

Entre la historia y la ley:

Land Grant History and the Law

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Land Grant Studies Program

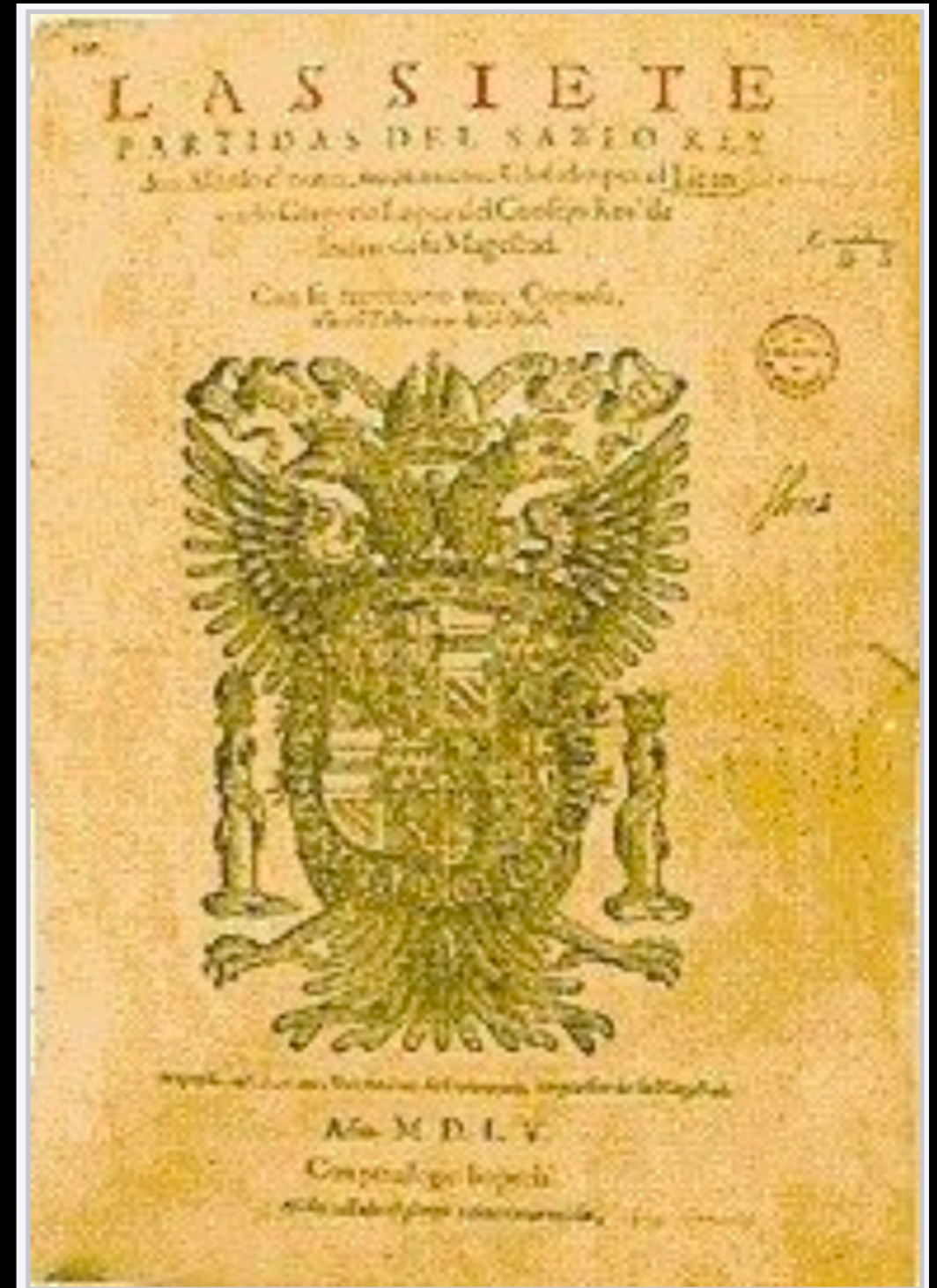
Established 2008

Goals of this presentation

- Identify issues from early history still relevant today
 - Emphasis will be on **community land grants**
 - Focus not just on adjudication history but also historical reasons that support current views of injustice
 - Survey of activities of existing land grants & institutions
- Identify relevant documentary sources and cases
 - Some of that material available to you in digital form

Spanish/Mexican origins of New Mexico land tenure - I

- Spain (Castille) had a land grant policy before 1492: recovery territory from Moors
 - **Siete Partidas (1265)**
 - Landed estates to nobles who led military efforts
 - Village commons to settlers assigned to hold territory
 - Will take those practices to the Americas in 1500s



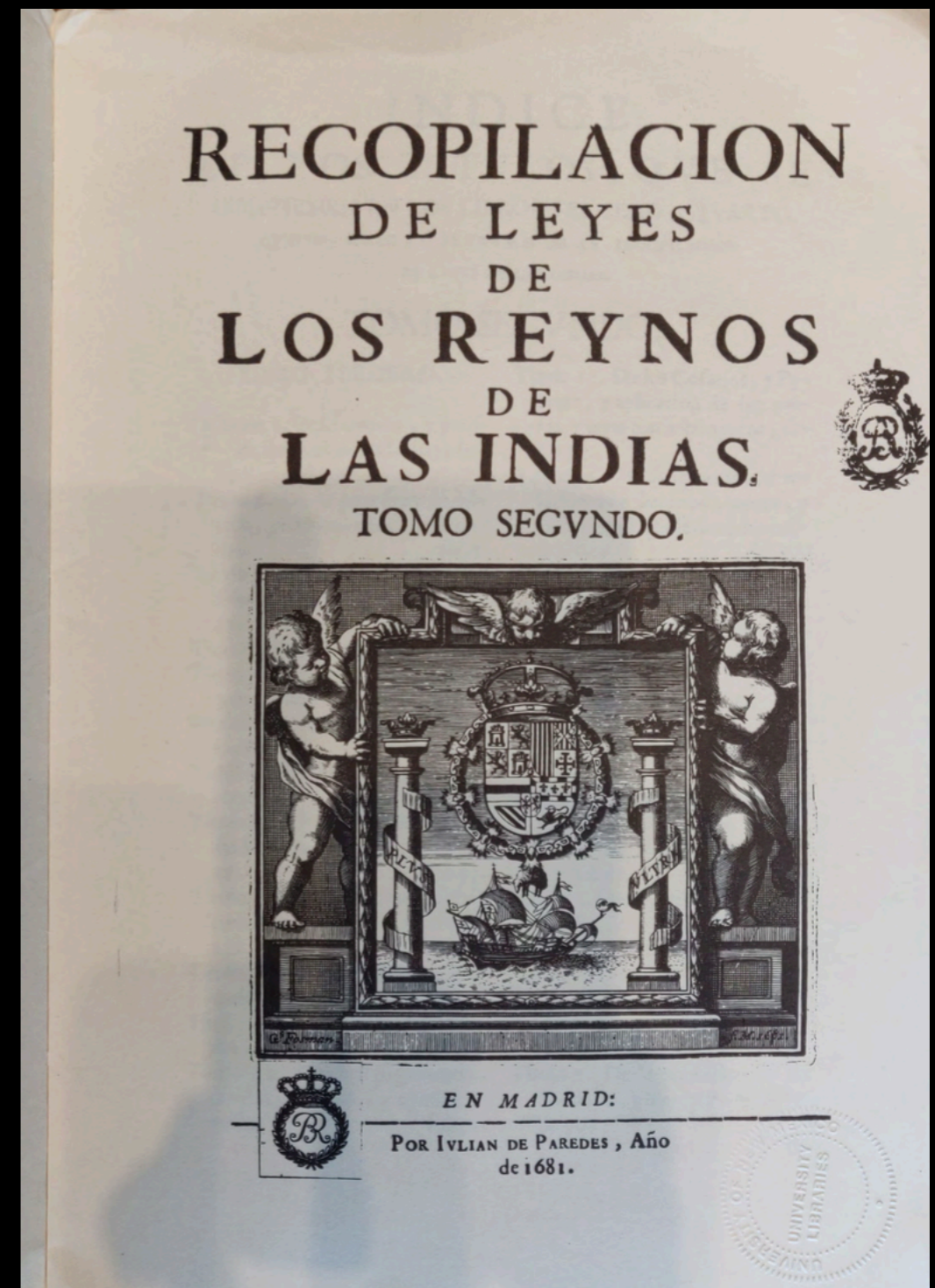
Spanish/Mexican origins of New Mexico land tenure - II

