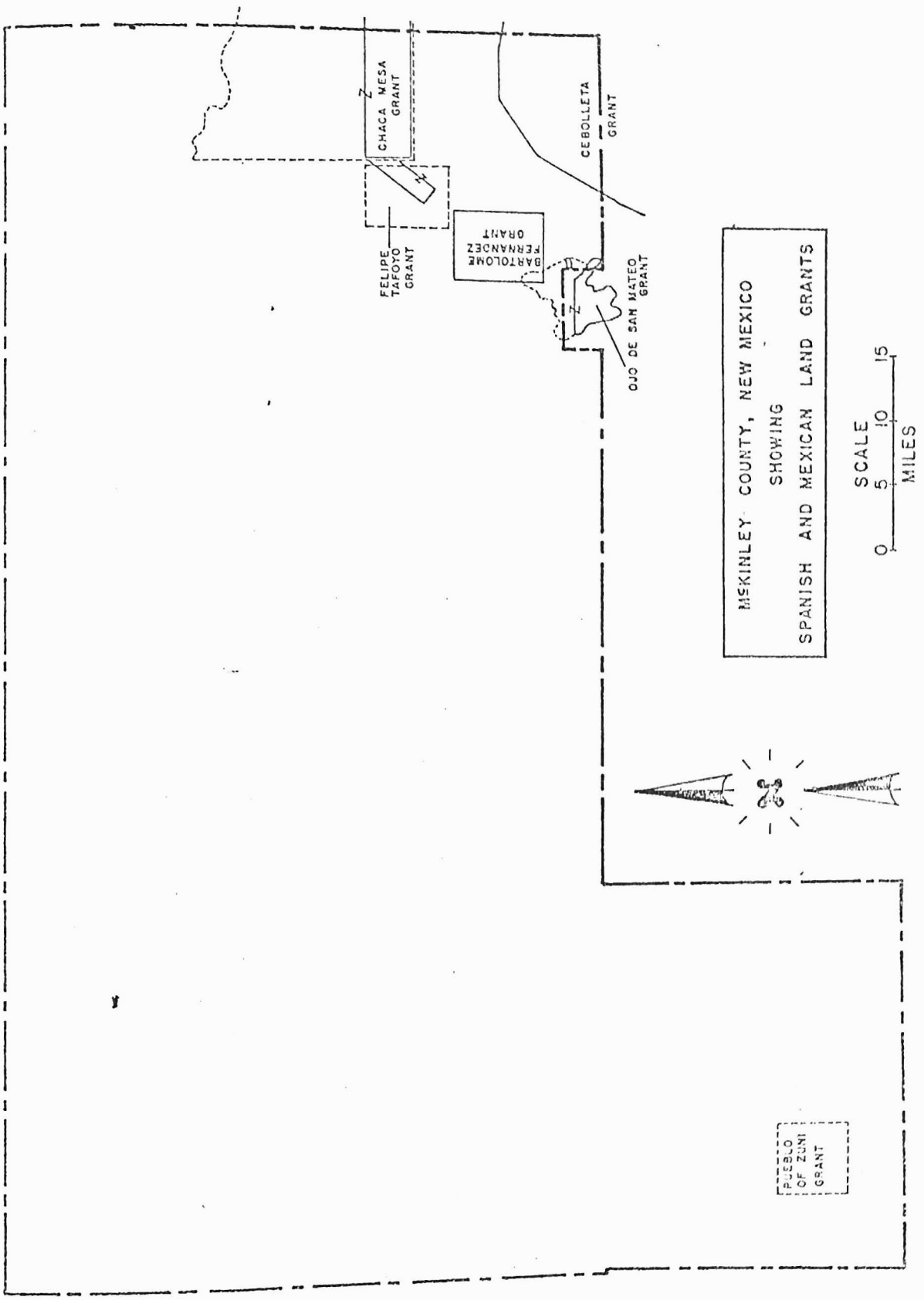
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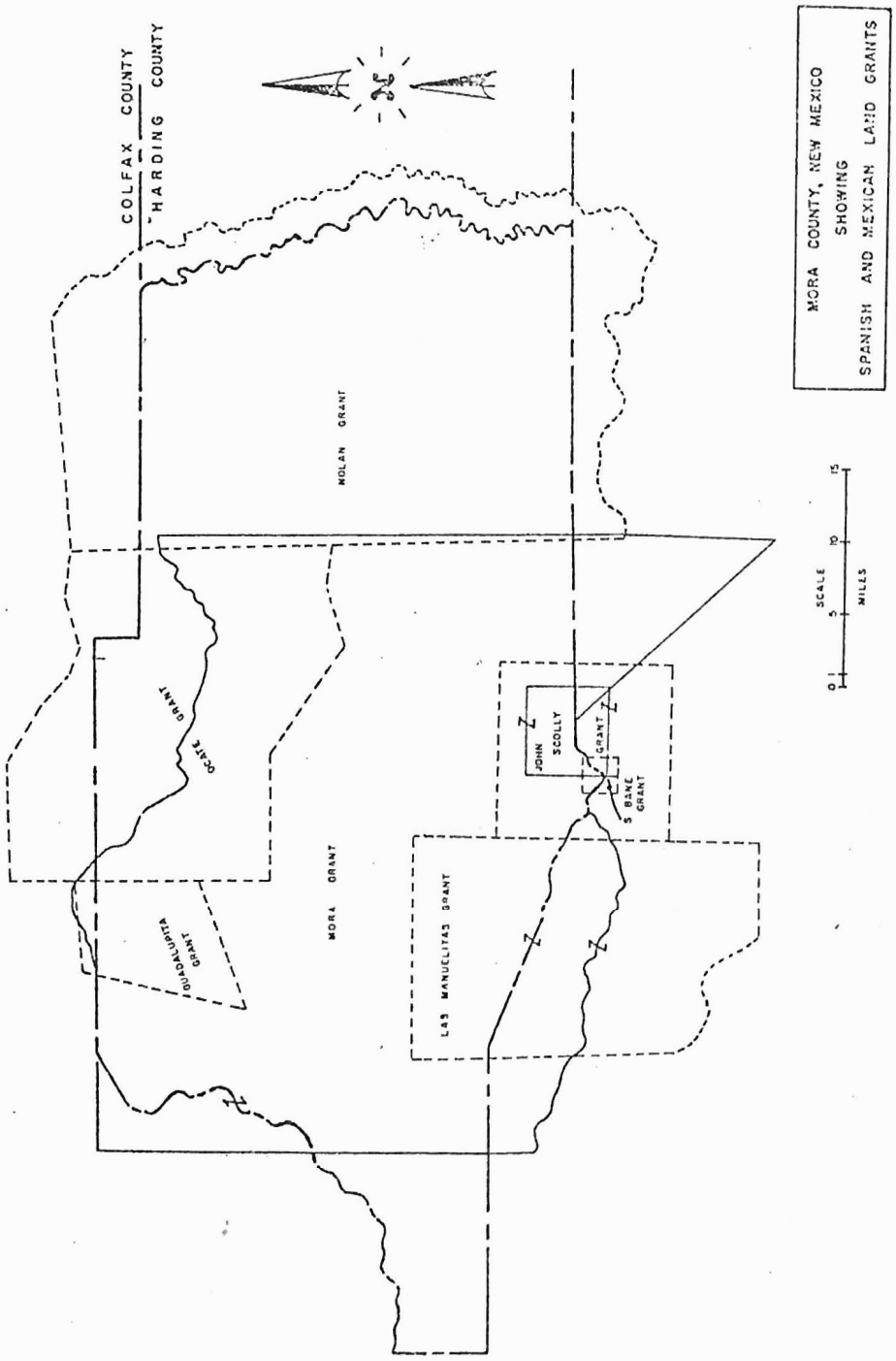
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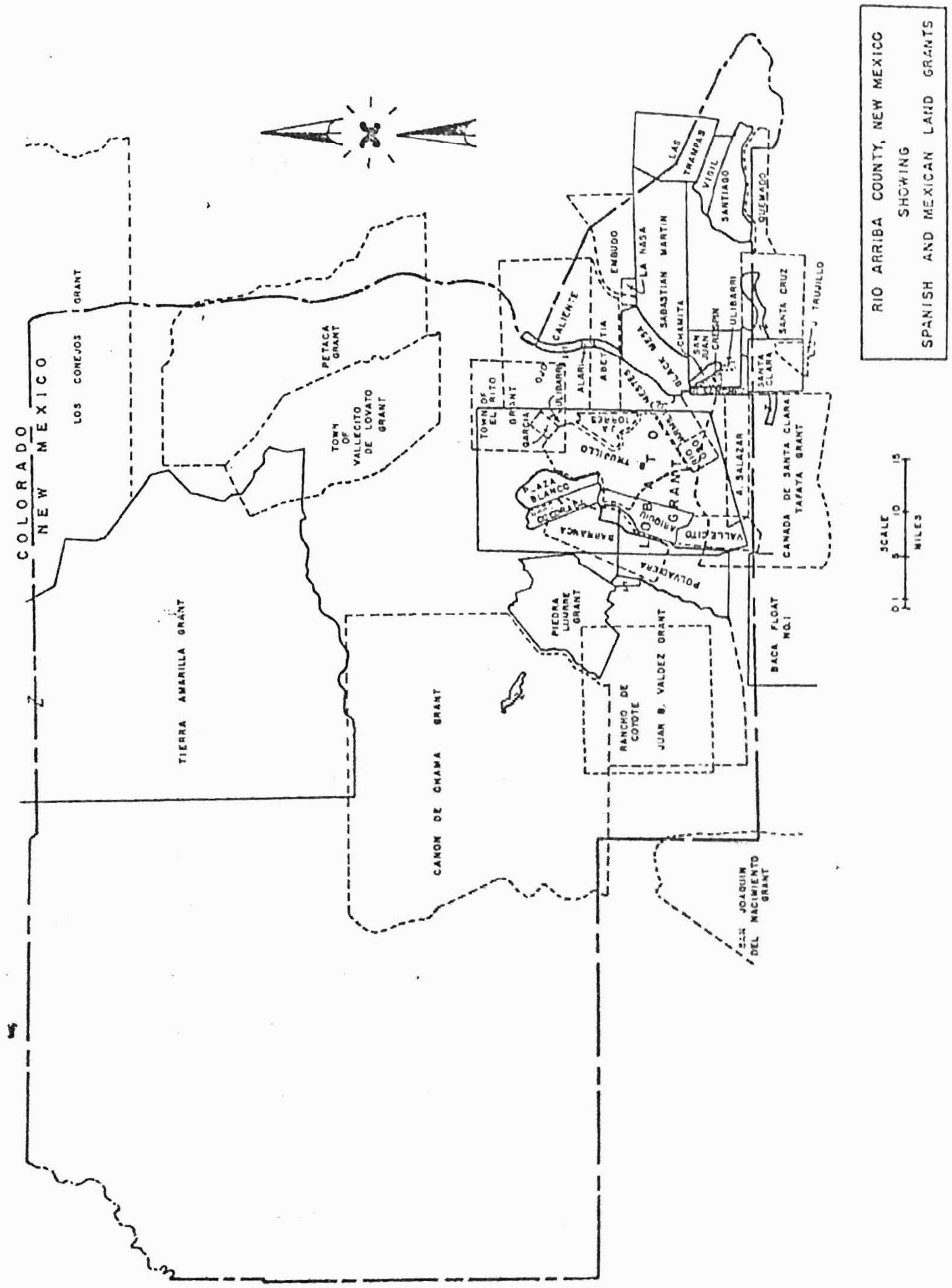
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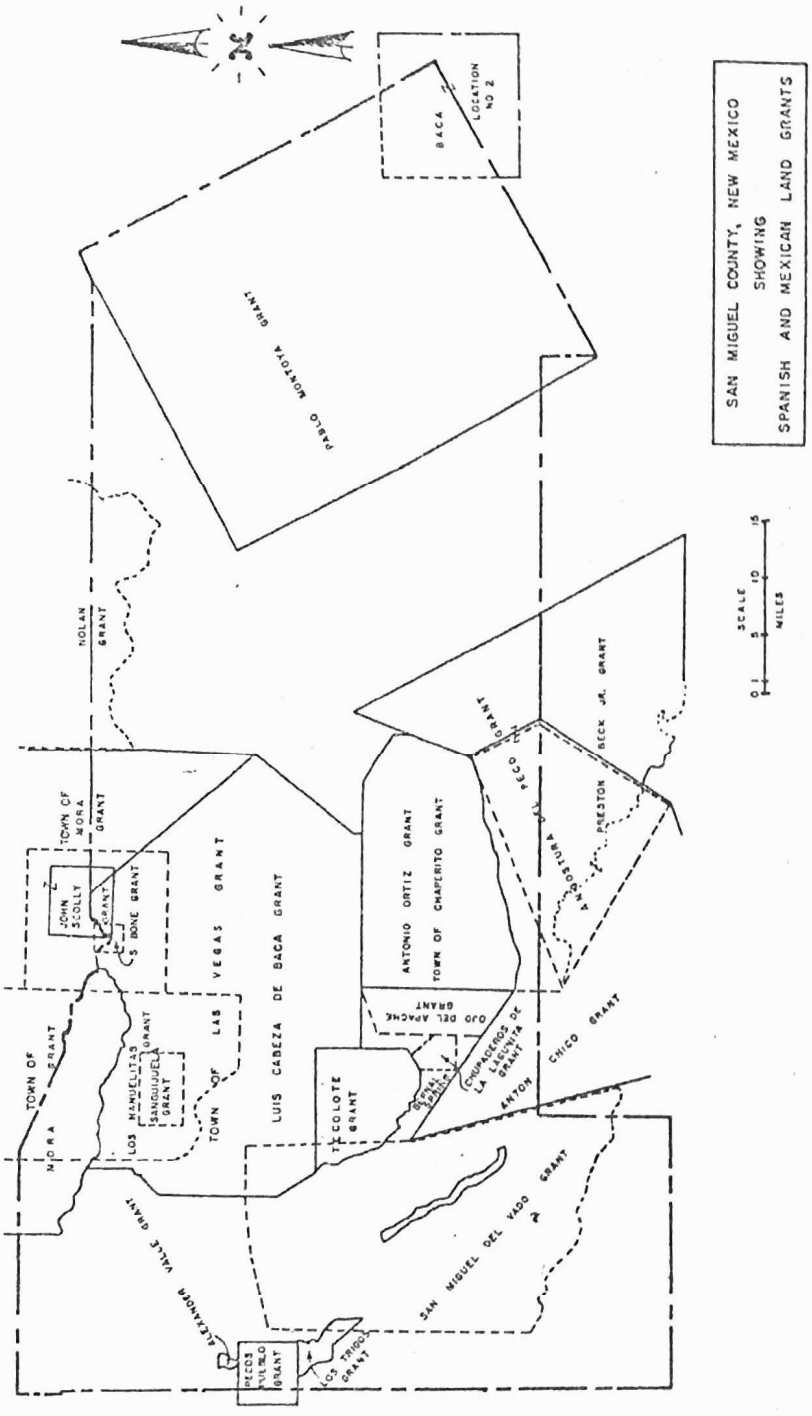
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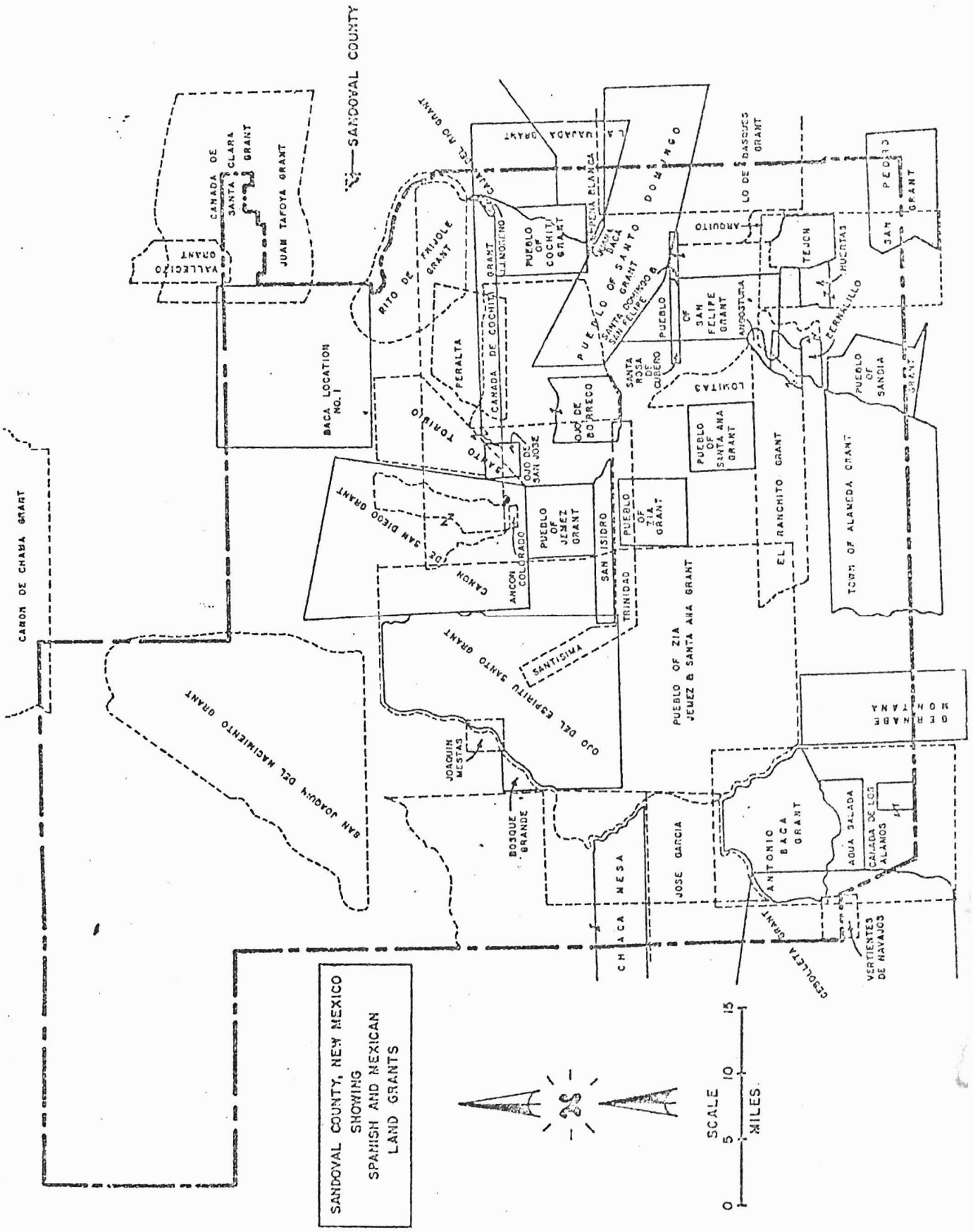
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SANTA ROSA DE CUBERO
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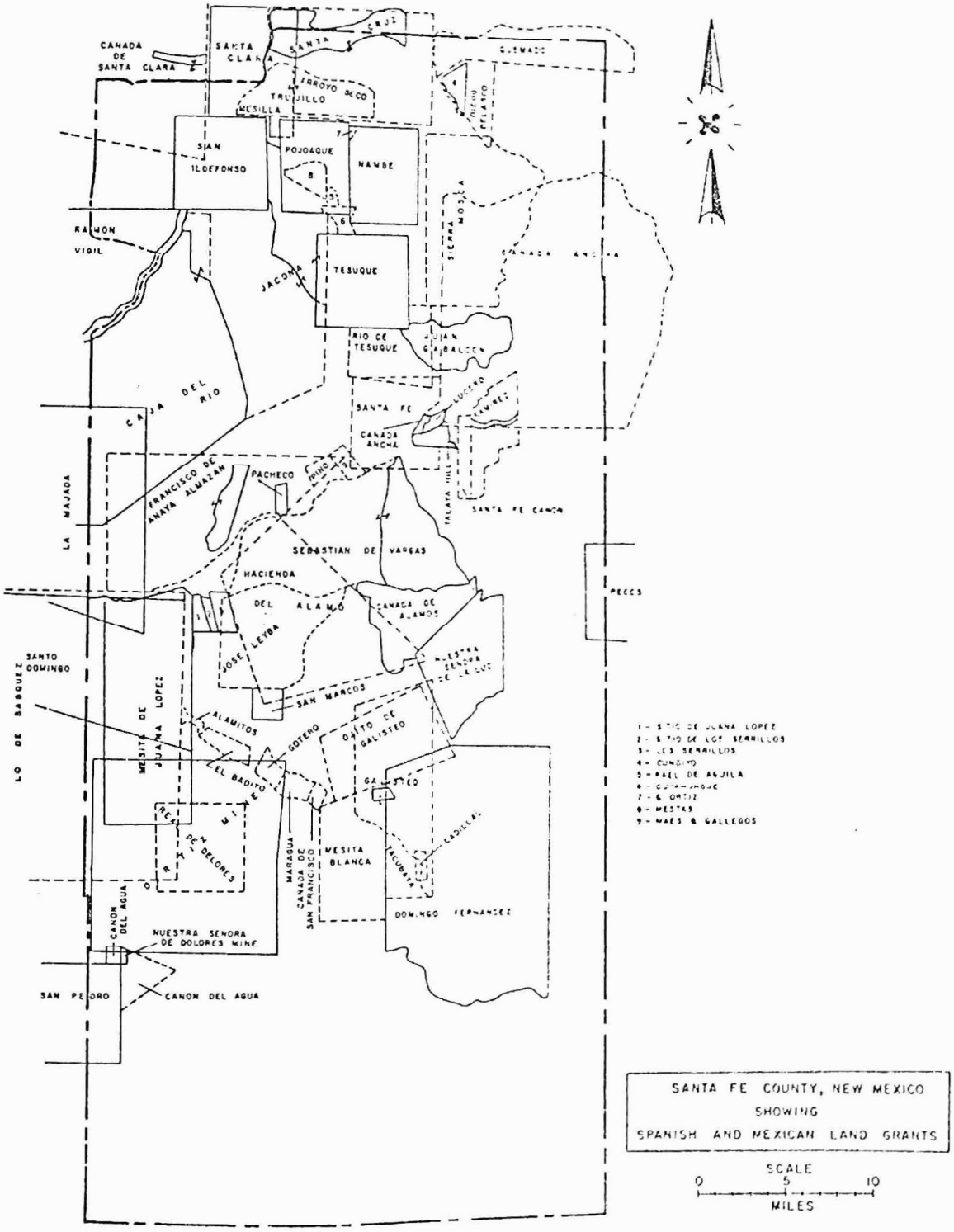
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SIERRA MOSCA
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SAN GABALDON
CAJA DEL RIO
SANTA FE
LUCERO
TAMEZ
CANADA ANCHA
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PACHECO