- Spanish land grants in New Mexico starting in 1689
 - **Individual grants:** to soldiers after Pueblo Revolt or to elite families who acquired lands for agriculture and grazing
 - **Community grants:** to subordinate populations (Pueblos, in existing locations) plus *genízaros* and *mestizos* willing to establish frontier outposts (**see glossary**)
 - **Pueblos** acquiesced Spanish rule; in exchange received village commons, recognition of land rights & right to self-government



Spanish/Mexican origins of New Mexico land tenure - III

- **Statutory law: Recopilación de leyes de los reynos de las Indias (1681)**
 - Codification of ~ 6,300 decrees
 - Books IV and VI still cited in court cases today
 - Separated Indian from non Indian land; established protections
 - Protector of the Indians
- **Spanish customary law** prevalent on margins of empire
 - Flexible interpretation of Recopilación



Pattern of settlement & New Mexico practice: Spanish colonial period - I

- Crowns goals:
 - Reduce the cost of frontier defense against semi-nomadic tribes and Europeans, and after the Louisiana Purchase, Americans
 - Provide buffer communities for the defense of Santa Fe and Albuquerque
 - Settlements, land grants: a means to those goals
- Some confusion re distinction individual vs. community grants
 - Some individual grants (Sebastián Martín; Cristóbal de la Serna) became community grants
 - During U.S. adjudication, community grants mistaken as individual grants (Juan Bautista Baldés; Mexican period: Tierra Amarilla)

Pattern of settlement & New Mexico practice: Spanish colonial period - II

- Defense and sustainability requirements
 - Construction of fortified plaza and *acequias*
 - Recipients had to demonstrate could defend against attack
 - **Family (private) lands: (*sitios, solares, regadio*)** *acequia*-irrigated subsistence agriculture
 - **Common (village) lands: (*pastos, montes, dehesa, cazas, pescas*)** watershed forest, grazing lands, hunting, fishing, other resources
 - **Common lands essential to survival of villages**
 - **Land grants revoked when abandoned, conditions not met**

Pattern of settlement: Mexican period, 1821-1846

- Treaty of Córdoba (1821): Spanish land grants recognized by Mexico as valid
- After Mexican Independence 5 noteworthy changes
 1. Two offices had granting authority: governor, territorial deputation
 2. Indians under Spanish rule recognized as citizens; land rights no longer *formally protected*
 3. Size of grants **larger**, especially after Texas invaded NM in 1841
 4. **Foreigners** who settled (& typically married in territory) eligible for land
 5. Central control weaker after New Mexico revolt 1837: local authorities had more leeway and granted some **excessively large grants to friends of governor**

Mexican American War, Treaty of Guadalupe Hidalgo and the Gadsden Purchase

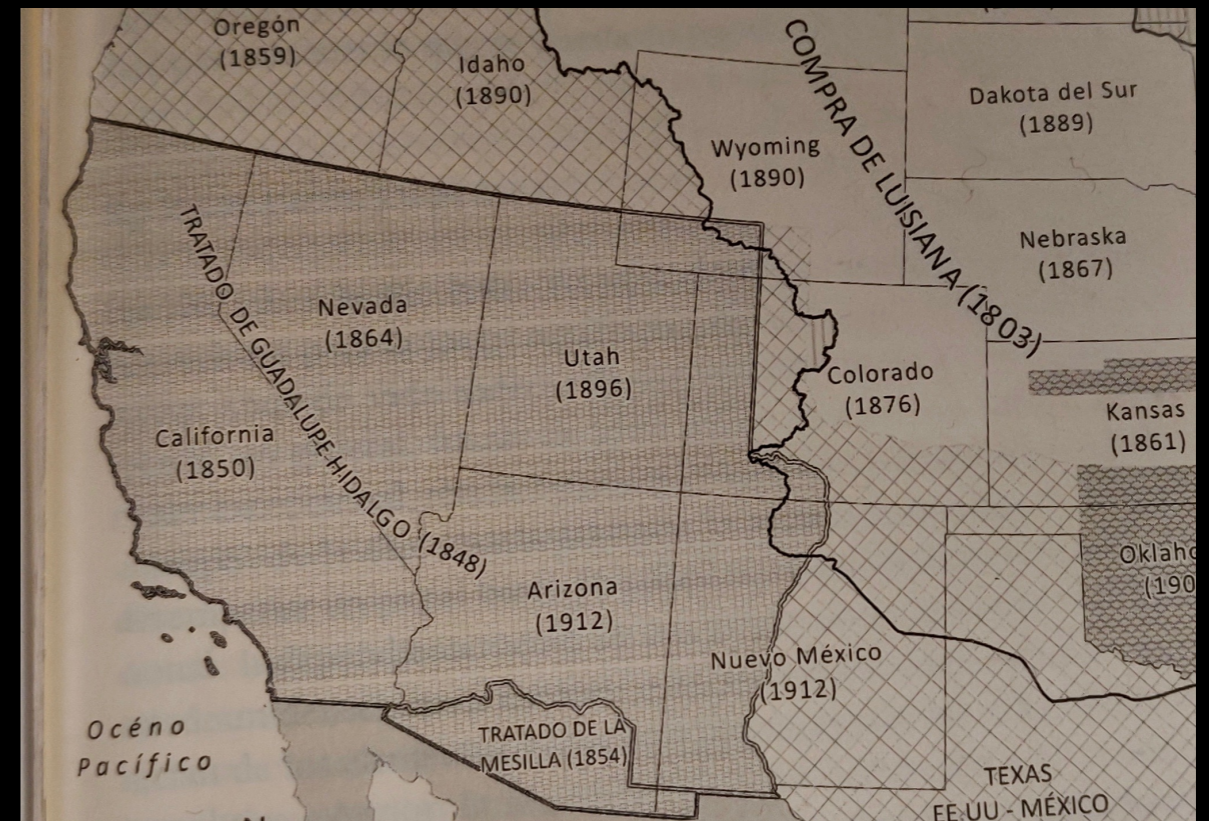
- U.S.-Mexican War, 1846-1848 concluded with Treaty of Guadalupe Hidalgo, 2 Feb 1848
 - **Article X** protected land grants explicitly and referenced Texas grants; removed by U.S. Senate
 - Mexican government insisted on Protocol de Querétaro to clarify intention
 - **Article VIII** protects property rights without identifying land or water rights explicitly; borrowed language from previous treaties
- Gadsden Purchase (1854) added land grants in southern NM & AZ
 - Came under same protections as Treaty Guadalupe-Hidalgo

Is the Treaty of Guadalupe Hidalgo self-executing?

- Three cases that dealt with issue of self-executing treaty
 - Non self-executing treaty requires congressional implementation legislation
 - *Foster v. Neilson* 27 U.S. 253 (1829): Previous treaty, Adams-Onís **not** self-executing
 - *United States v. Percheman* 32 U.S. 51 (1832) **Reversed Foster**
 - *Botiller v. Domínguez* 130 U.S. 238 (1889) **Qualified Percheman**
- Why this matters
 - If self-executing, grants valid under Mexican law would have been valid under U.S. law without further action
 - Two different interpretations: **GAO (2004)**; Benavides & Golten (2008)

Implementation of Treaty of Guadalupe Hidalgo & territorial government - I

- Congressional action to adjudicate land grants
 - Initial focus on CA because of large new population after gold rush
 - NM had largest Mexican population in SW & included AZ, CO, SE corner of UT
 - Boundaries changed in mid 1860s



Implementation of Treaty of Guadalupe Hidalgo & territorial government - II

- Territorial administration
 - 1854 Enabling statute created Office of Surveyor General of New Mexico
 - Pueblos and a few Spanish/Mexican LGs presented for confirmation before Civil War
 - Federal appointment of executive offices; legislature elected locally
 - Mexicans collectively naturalized as U.S. citizens 1849
 - Pueblos deprived of voting rights by Legislature
 - Pueblos, Apaches, Navajos assigned Indian agent
 - New Mexico not admitted as state until 1912

Surveyor General process: the enormity of the task - I

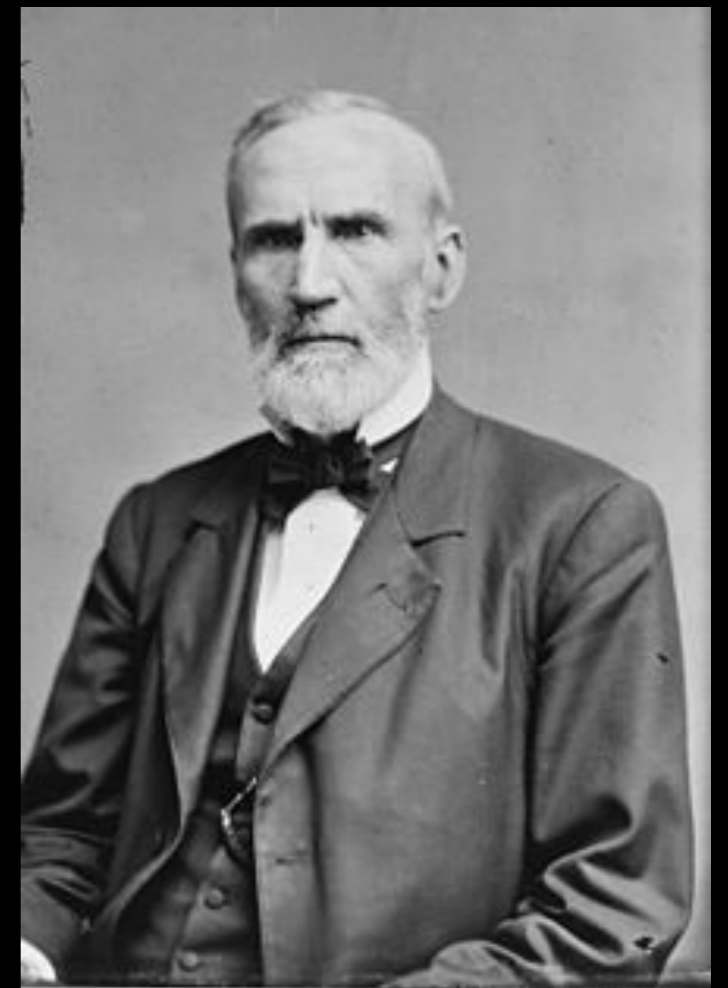
- Surveyor General of New Mexico: large mandate, limited resources
 - *Surveyor General of New Mexico - 1854 – 1891 (10 Stat. 308)*
 - Major task of surveyors general: surveying boundaries of territories and establishing township/range grid to establish benchmarks for later surveys
 - Also responsible for receiving petitions for homesteads (Register and Receiver offices)
- Establishing public domain for distribution of homesteads required establishing boundaries of “private land claims”
 - *Recognizing and denying land grant petitions for confirmation “as Mexico would have done”*

Surveyor General process: the enormity of the task - II

- Surveyors General repeatedly asked for a court like the one used in California
 - This would transfer task of adjudicating land grants
- Clashes between Spanish/Mexican legal traditions and U.S. property law
 - Unwillingness to accept common lands as indivisible parcels owned by land grants for common benefit of villages
 - **Tenancies in common and partition suits**
 - Surveyors General (1854-1891) accepted some practices of **Spanish/ Mexican customary law**; Court of Private Land Claims (1891-1904) mostly did not

Surveyor General process: mixed results

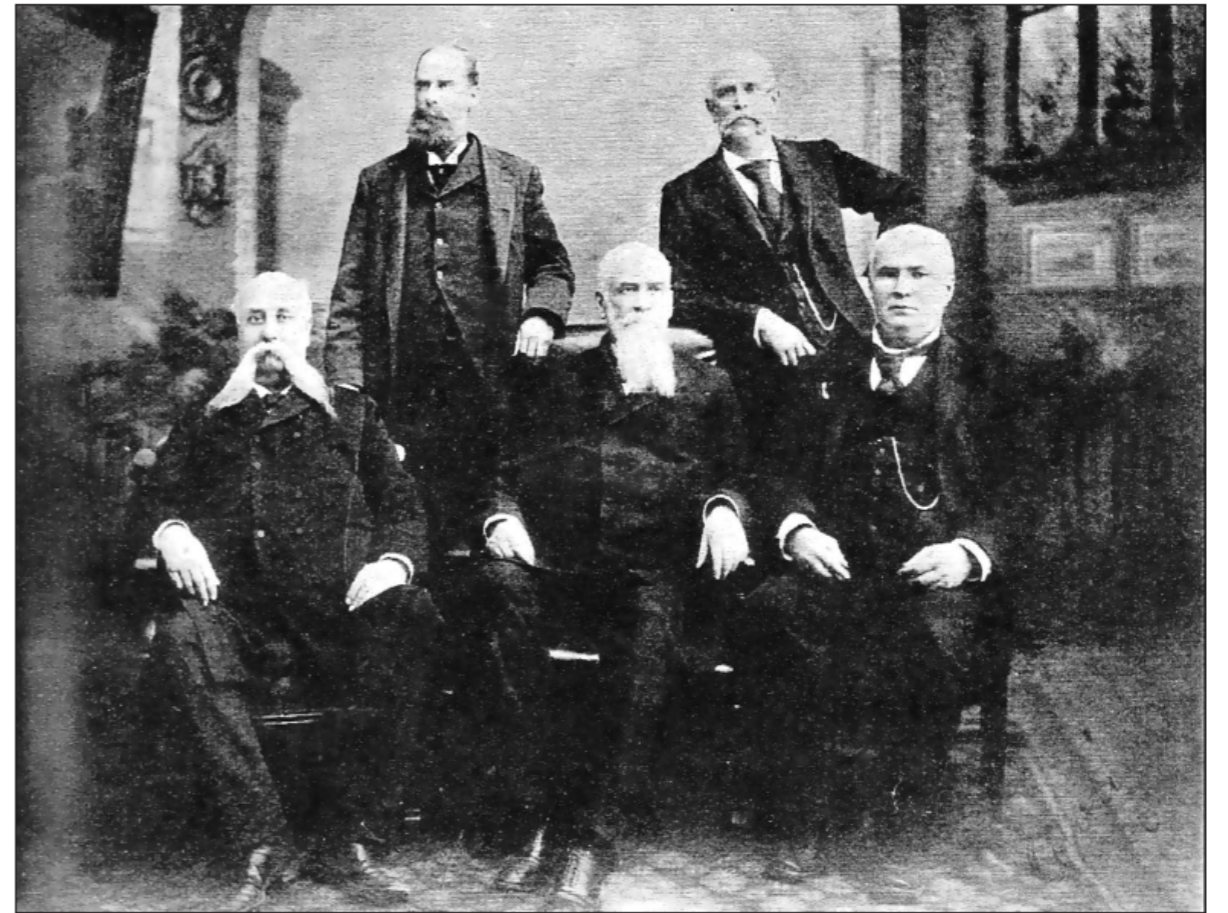
- Inconsistent application of rules re validity and boundaries
 - Took 37 years to process less than 30% of claims
 - Pueblos, a few grants adjudicated 1859-1868 received what claimed
 - Spanish/Mexican grants, with exceptions, not as fortunate
- Other obstacles to a clean and expedited process
 - Errors in adjudication process, faulty surveys
 - **Tameling case (1876): “grant de novo”**
(Tameling v. United States Freehold & Emigration Company, 93 U.S. 644)
 - Corruption of government officials – speculation and **Santa Fe Ring**
 - Cash-poor communities paid lawyers 1/3 of common lands
- However, rules of equity broadly applied benefited communities