PINO
TALAYA HILL
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LA MAJADA
SEBASTIAN DE VARGAS
HACIENDA DEL ALAMO
CANADA DE ALAMOS
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SANTO DOMINGO
JOSE LEYBA
NUESTRA SEÑORA DE LA LUZ
SAN MARCOS
ALAMITOS
GOTERO
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EL BADITO
GALISTEO
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LO DE BARQUEZ
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DOMINGO FERNANDEZ
CANON DEL AGUA
NUESTRA SEÑORA DE DOLORES MINE
SAN PEDRO
CANON DEL AGUA
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2 - SITIO DE LOS SERRILLOS
3 - LOS SERRILLOS
4 - CUNDIYO
5 - PAEL DE AGUILA
6 - GUAMROJO
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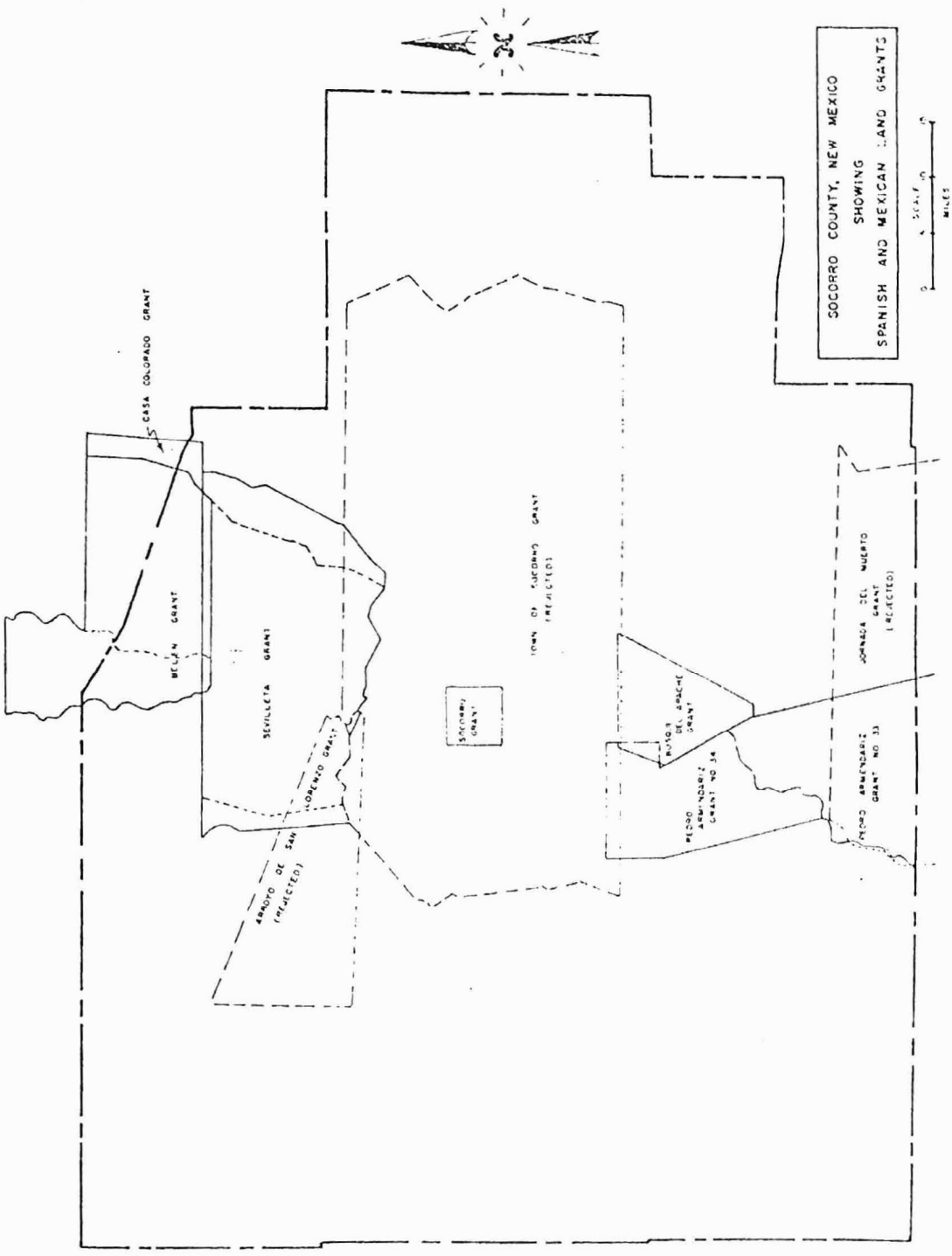