George W. Julian
US. Surveyor Gen., 1885-1889

Court of Private Land Claims, 1891-1904 - I

- Vast majority of claims in New Mexico adjudicated through this process
 - *Court of Private Land Claims 1891 - 1904 (26 Stat. 854)*
 - Included a U.S. Attorney to argue for the interest of the United States against claimants; Matthew G. Reynolds, *Spanish and Mexican Laws of New Spain and Mexico (1895)*
 - Stricter application of rules: most grants approved in 1860s would have been rejected in 1890s
 - Many individual grants rejected based on incomplete documentation or incorrect official making the grant
 - Most community grants approved but had all or some common lands stripped from grant



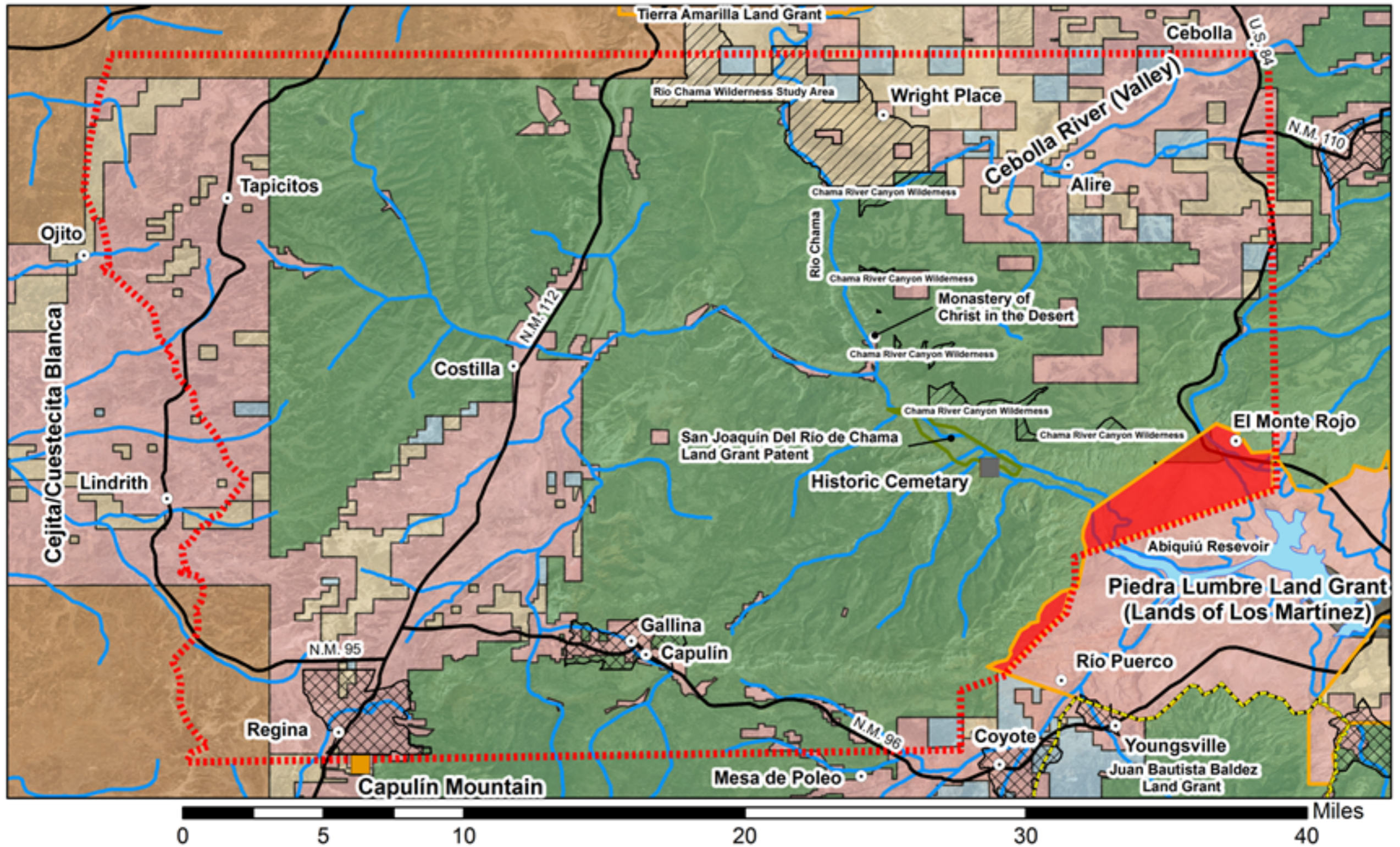
Standing (left to right): Wilburn F. Stone, Henry C. Sluss;
Sitting: Thomas C. Fuller, Joseph R. Reed, William M. Murray

Source: Ralph Emerson Twitchell, Esq., *The Leading Facts of New Mexican History*, Vol. II (Cedar Rapids, Iowa: The Torch Press, 1912) p. 473.

Court of Private Land Claims, 1891-1904 - II

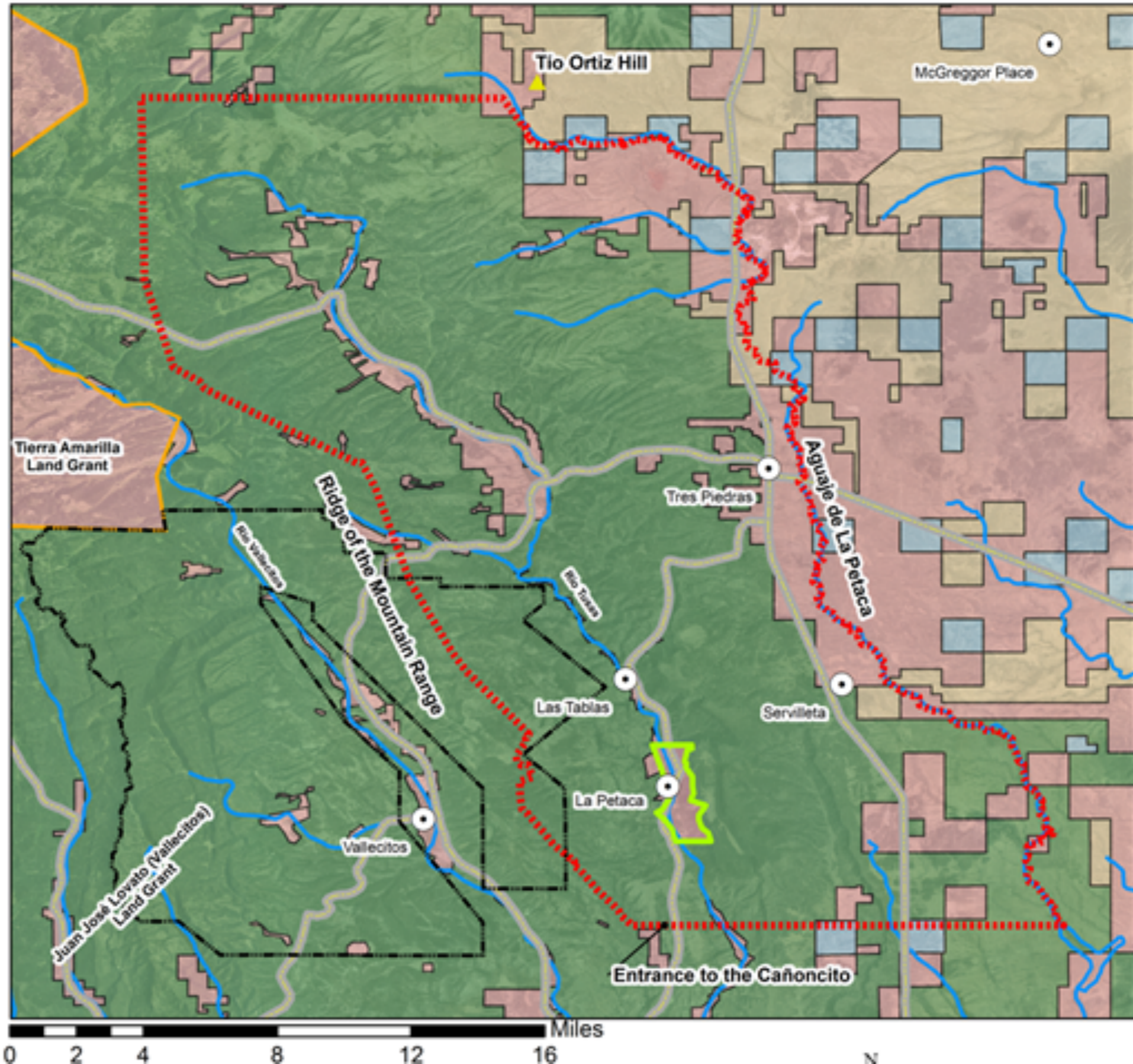
- U.S. Attorney Reynolds adopts view that liberal interpretation of Spanish/Mexican law harmed U.S. interests
 - “Reynolds seemed dedicated to the defeat of as many grants as possible. If he could not defeat them, he strove to reduce acreage as much as possible.” (Bradfute 1975)
- *United States v. Sandoval (1897)*
 - Case brought by Julian Sandoval, et. al, who were attempting to win confirmation of the San Miguel del Bado Land Grant (granted 1794)
 - Reynolds appeals CPLC approval arguing common lands belonged to the sovereign, therefore to U.S. public domain
 - US Supreme Court overturned CPLC, accepts Reynolds’ argument
 - Set precedent: at least seven community land grants lost over 3 million acres of claimed land

San Joaquín Del Río de Chama Land Grant Historic Boundaries



Historic acreage: **471,756 acres**
 Patented acreage: **1,422 acres (0.3%)**
 US Forest Service: **281,420 acres (59.65%)**
 BLM: **36,532.23 acres (7.74%)**

La Petaca Land Grant Historic Boundaries



Boundaries and Features

- 1900 Survey Patented Bound. (1,392.1 ac.)
- 1878 Survey (186,652 ac.)
- Boundaries of Patented Land Grants
- Vallecitos Sustained Yield Unit
- Water Channel
- Road
- Tio Ortiz Hill
- Populated Place

Ownership Classes

- Forest Service
- Private
- BLM
- State

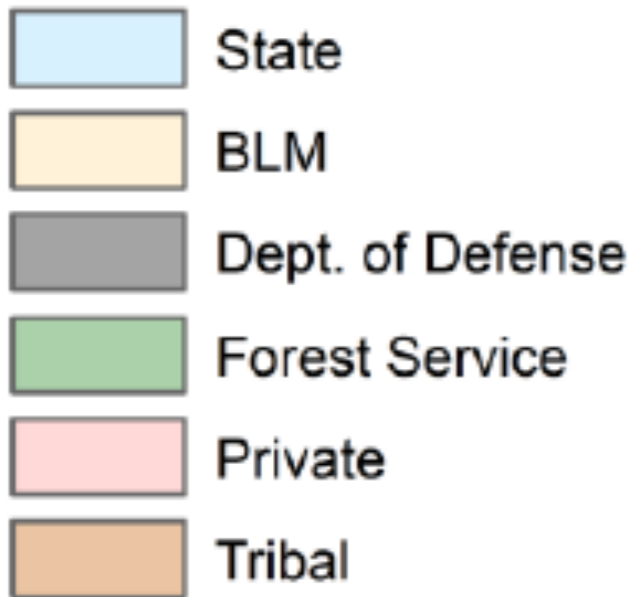
Historic acreage:
186,652 acres
Patented acreage:
1,392.1 acres (0.7%)

U.S. Forest Service
152,379.50 acres
(81.6%)

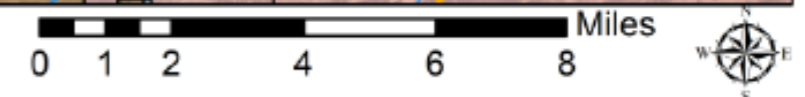
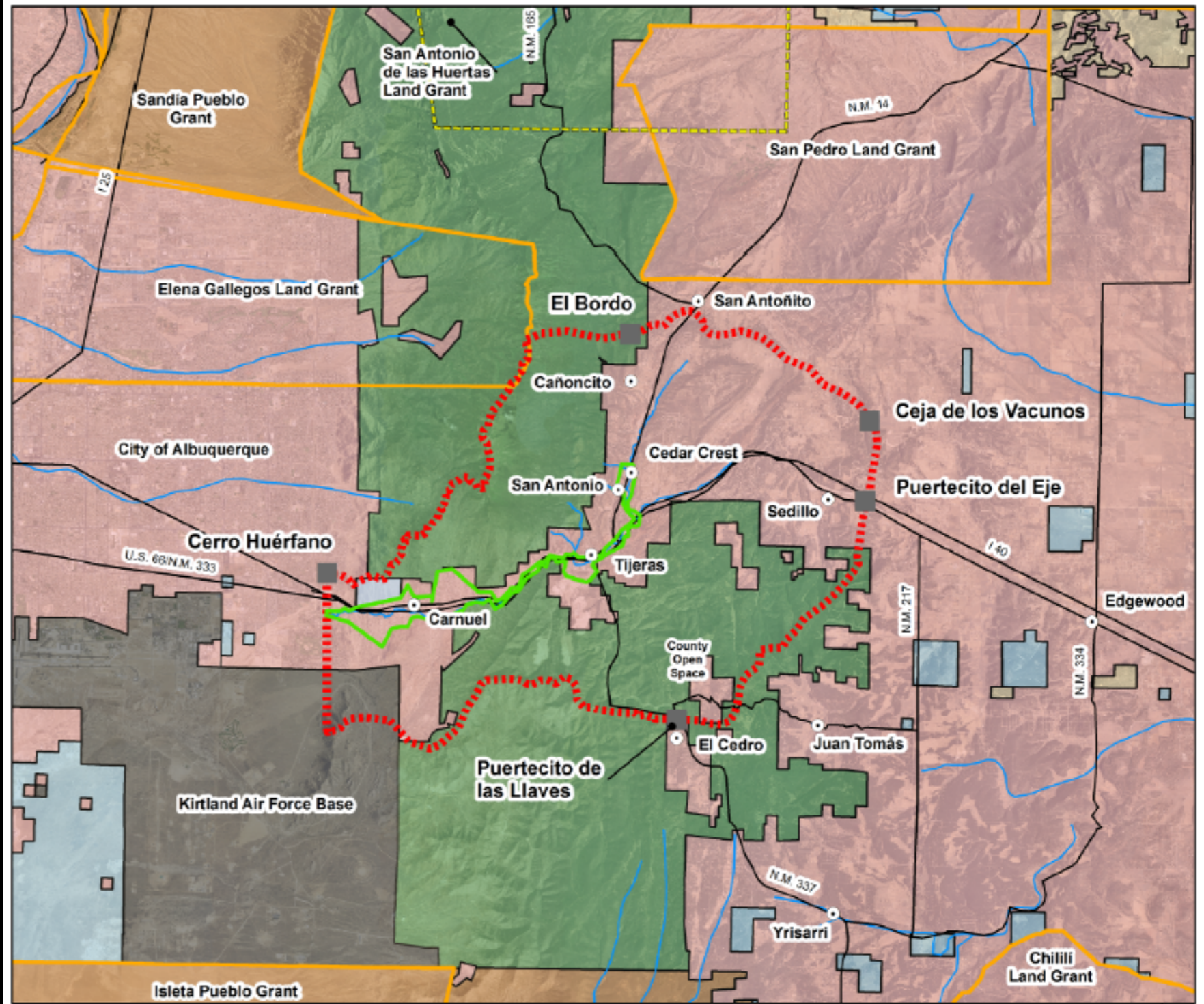
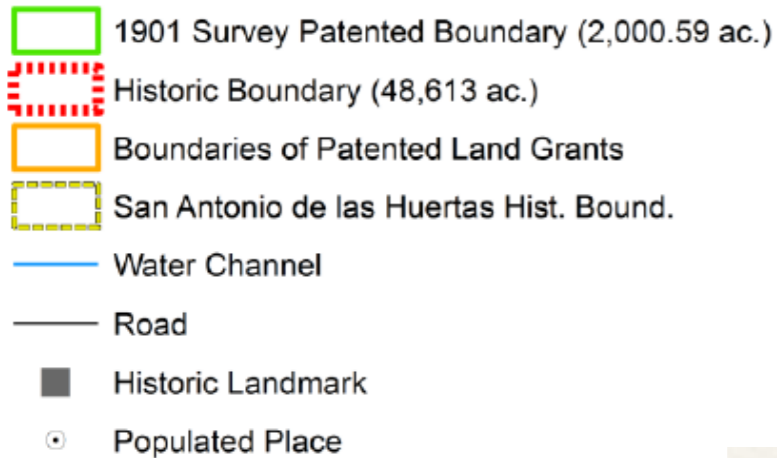
BLM
2,324.52 acres (1.24%)