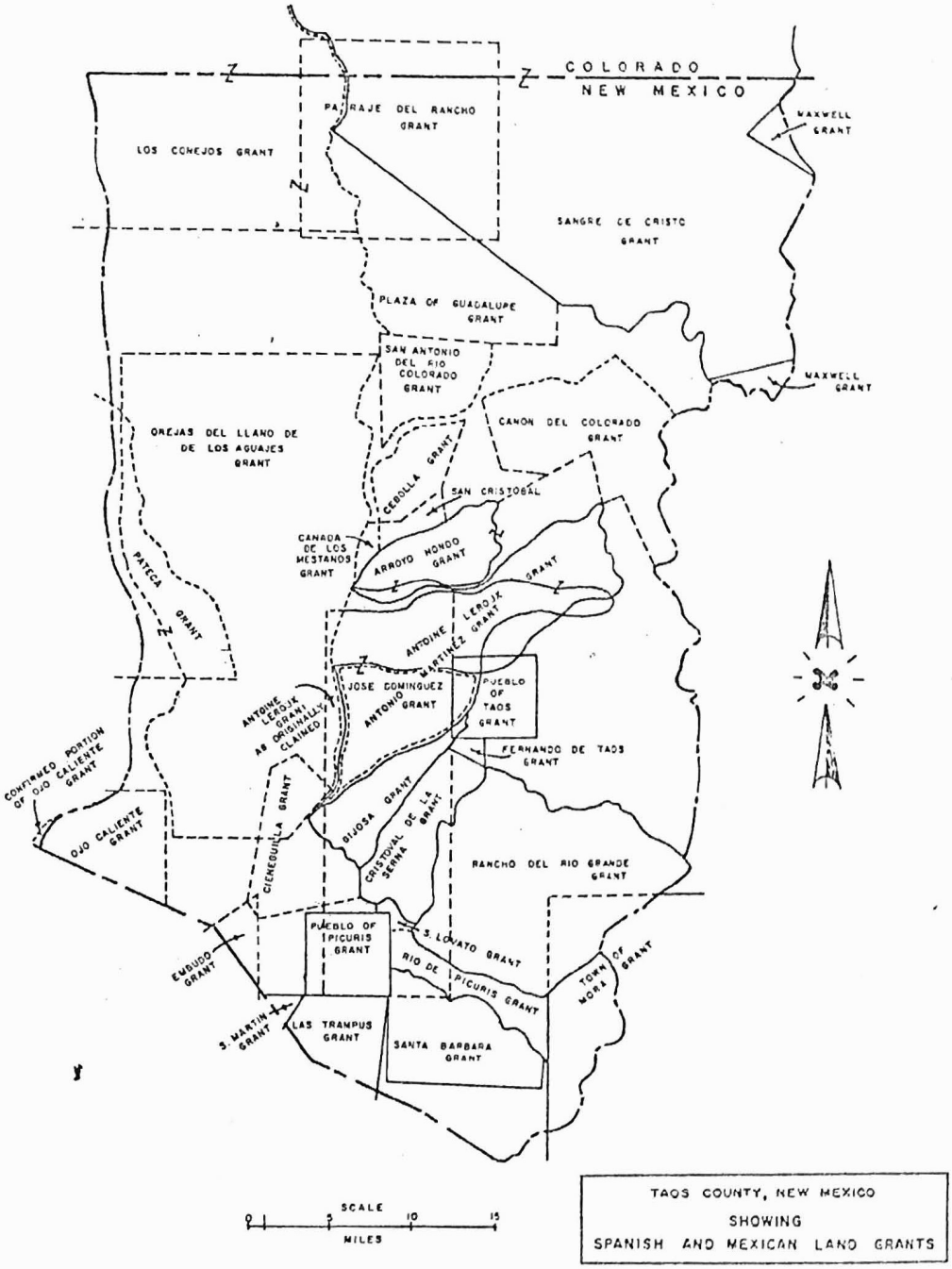
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JOSE DOMINGUEZ ANTONIO GRANT
PUEBLO OF TAOS GRANT
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FERNANDO DE TAOS GRANT
CONFIRMED PORTION OF OJO CALIENTE GRANT
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TOWN OF MORA GRANT
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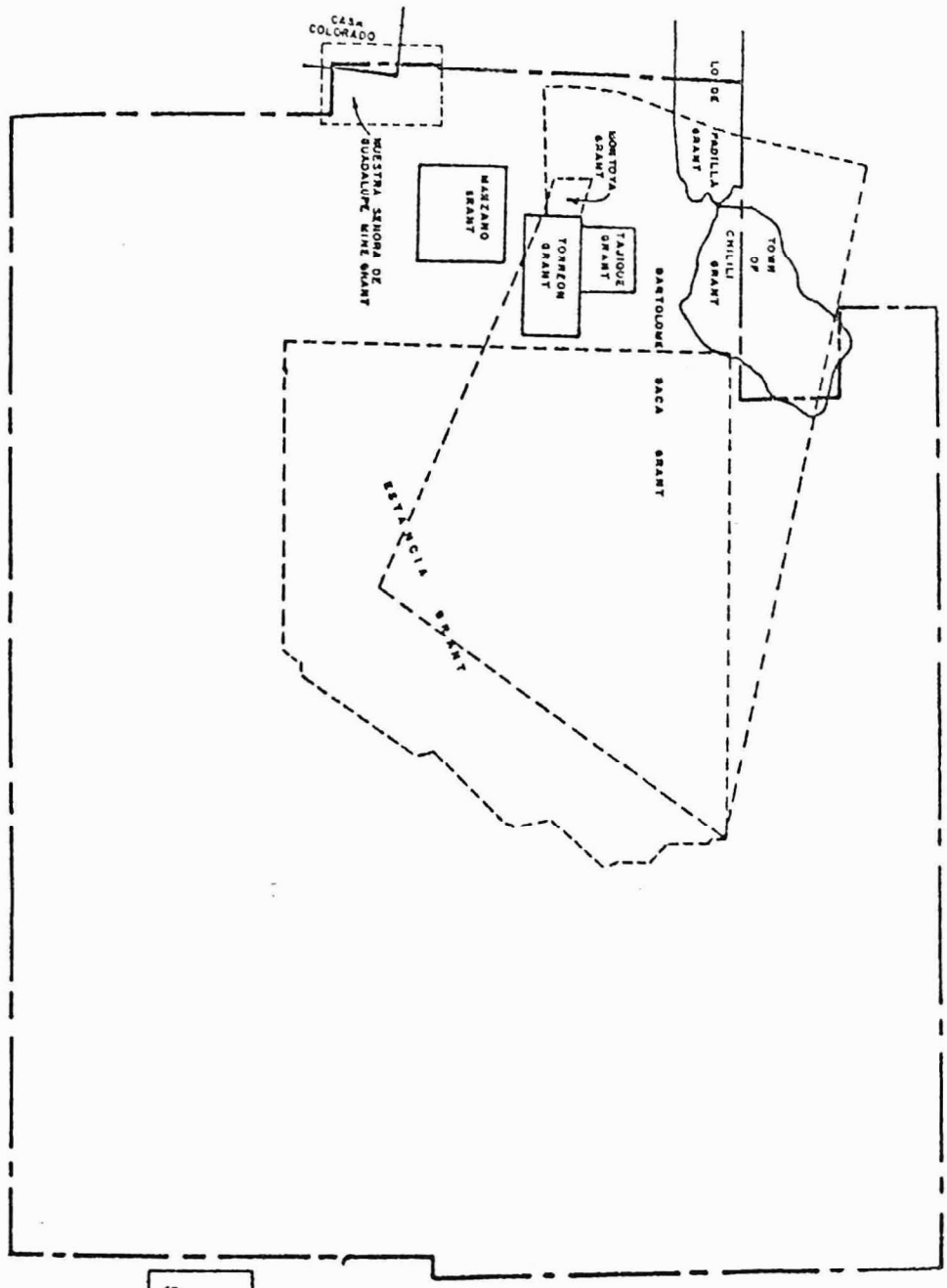
SHOWING
SPANISH AND MEXICAN LAND GRANTS



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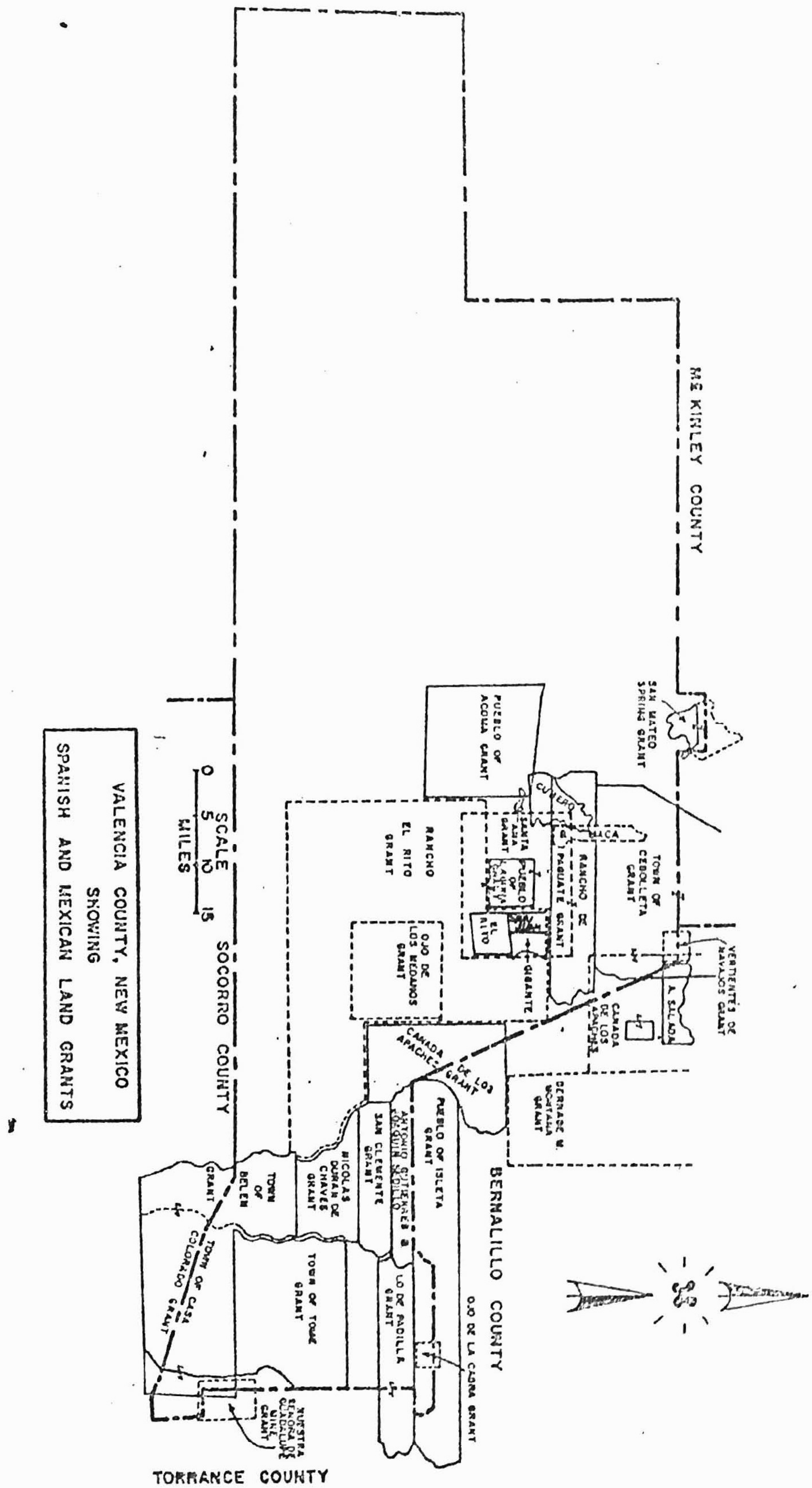
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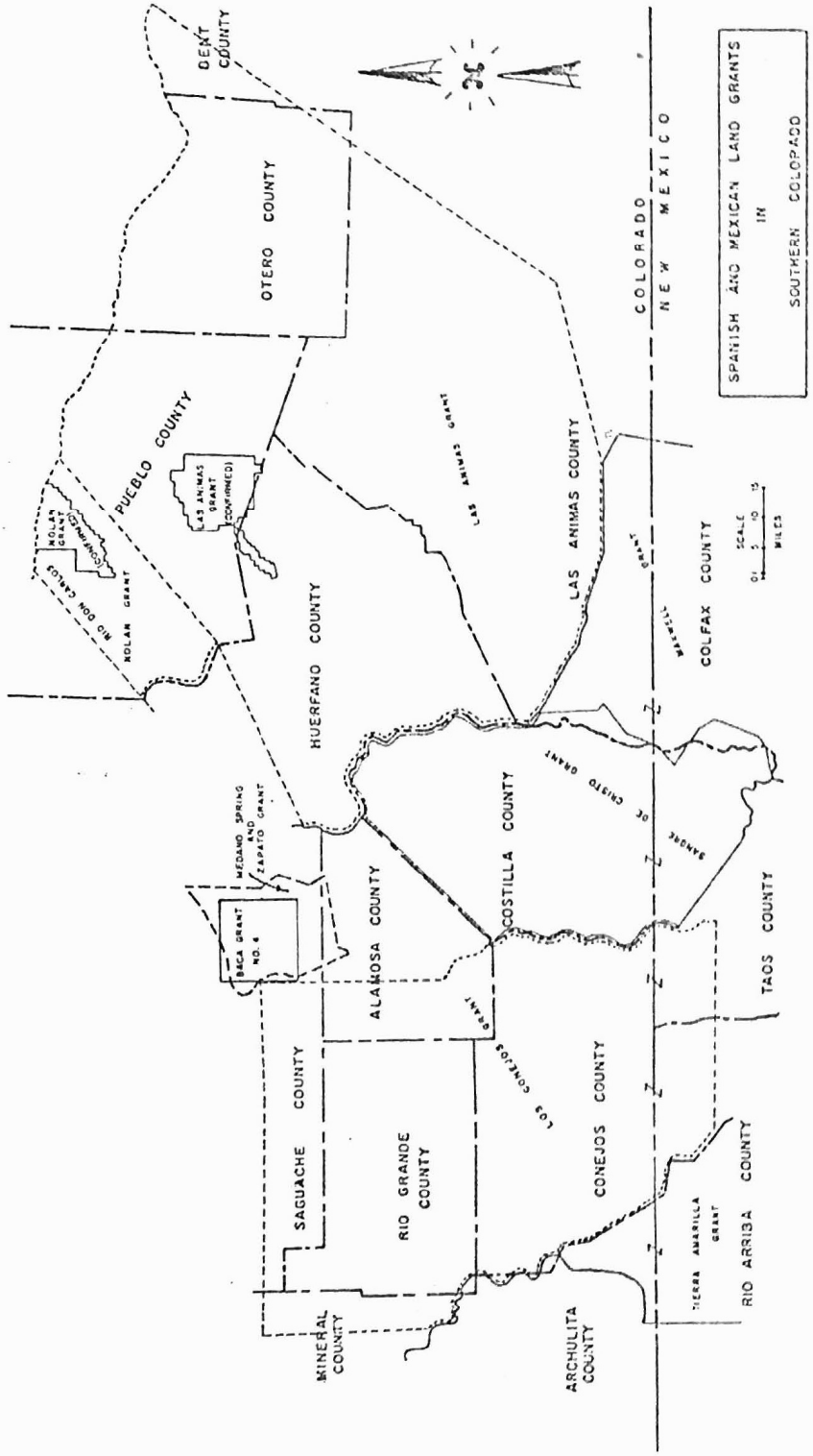
SPANISH AND MEXICAN LAND GRANTS
IN
SOUTHERN COLORADO
COLORADO
NEW MEXICO
DENT COUNTY
OTERO COUNTY
PUEBLO COUNTY
LAS ANIMAS COUNTY
HUERFANO COUNTY
COSTILLA COUNTY
COLFAX COUNTY
ALAMOSA COUNTY
SAGUACHE COUNTY
RIO GRANDE COUNTY
CONEJOS COUNTY
TAOS COUNTY
MINERAL COUNTY
ARCHULITA COUNTY
RIO ARRIBA COUNTY
LAS ANIMAS GRANT
MEDANO SPRING AND ZAPATO GRANT
BACA GRANT NO. 4
DE CRISTO GRANT
LOS CONEJOS GRANT
TIERRA AMARILLA GRANT
SCALE
MILES