Cañón de Carnué Land Grant Historic Boundaries

Ownership Classes



Boundaries and Features



Historic acreage
48,613 acres

Patented acreage:
2,000.59 acres (4%)

U.S. Forest Service
23,567.30 acres (48.47%)

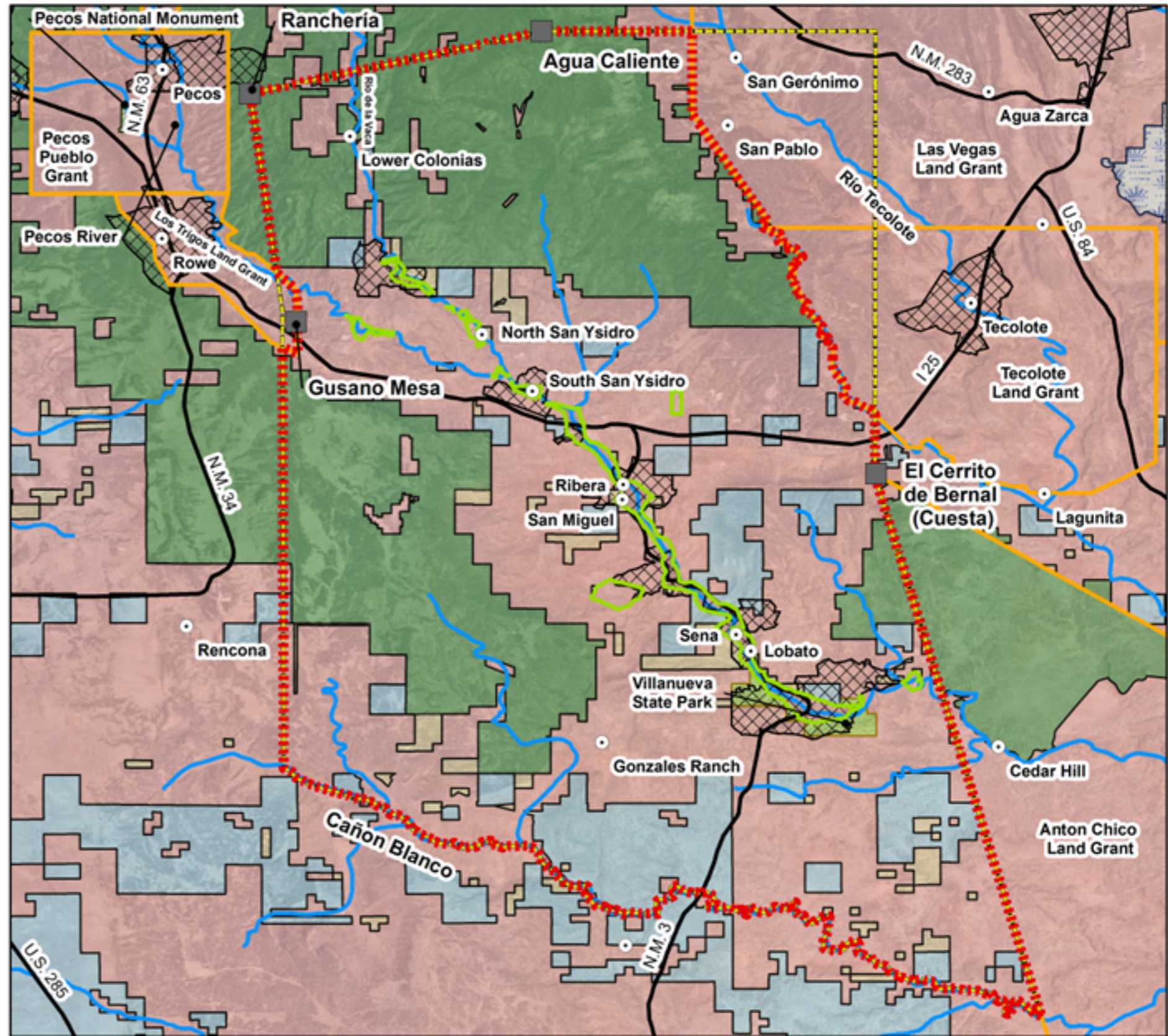
San Miguel del Vado Land Grant Historic Boundaries

Boundaries and Features

-  1903 Survey Patented Bound. (5,098 ac.)
-  Historic Boundary Post Daughter Grants (290,902 ac.)
-  1879 Survey (315,516 ac.)
-  Boundaries of Patented Land Grants
-  Census 2010 Designated Place
-  Water Channel
-  Road
-  Historic Landmark
-  Populated Place

Ownership Classes

-  State
-  State Park
-  Private
-  BLM
-  Forest Service
-  Fish & Wildlife
-  Nat'l Park Serv.



Historic acreage:
285,804 acres
 Patented acreage:
5,098 acres (1.7%)
 U.S. Forest Service
97,917.80 acres
 (33.66%)
 BLM
8,863.30 acres (3.04%)

Community land grant land loss I

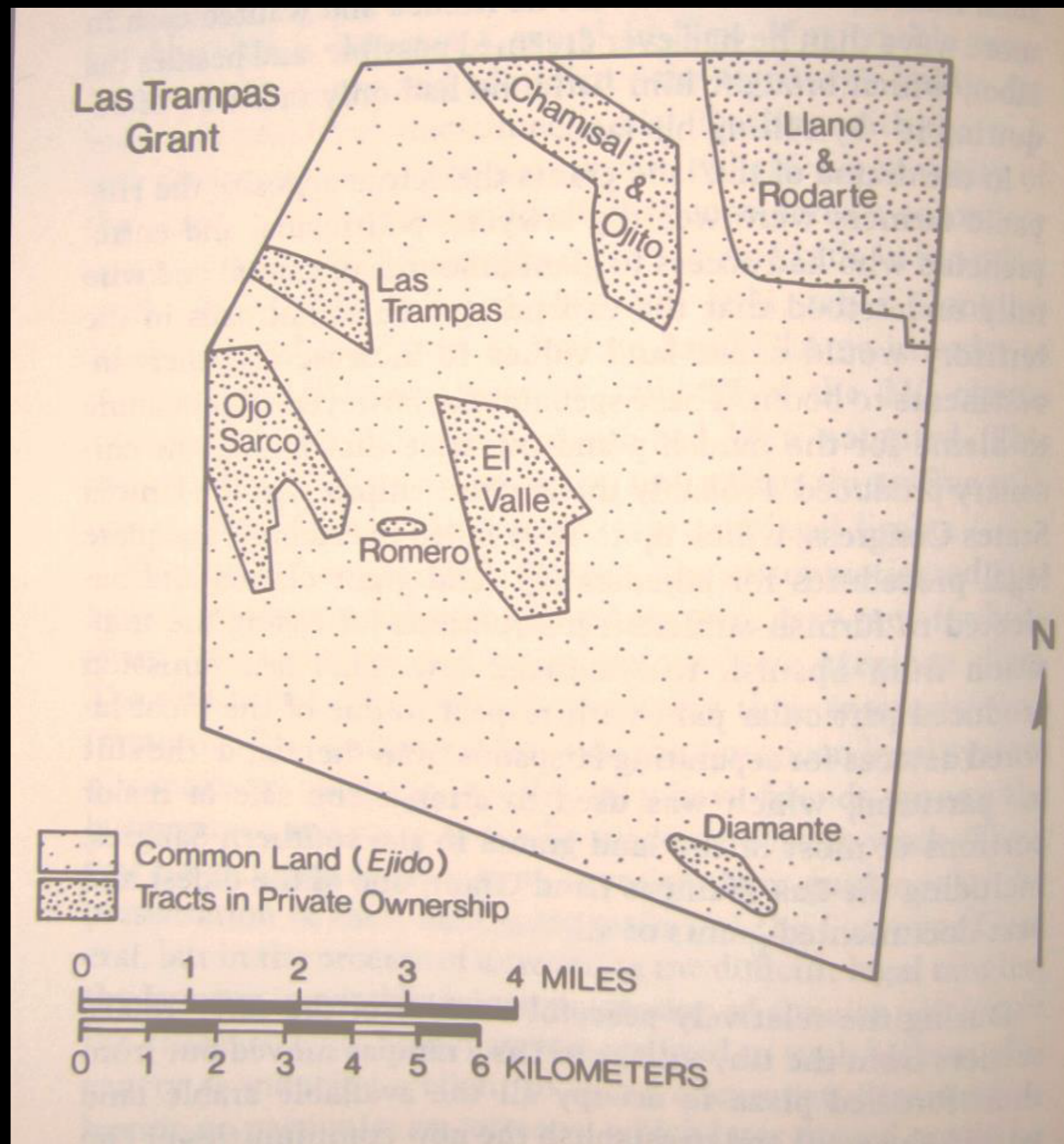
- Land speculation & corruption by government officials
- Adjudication as **tenancies-in-common**
 - **Partition suits** – ex: Santo Tomás Apóstol del Río de Las Trampas Land Grant
- Adjudication that denied common lands or rejected legitimate claims
 - Court of Private Land Claims process – ex: Embudo Land Grant
- Patents Issued incorrectly
 - ex: San Joaquín del Río de Chama Grant Land Grant