How expended.

out of any money in the treasury not otherwise appropriated, and to be expended under the superintendence of the Secretary of War, for the continuation of the improvement of the Cape Fear River, North Carolina, at or near its communication with the ocean.

APPROVED, July 22, 1854.

July 22, 1854.

CHAP. CIII. — *An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes.*

Surveyor-General for New Mexico; his appointment, power, authority, duties and compensation. 1853, ch. 69. Appropriation for clerk hire. Location of his office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor-General for New Mexico, whose annual salary shall be three thousand dollars, and whose power, authority, and duties shall be the same as those provided by law for the Surveyor-General of Oregon; he shall have proper allowances for clerk hire, office rent, and fuel, not exceeding what now is or hereafter may be allowed by law to the said Surveyor-General of Oregon; and he shall locate his office from time to time at such places as may be directed by the President of the United States.

Donation of public lands to every white male citizen, or to every white male above 21 years of age, who has declared his intention and who are residing in said Territory at passage of this act. Donation of public lands to those who shall remove there between January 1st, 1853, and January 1st, 1858. Proviso.

SEC. 2. *And be it further enacted*, That, to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who was residing in said Territory prior to the first day of January, eighteen hundred and fifty-three, and who may be still residing there, there shall be, and hereby is, donated one quarter section, or one hundred and sixty acres of land. And to every white male citizen of the United States, or every white male above the age of twenty-one years, who has declared his intention to become a citizen, and who shall have removed or shall remove to and settle in said Territory between the first day of January, eighteen hundred and fifty-three, and the first day of January, eighteen hundred and fifty-eight, there shall in like manner be donated one quarter-section, or one hundred and sixty acres, on condition of actual settlement and cultivation for not less than four years: *Provided, however*, That each of said donations shall include the actual settlement and improvement of the donee, and shall be selected by legal subdivisions, within three months after the survey of the land where the settlement was made before the survey; and where the settlement was made after the survey, then within three months after the settlement has been made; and all persons failing to designate the boundaries of their claims within that time, shall forfeit all right to the same.

Patent to issue — when. Proviso. Proviso. Patents to issue to citizens only.

SEC. 3. *And be it further enacted*, That, on proof of the settlement and cultivation required by this act, to the satisfaction of the surveyor-general, or other officer designated by law for that purpose, subject to the supervision of the Secretary of the Interior, a certificate shall be issued to the party entitled, on presentation of which, if approved by the Secretary of the Interior, a patent shall issue thereon: *Provided, however*, That on the death of any such settler before the completion of the four years' occupancy and cultivation required by this act, the right shall descend to his heirs at law, who shall be entitled to a certificate and patent, as aforesaid, on proof, as before provided, of continued occupancy and cultivation by such settler to the time of his death: *Provided, however*, That when lands are claimed under any of the provisions of this act by persons who are not citizens of the United States, patents shall not issue therefor until they become citizens.

Reservation of mineral and other lands.

SEC. 4. *And be it further enacted*, That none of the provisions of this act shall extend to mineral or school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, and all legal subdivisions settled on

and occupied, in whole or in part, for purposes of trade and commerce, and not for agriculture, shall be subject to the provisions of the act of twenty-third of May, eighteen hundred and forty-four, in relation to town sites on the public lands, whether so settled and occupied before or after the survey of said lands, except that said lands shall be donated instead of being sold. 1844, ch. 17.

Reservation of land for schools.

SEC. 5. *And be it further enacted*, That when the lands in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township, in said Territory, shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be created out of the same.

Reservation of land for a university.

SEC. 6. *And be it further enacted*, That, when the lands in said Territory shall be surveyed as aforesaid, a quantity of land equal to two townships shall be, and the same is hereby, reserved for the establishment of a University in said Territory, and in the State hereafter to be created out of the same, to be selected, under the direction of the legislature, in legal subdivisions of not less than one half-section.

Land not taken under this act subject to the act of 1841, ch. 16.

SEC. 7. *And be it further enacted*, That any of the lands not taken under the provisions of this act shall be subject to the operation of the Preëmption Act of fourth September, eighteen hundred and forty-one, whether settled upon before or after the survey; and, in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned; and any person claiming a donation under this act shall be permitted to enter the land claimed by him at any time prior to the four years' occupancy and cultivation required, by paying therefor at the rate of one dollar and twenty-five cents per acre, and proving occupancy and cultivation up to the time of such payment.

Time in which the land may be entered.

Spanish and Mexican claims to land to be ascertained.

SEC. 8. *And be it further enacted*, That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bonâ fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.

Portion of such claims to be reported. Vol. 9, 922.

The report to be laid before Congress for action.

Lands covered by such claims reserved from sale.

Full power given to execute this act.

SEC. 9. *And be it further enacted*, That full power and authority are hereby given the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of this act.

Surveyor-General for Nebraska

SEC. 10. *And be it further enacted*, That the President of the United States shall be and he is hereby, authorized to appoint, by and with the

and Kansas; his appointment, powers, duties, and compensation.

advice and consent of the Senate, a Surveyor-General for the Territories of Nebraska and Kansas, who shall locate his office at such place as the President of the United States shall from time to time direct, and whose duties, powers, obligations and responsibilities and compensation shall be the same as those of the Surveyor-General of Wisconsin and Iowa, and who shall be allowed the same amount for office rent, fuel, incidental expenses, and clerk hire, as is allowed to said Surveyor-General of Wisconsin and Iowa.

Standard meridian and other lines to be surveyed.

SEC. 11. *And be it further enacted*, That said Surveyor-General shall cause the necessary surveys to be made in said Territories of standard meridian, base, and parallel lines, and of township and subdivisional lines, under such rules and regulations as shall be prescribed by the Commissioner of the General Land-Office.

Certain lands subject to the operation of the Act of 1841, ch. 16.

SEC. 12. *And be it further enacted*, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Nebraska and Kansas, shall be subject to the operations of the Preëmption Act of fourth September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned; *Provided, however*, That where unsurveyed lands are claimed by preëmption, notice of the specific tracts claimed shall be filed within three months after the survey has been made in the field, and on failure to file such notice or to pay for the tracts claimed before the day fixed for the public sale of the lands by the proclamation of the President of the United States, the parties claiming such lands shall forfeit all right thereto: *Provided*, said notices may be filed with the Surveyor-General, and to be noted by him on the township plats, until other arrangements shall have been made by law for that purpose.

Proviso.

Proviso.

Omaha Land District.

SEC. 13. *And be it further enacted*, That the public lands in the Territory of Nebraska, to which the Indian title shall have been extinguished, shall constitute a new land district to be called the Omaha District; and the public lands in the Territory of Kansas, to which the Indian title shall have been extinguished, shall constitute a new land district, to be called the Pawnee District: the officers for each of which districts shall be established at such points as the President may deem expedient; and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a Register and Receiver of Public Moneys for each of said districts, who shall each be required to reside at the site of their respective offices, and they shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land-offices of the United States. And the President is hereby authorized to cause the surveyed lands to be exposed for sale from time to time, in the same manner and upon the same terms and conditions as the other public lands of the United States.

Pawnee Land District.

Place of office.

Register and Receiver for said districts to be appointed.

Land to be surveyed and exposed for sale.

APPROVED, July 22, 1854.

July 27, 1854.

CHAP. CV.—*An Act creating a Collection District in New York, to be called the District of Dunkirk, and constituting Dunkirk a Port of Entry, and the Ports of Barcelona, Silver Creek, and Cattaraugus Creek, Ports of Delivery.*

Collection district of Dunkirk established.

Said district designated.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the counties of Cattaraugus and Chautauque and the harbors, rivers, and waters on the southern shore of Lake Erie, in the State of New York, west of and including Cattaraugus Creek and the shores, on each side of said creek, and west along the shore and territory bordering on Lake Erie aforesaid, to the Pennsylvania State line, and the islands in the said lake contiguous thereto, heretofore embraced in the District of Buffalo Creek, shall be and are hereby constituted a collection district to be called the District of Dunkirk; and a port of entry for said district is hereby established at

Dunkirk made the port of entry.

rendered in pursuance of this act, in favor of claimants and against the United States, and not paid as hereinbefore provided, which shall thereupon be appropriated for in the proper appropriation bill.

Sales, attorneys' contracts, etc., declared void.

SEC. 9. That all sales, transfers, or assignments of any such claims heretofore or hereafter made, except such as have occurred in the due administration of decedents' estates, and all contracts heretofore made for fees and allowances to claimants' attorneys, are hereby declared void, and all warrants issued by the Secretary of the Treasury, in payment of such judgments, shall be made payable and delivered only to the claimant or his lawful heirs, executors or administrators or transferee under administrative proceedings, except so much thereof as shall be allowed the claimant's attorneys by the court for prosecuting said claim, which may be paid direct to such attorneys, and the allowances to the claimant's attorneys shall be regulated and fixed by the court at the time of rendering judgment in each case and entered of record as part of the findings thereof; but in no case shall the allowance exceed fifteen per cent of the judgment recovered, except in case of claims of less amount than five hundred dollars, or where unusual services have been rendered or expenses incurred by the claimant's attorney, in which case not to exceed twenty per cent of such judgment shall be allowed by the court.

Warrants payable to claimant, etc.

Allowance to attorneys.

Maximum.

Appeal.

SEC. 10. That the claimant, or the United States, or the tribe of Indians, or other party thereto interested in any proceeding brought under the provisions of this act, shall have the same rights of appeal as are or may be reserved in the Statutes of the United States in other cases, and upon the conditions and limitations therein contained. The mode of procedure in claiming and perfecting an appeal shall conform, in all respects, as near as may be, to the statutes and rules of court governing appeals in other cases.

All papers, etc., to be furnished the court.

SEC. 11. That all papers, reports, evidence, records and proceedings now on file or of record in any of the departments, or the office of the Secretary of the Senate, or the office of the Clerk of the House of Representatives, or certified copies of the same, relating to any claims authorized to be prosecuted under this act, shall be furnished to the court upon its order, or at the request of the Attorney-General.

Additional assistant Attorney-General to be appointed.

SEC. 12. To facilitate the speedy disposition of the cases herein provided for, in said Court of Claims, there shall be appointed, in the manner prescribed by law for the appointment of Assistant Attorney-Generals, one additional Assistant Attorney-General of the United States, who shall receive a salary of twenty-five hundred dollars per annum.

Investigation under present laws to cease.

Balances to be covered in.

SEC. 13. That the investigation and examinations, under the provisions of the acts of Congress heretofore in force, of Indian depredation claims, shall cease upon the taking effect of this act, and the unexpended balance of the appropriation therefor shall be covered into the Treasury, except so much thereof as may be necessary for disposing of the unfinished business pertaining to the claims now under investigation in the Interior Department, pending the transfer of said claims and business to the Court or courts herein provided for, and for making such transfers and a record of the same, and for the proper care and custody of the papers and records relating thereto.

Approved, March 3, 1891.

March 3, 1891.

CHAP. 539.—An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories.

Court of private land claims established.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and hereby is, established a court to be called the court of private

land claims, to consist of a chief justice and four associate justices, who shall be, when appointed, citizens and residents of some of the States of the United States, to be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term expiring on the thirty-first day of December, anno Domini eighteen hundred and ninety-five; any three of whom shall constitute a quorum. Said court shall have and exercise jurisdiction in the hearing and decision of private land claims according to the provisions of this act. The chief justice and associate justices shall each receive a compensation of five thousand dollars per year, payable monthly, and their necessary traveling and personal expenses while engaged in the performance of their duties. The said court shall appoint a clerk, at a salary of two thousand dollars a year, who shall attend all the sessions of the court, and a deputy clerk, where regular terms of the court are held, at a salary of eight hundred dollars a year. The court shall also appoint a stenographer, at a salary of fifteen hundred dollars a year, who shall attend all the sessions of the court, and perform the duties required of him by the court.

Composition.
Qualifications
Appointment by President.
Official term.
Quorum.
Jurisdiction.
Compensation of justices.
Clerk and deputy.
Pay.
Stenographer.
Pay.