Community land grant land loss II

- Loss of common lands after *Sandoval* (1897)
 - Left individual families with parcels in village; not sustainable without *ejido*
 - Some heirs took advantage of Homestead Act, which assumes 160 acres sufficient; without access to water land of little use
 - ex: San Miguel del Bado Land Grant
- Taxation of land grants by State
 - ex: Cristóbal de la Serna; Chililí, Abiquiú
- Adverse Possession and Encroachments
 - internal and external
- Sale of Common Lands for Profit

Las Trampas Grant, 1986

After the 1903 **partition**, forest lands essential to Las Trampas and other grant communities became the property of timber interests before the federal government purchased the lands and incorporated them into the Carson National Forest in 1926.



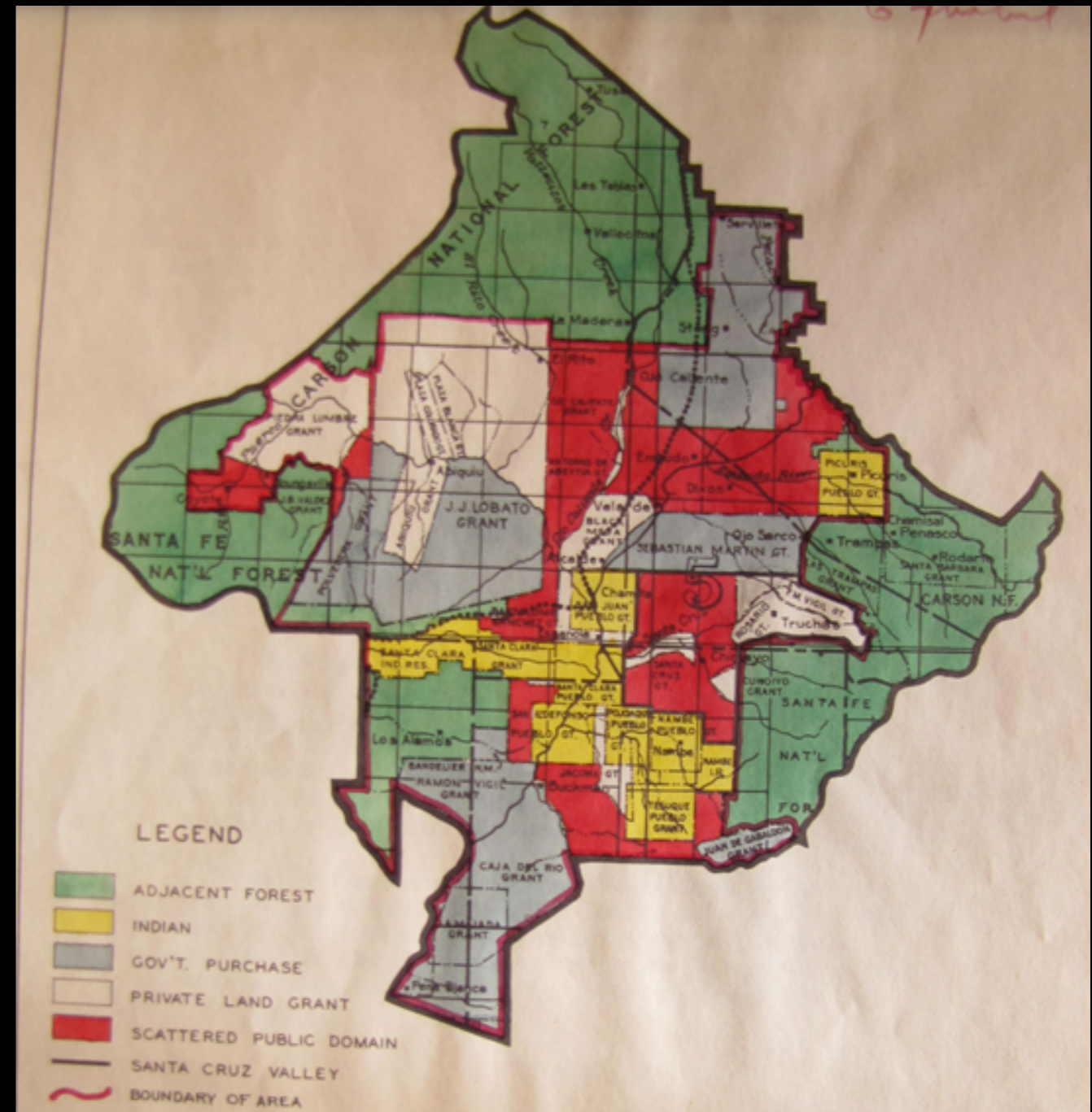
From William deBuys, *Enchantment in Exploitation* (1985)

Calculating Land Loss

- Approximately **8 million acres** of land were **claimed** by community land grants during the adjudication process. Approximately **5 million acres** were *“confirmed”*
- At the close of and as direct result of the adjudication process more than **3 million acres** of former common lands are placed into the public domain.
- Today the community land grants still in existence with active boards collectively own approximately **200,000 acres** of common land.
- This means that since adjudication the *total percent of common lands lost* between 1848 and today is approximately **98%**.