The said court shall have power to adopt all necessary rules and regulations for the transaction of its business and to carry out the provisions of this act; to issue any process necessary to the transaction of the business of said court, and to issue commissions to take depositions as provided in chapter seventeen of title thirteen of the Revised Statutes of the United States. Each of said justices shall have power to administer oaths and affirmations. It shall be the duty of the United States marshal for any district or Territory in which the court is held to serve any process of the said court placed in his hands for that purpose, and to attend the court in person or by deputy when so directed by the court. The court shall hold such sessions in the States and Territories mentioned in this act as shall be needful for the purposes thereof, and shall give notice of the times and places of the holding of such sessions by publication in both the English and Spanish languages, in one newspaper published at the capital of such State or Territory, once a week for two successive weeks, the last of which publications shall be not less than thirty days next preceding the times of the holding of such sessions, but such sessions may be adjourned from time to time without such publication.

Powers, etc., of court.
Commissions to take depositions.
Oaths, etc.
United States marshals to serve process, etc.
Sessions of court.
Notice by publication in English and Spanish.
Adjourned sessions.

SEC. 2. That there shall also be appointed by the President, by and with the advice and consent of the Senate, a competent attorney, learned in the law, who shall when appointed be a resident and citizen of some State of the United States, to represent the United States in said court. Such attorney shall receive a compensation of three thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties. And there shall be appointed by the said court a person who shall be when appointed a citizen and resident of some State of the United States, skilled in the Spanish and English languages, to act as interpreter and translator in said court, to attend all the sessions thereof, and to perform such other service as may be required of him by the court. Such person shall be entitled to a compensation of one thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties.

U.S. Attorney.
Appointment by President.
Qualifications, etc.
Compensation.
Interpreter and translator.
Compensation.

SEC. 3. That immediately upon the organization of said court the clerk shall cause notices thereof, and of the time and place of the first session thereof, to be published for a period of ninety days in one newspaper at the city of Washington and in one published at the capital of the State of Colorado and of the Territories of Arizona and New Mexico. Such notices shall be published in both the Spanish and English languages, and shall contain the substance of this act.

Notice of organization of court, etc., in English and Spanish.

Production of records, etc., in court.

SEC. 4. That it shall be the duty of the Commissioner of the General Land Office of the United States, the surveyors-general of such Territories and States, or the keeper of any public records who may have possession of any records and papers relating to any land grants or claims for land within said States and Territories in relation to which any petition shall be brought under this act, on the application of any person interested, or by the attorney of the United States, to safely transmit such records and papers to said court or to attend in person or by deputy any session thereof when required by said court, and produce such records and papers.

Competence, etc., of evidence as to claims.

SEC. 5. That the testimony which has been heretofore lawfully and regularly received by the surveyor-general of the proper Territory or State or by the Commissioner of the General Land Office, upon any claims presented to them, respectively, shall be admitted in evidence in all trials under this act when the person testifying is dead, so far as the subject matter thereof is competent evidence; and the court shall give it such weight as, in its judgment, under all the circumstances, it ought to have.

Claimants under certain unconfirmed grants may petition court in Territory, etc., where land is and where court is sitting.

SEC. 6. That it shall and may be lawful for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the Republic of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States which at the date of the passage of this act have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court in the State or Territory where said land is situated and where the said court holds its sessions, but cases arising in the States and Territories in which the court does not hold regular sessions may be instituted at such place as may be designated by the rules of the court.

Institution of cases otherwise.

Form, etc., of petition.

The petition shall set forth fully the nature of their claims to the lands, and particularly state the date and form of the grant, concession, warrant, or order of survey under which they claim, by whom made, the name or names of any person or persons in possession of or claiming the same, or any part thereof, otherwise than by the lease or permission of the petitioner; and also the quantity of land claimed and the boundaries thereof, where situate, with a map showing the same, as near as may be, and whether the said claim has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the said territory so acquired, and by them reported on unfavorably or recommended for confirmation, or authorized to be surveyed or not; and pray in such petition that the validity of such title or claim may be inquired into and decided.

Jurisdiction, etc.

Procedure.

And the said court is hereby authorized and required to take and exercise jurisdiction of all cases or claims presented by petition in conformity with the provisions of this act, and to hear and determine the same, as in this act provided, on the petition and proofs in case no answer or answers be filed after due notice, or on the petition and the answer or answers of any person or persons interested in preventing any claim from being established, and the answer of the attorney for the United States where he may have filed an answer, and such testimony and proofs as may be taken; and a copy of such petition, with a citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordinary legal manner of serving such process in the

Service of copy of petition and citation.

proper State or Territory, and in like manner on the attorney for the United States; and it shall be the duty of the attorney for the United States, as also any adverse possessor or claimant, after service of petition and citation as hereinbefore provided, within thirty days, unless further time shall, for good cause shown, be granted by the court, or a judge thereof, to enter an appearance, and plead, answer, or demur to said petition; and in default of such plea, answer, or demurrer being made within said thirty days, or within the further time which may have been granted as aforesaid, the court shall proceed to hear the cause on the petition and proofs, and render a final decree according to the provisions of this act, and in no case shall a decree be entered otherwise than upon full legal proof and hearing; and in every case the court shall require the petition to be sustained by satisfactory proofs, whether an answer or plea shall have been filed or not.

Appearance, answer, etc., of United States and adverse possessor.

Default.

Hearing on petition and proofs.
Final decree.

SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord, eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico, on the thirtieth day of December, in the year of our Lord, eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed.

Proceedings after petition.

Powers, etc., of adjudication.

Scope of final decree.

Vol. 9, p. 922.

Vol. 10, p. 1031.

Every decree must include certain references and specifications.

SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

Certain other claimants claiming under completed title may apply for confirmation.

Procedure.

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right

Confirmation of perfect title, limited.

Exception.

Adverse claims, etc., not affected.

Effect of confirmation.
Private rights not affected.

of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

Proceedings by the United States against certain claimants, etc., to settle title, etc.

It shall be lawful for and the duty of the head of the Department of Justice, whenever in his opinion the public interest or the rights of any claimant shall require it, to cause the attorney of the United States in said court to file in said court a petition against the holder or possessor of any claim or land in any of the States or Territories mentioned in this act who shall not have voluntarily come in under the provisions of this act, stating in substance that the title of such holder or possessor is open to question, or stating in substance that the boundaries of any such land, the claimant or possessor to or of which has not brought the matter into court, are open to question, and praying that the title to any such land, or the boundaries thereof, if the title be admitted, be settled and adjudicated; and thereupon the court shall, on such notice to such claimant or possessor as it shall deem reasonable, proceed to hear, try, and determine the questions stated in such petition or arising in the matter, and determine the matter according to law, justice, and the provisions of this act, but subject to all lawful rights adverse to such claimant or possessor, as between such claimant and possessor and any other claimant or possessor, and subject in this respect to all the provisions of this section applicable thereto.

Notice.

Hearing, etc.

Determination subject to adverse rights, etc.

Appeal.

SEC. 9. That the party against whom the court shall in any case decide—the United States, in case of the confirmation of a claim in whole or in part, and the claimant, in case of the rejection of a claim, in whole or in part—shall have the right of appeal to the Supreme Court of the United States, such appeal to be taken within six months from date of such decision, and in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy, as is now provided by law for the taking of appeals from decisions of the circuit courts of the United States. On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive. Should no appeal be taken as aforesaid the decree of the court below shall be final and conclusive.

Retrial by Supreme Court on appeal.

Final decree.

Attorney-General to be notified by attorney of United States of judgment of confirmation.

Upon the rendition of any judgment of the court confirming any claim, it shall be the duty of the attorney of the United States to notify the Attorney-General, in writing of such judgment, giving him a clear statement of the case and the points decided by the court, which statement shall be verified by the certificate of the presiding judge of said court; and in any case in which such statement shall not be received by the Attorney-General within sixty days next after the rendition of such judgment, the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of such statement. And if the Attorney-General shall so direct, it shall be the duty of the clerk of the court to transmit the record of any cause in which final judgment has been rendered to the Attorney-General for his examination. In all cases it shall be the duty of the Attorney-General to instruct the attorney for the United States what further course to pursue and whether or not an appeal shall be taken.

Appeal by United States.

Transmission of record to Attorney-General.

Instructions to U. S. attorney.

Certification of final decree of confirmation to commissioner of General Land Office by clerk of decreeing court.

SEC. 10. That whenever any decision of confirmation shall become final, the clerk of the court in which the final decision shall be had shall certify that fact to the Commissioner of the General Land Office, with a copy of the decree of confirmation, which shall plainly state the location, boundaries, and area of the tract confirmed. The said Commissioner shall thereupon without delay cause the tract so confirmed to be surveyed at the cost of the United States. When

Survey of confirmed tract.

any such survey shall have been made and returned to the surveyor-general of the respective Territory or State, and the plat thereof completed, the surveyor-general shall give notice that same has been done, by publication once a week, for four consecutive weeks in two newspapers, one published at the capital of the Territory or State and the other (if any such there be) published near the land so surveyed, such notices to be published in both the Spanish and English languages; and the surveyor-general shall retain such survey and plat in his office for public inspection for the full period of ninety days from the date of the first publication of notice in the newspaper published at the capital of the Territory or State.

Notice by publication, in Spanish and English, of completed survey.

Survey to be open to public inspection for ninety days.

If, at the expiration of such period, no objection to such survey shall have been filed with him, he shall approve the same and forward it to the Commissioner of the General Land Office. If, within the said period of ninety days, objections are made to such survey, either by any party claiming an interest in the confirmation or by any party claiming an interest in the tract embraced in the survey or any part thereof, such objection shall be reduced to writing, stating distinctly the interest of the objector and the grounds of his objection, and signed by him or his attorney, and filed with the surveyor-general, with such affidavits or other proofs as he may produce in support of his objection. At the expiration of the said ninety days the surveyor-general shall forward such survey, with the objections and proofs filed in support of or in opposition to such objections, and his report thereon, to the Commissioner of the General Land Office.

Approval and forwarding to General Land Office.

If objected to, survey to be forwarded with objections, proofs, and report.

Immediately upon receipt of any such survey, with or without objections thereto, the said Commissioner shall transmit the same, with all accompanying papers, to the court in which the final decision was made for its examination of the survey and of any objections and proofs that may have been filed, or shall be furnished; and the said court shall thereupon determine if the said survey is in substantial accordance with the decree of confirmation. If found to be correct, the court shall direct its clerk to indorse upon the face of the plat its approval. If found to be incorrect, the court shall return the same for correction in such particulars as it shall direct. When any survey is finally approved by the court, it shall be returned to the Commissioner of the General Land Office, who shall as soon as may be cause a patent to be issued thereon to the confirmee. One half of the necessary expenses of making the survey and plat provided for in this section, and in respect of which a patent shall be ordered to be issued, shall be paid by the claimant or patentee, and shall be a lien on said land, which may be enforced by the sale of so much thereof as may be necessary for that purpose, after a default of payment thereof for six months next after the approval of such survey and plat; and no patent shall issue until such payment.

Commissioner of General Land Office to transmit survey, etc., to court of final decision.

Approval by court.

Correction.

Issue of patent to confirmee.

One half of survey expenses to be paid by claimant.

Enforcement, lien on land.

SEC. 11. That the provisions of this act shall extend to any city lot, town lot, village lot, farm lot, or pasture lot claimed directly or mediately under any grant which may be entitled to confirmation by the United States, for the establishment of a city, town, or village, by the Spanish or Mexican Government, or the lawful authorities thereof; but the claim for said city, town, or village shall be presented by the corporate authorities of the said city, town, or village; or where the land upon which said city, town, or village is situated was originally granted to an individual the claim shall be presented by or in the name of said individual or his legal representatives.

Scope of act as to claims.

Legal claimants and representatives.

SEC. 12. That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years from the taking effect of this act, if no petition in respect to the same shall have then been filed as hereinbefore provided, be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred: *Provided*, That in any case where it shall come to the knowledge of the court that minors, married

Neglect to file petition, in two years, a bar.

Proviso.

women, or persons non compos mentis are interested in any land claim or matter brought before the court it shall be its duty to appoint a guardian ad litem for such persons under disability and require a petition to be filed in their behalf, as in other cases, and if necessary to appoint counsel for the protection of their rights. The judges, respectively, of said court are hereby authorized in all cases arising under this act to grant in vacation all orders for taking testimony, and otherwise to hear and dispose of interlocutory motions not affecting the substantial merits of a case. And said court shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the production of books, papers, and documents, the attendance of witnesses, and in punishing contempts.

Guardian ad litem, etc., where disability.

Orders and interlocutory motions, in vacation.

Powers of court.

Production of papers, etc.

Contempts.

Limitations.

SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

No claim allowed, unless title lawfully and regularly derived, etc.

First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

No claim allowed interfering with Indian title, etc.

Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

No confirmation to confer title, etc., to mines or minerals. Exceptions.

Third. No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all patents issued under this act. But no such mine shall be worked on any property confirmed under this act without the consent of the owner of such property until specially authorized thereto by an act of Congress hereafter passed.

Mines and minerals, the property of the United States.

Consent of owner, to work mines.

No claim allowed for right hitherto decided by Congress, etc.

Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.

Private rights of persons, between each other, not concluded.

Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands.

Rights between United States and claimants are concluded.

Operation of decree as against United States.

Release of its title only.

Non-liability of United States.

Sixth. No confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as is in this act provided.

No confirmation, etc., for more than eleven square leagues to original grantee, etc.

Ante, p. 853.

Seventh. No confirmation in respect of any claims or lands mentioned in section six of this act or in respect of any claim or title that was not complete and perfect at the time of the transfer of sovereignty to the United States as referred to in this act, shall in any case be made or patent issued for a greater quantity than eleven

square leagues of land to or in the right of any one original grantee or claimant, or in the right of any one original grant to two or more persons jointly, nor for a greater quantity than was authorized by the respective laws of Spain or Mexico applicable to the claim.

Conditional grants, etc., barred, if conditions unperformed.

Eighth. No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant, or other authority to acquire land.

Lands decreed to claimant but granted, etc., by United States to another.

SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid, notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant, and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands, surveys may be ordered by the court, and proof taken before the court, or by a commissioner appointed for that purpose by the court.

U. S. title, valid.

Proof of sale and value.

Judgment for claimant.

Maximum value.

Appeal.

Appraisal, etc.

Appointment of commissioner.

Ascertainment and report on Spanish and Mexican claims, etc.

SEC. 15. That section eight of the act of Congress approved July twenty-second, eighteen hundred and fifty-four, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," and all acts amendatory or in extension thereof, or supplementary thereto, and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Vol. 10, p. 309, etc., repealed.

Continuous adverse possession for twenty years, recognized, etc., in future township surveys in New Mexico, Arizona, Utah, Colorado, Nevada, and Wyoming.

SEC. 16. That in township surveys hereafter to be made in the Territories of New Mexico, Arizona, and Utah, and in the States of Colorado, Nevada, and Wyoming if it shall be made to appear to the satisfaction of the deputy surveyor making such survey that any person has, through himself, his ancestors, grantors, or their lawful successors in title or possession, been in the continuous adverse actual bona fide possession, residing thereon as his home, of any tract of land or in connection therewith of other lands, all together not exceeding one hundred and sixty acres in such township for twenty years next preceding the time of making such survey, the deputy surveyor shall recognize and establish the lines of such possession and make the subdivision of the adjoining lands in accordance therewith. Such possession shall be accurately defined in the field-notes of the survey and delineated on the township plat, with the boundaries and area of the tract as a separate legal subdivision. The deputy surveyor shall return with his survey the name or names of all persons so found to be in possession, with a proper description of the tract in the possession of each as shown by the survey, and the proofs furnished to him of such possession.

Maximum size of tract.

Deputy surveyor to establish lines, etc., and make returns, etc.

Review by Commissioner of General Land office.

Upon receipt of such survey and proofs the Commissioner of the General Land Office shall cause careful investigation to be made in such manner as he shall deem necessary for the ascertainment of the truth in respect of such claim and occupation, and if satisfied upon such investigation that the claimant comes within the provisions of this section, he shall cause patents to be issued to the parties so found to be in possession for the tracts respectively claimed by by them: *Provided, however,* That no person shall be entitled to con-

Issue of patents.

Provisos.

Limitations.

firmation of, or to patent for, more than one hundred and sixty acres in his own right by virtue of this section: *And provided further*, That this section shall not apply to any city lot, town lot, village lot, farm lot, or pasture lot held under a grant from any corporation or town the claim to which may fall within the provisions of section eleven of this act.

Ante, p. 859.

Where township surveys already made.

SEC. 17. That in the case of townships heretofore surveyed in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming, all persons who, or whose ancestors, grantors, or their lawful successors in title or possession, became citizens of the United States by reason of the treaty of Guadalupe-Hidalgo, and who have been in the actual continuous adverse possession and residence thereon of tracts of not to exceed one hundred and sixty acres each, for twenty years next preceding such survey, shall be entitled, upon making proof of such facts to the satisfaction of the register and receiver of the proper land district, and of the Commissioner of the General Land Office upon such investigation as is provided for in section sixteen of this act, to enter without payment of purchase money, fees, or commissions, such legal subdivisions, not exceeding one hundred and sixty acres, as shall include their said possessions: *Provided, however*, That no person shall be entitled to enter more than one such tract, in his own right, under the provisions of this section.

Citizens, etc., in continuous adverse possession, etc., for twenty years, may enter without payment, etc.

Vol. 9, p. 922.

Proviso.

Limit.

Filing of claims under adverse possession.

Time limit.

SEC. 18. That all claims arising under either of the two next preceding sections of this act shall be filed with the surveyor-general of the proper State or Territory within two years next after the passage of this act, and no claim not so filed shall be valid. And the class of cases provided for in said two next preceding sections shall not be considered or adjudicated by the court created by this act, and no tract of such land shall be subject to entry under the land laws of the United States.

Not to be adjudicated by Court of Private Land Claims.

Lands excluded from entry.

Cessation, etc., of functions, etc., of court.

Date.

SEC. 19. That the powers and functions of the court established by this act shall cease and determine on the thirty-first day of December, eighteen hundred and ninety-five, and all papers, files, and records in the possession of said court belonging to any other public office of the United States shall be returned to such office, and all other papers, files, and records in the possession of or appertaining to said court shall be returned to and filed in the Department of the Interior.

Return, etc., of records, etc., to Interior Department.

Approved, March 3, 1891.

March 3, 1891.

CHAP. 540.—An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes.

Deficiencies appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in the appropriations for the fiscal year eighteen hundred and ninety-one, and for prior years, and for other objects hereinafter stated, namely:

Executive.

EXECUTIVE.

Executive office. Contingent expenses.

For contingent expenses Executive Office, including stationery therefor, as well as record books, telegrams, books for library, miscellaneous items, and furniture and carpets for offices, care of office carriage, horses and harness, one thousand five hundred dollars.