Land grants and the federal government I

- Creation of Forest Reserves from the public domain
 - Partially from rejected land grant common land
- Pre-New Deal Acquisitions
 - Public Law 39 – New Mexico Color of Title Act (1932)
- The New Deal and the Expansion of Federal Lands
 - “For the relief of the local population”
 - Introduction of federal legislation specifically designed to address socio- and economic disparities among native populations of NM.
 - Early New Deal Programs, 1933-1936
 - Purchases of land grants under the Farmer’s Home Administration & Soil Conservation Service



PROJECT LANDS LOCATION KEY AND SUMMARY OF ASSIGNMENTS, 1936-1941

Indian Use

1. Gallup - Two Wells checkerboard
2. Zuni checkerboard
3. Acoma checkerboard
4. Laguna checkerboard
5. Bernabé Montañó Grant
6. Antonio Sedillo Grant
7. Lo de Padilla Grant (part)
8. Zia-Santa Ana checkerboard
9. Ojo del Borrego Grant

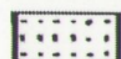

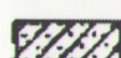

Spanish American Use

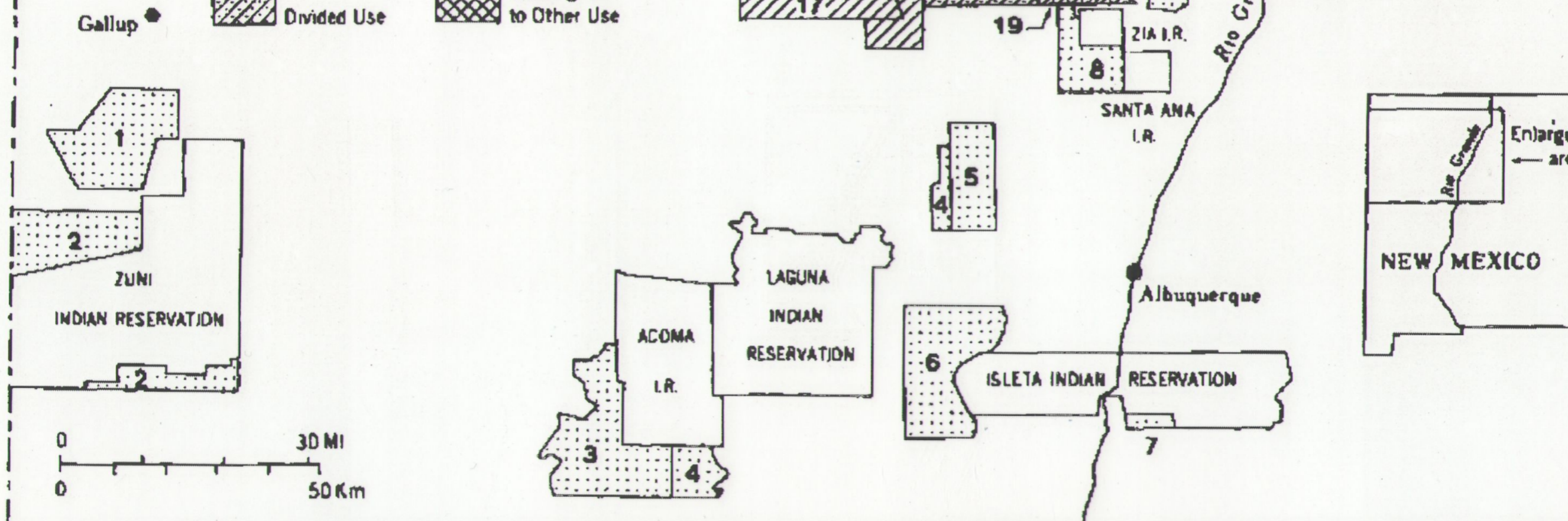
10. Ojo de San José Grant
11. La Majada Grant
12. Caja del Río Grant
13. Taos County checkerboard
14. J.J. Lobato Grant (south 1/2)
15. Polvadera Grant
16. Río Puerco checker board
17. Ignacio Chávez Grant

- ## Divided Use, Indian and Spanish American
18. Ojo del Espíritu Santo Grant
 19. San Ysidro Grant
 20. Sebastián Martín Grant

Reassigned to Other Use

21. Juan de Gabaldón Grant (purchased for Indian use, but transferred in 1937 to Forest Service as recreation area)
22. Ramón Vigil Grant (assigned to Spanish American use, but transferred in 1939 to Forest Service - except for Indian sacred area - and later to Los Alamos atomic project)

- | | |
|---|---|
|  Indian Use |  Spanish American Use |
|  Divided Use |  Reassigned to Other Use |



From David D. ... "Indian Migration and Land Reform in New Mexico" WUC 117

Land grants and the federal government - II

- Early New Deal Programs, 1933-1936
 - Radical; contemplated land return
- The Late New Deal, 1936-1939
 - transferred to U.S. Forest Service
 - Creation of Vallecitos Sustained Yield Unit (1947)
 - Public Law 419 (1953)
- End of the New Deal
- Corporatization of Forest Lands
 - Imposition of permitting requirements for wood gathering & grazing
 - Grazing reductions

TABLE No. 6.—Federal Land Purchases Since 1934

	Acreage	Purchase Price
Grand Totals	1,087,811	\$ 2,132,745
For Indian Use—Totals	452,398	883,024
Acoma Pueblo Purchases	184,642	222,723
Borrogo Grant	16,079	48,239
Isleta Pueblo Purchases	17,492	31,809
Laguna Pueblo Purchases	64,355	133,246
Bernabe Montano Grant	44,070	132,211
Antonio Sedillo Grant	86,204	150,860
Zia-Santa Ana Pueblo Purchases	39,556	163,996
For Non-Indian Use—Totals	467,290	922,442
Caja del Rio Grant	68,848	86,060
Cayamungue Grant	604	1,208
Gabaldon Grant	8,000	32,000
La Mojada Grant	26,000	28,600
J. J. Lobato Grant ¹	65,000	130,000
Ojo de San Jose Grant	3,986	4,983
Polvadera Grant	33,696	84,242
Rio Puerco Purchases ²	153,316	362,354
Taos County Purchases	75,752	158,817
Tewa Basin Misc. Tracts	879	1,759
Ramon Vigil Grant ³	31,209	32,419
For Joint Indian and Non-Indian Use	168,123	327,279
Sebastian Martin Grant ⁴	45,000	31,950
Espiritu Santo Grant ⁴	113,141	282,852
San Ysidro Grant ⁴	9,982	12,477

¹ The southern portion.

² Acreage and price are for the total optioned area; title transfers in progress in July, 1942.

³ 5,913 acres of grant are reserved as area for the San Ildefonso Pueblo.

⁴ There is an equal division of use rights between Indian and non-Indian users.

Source: Interdepartmental Rio Grande Board.

Grazing Permits and Livestock Numbers

Santa Fe National Forest, 1940-1980

Santa Fe National Forest Grazing Permit and Livestock Numbers					
	1940	1950	1960	1970	1980
Paid Permits	640	483	474	418	408
Free Use Permits	217	188	24	7	0
Cattle	7,129	7,580	8,429	12,173	11,692
Sheep	27,180	9,532	4,905	700	0

From William deBuys, *Enchantment in Exploitation* (1985)

Grazing Permits and Livestock Numbers

Carson National Forest, 1940-1980

Carson National Forest Grazing Permit and Livestock Numbers					
	1940	1950	1960	1970	1980
Paid Permits	921	897	696	490	427
Free Use Permits	461	239	13	78	0
Cattle	11,497	9,750	9,580	10,460	11,972
Sheep	60,300	46,981	38,292	26,536	20,637

From William deBuys, *Enchantment in Exploitation* (1985)

Land Grant Activism in the Civil Rights Era

- **Federal & state government neglect leads to famous period of activism**
 - Reies López Tijerina formed the Alianza Federal de Mercedes Organization was first statewide and regional organization that registered heirs; focused on role of federal agencies and occupied former land grant land in demonstrations
 - Notable events include 1966 occupation of Echo Amphitheatre (1966) and 1967 Tierra Amarilla Courthouse Raid



Land Grant Activism after the Civil Rights Era

- **Uncoordinated activism continued after decline of the Alianza**
 - **New Mexico Land Grant Forum** active statewide in 1990s
 - More effective in advocating for and influencing policy
 - Activism leads to the passage of laws in New Mexico, Congressional hearings, bill for a claims commission and issuance of GAO Treaty of Guadalupe Hidalgo Reports (2001, 2004)



Modern Land Grant Activism I

- GAO pub. “Definition and List of Community Grants in NM” - 2001
- Land Grant Legislative Interim Committee Formed - 2003
- Land Grants recognized at Local Units of Government – 2004
- GAO pub. “Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico” - 2004
- Land Grant Registry Established - 2004
- Treaty of Guadalupe Hidalgo Division - 2004
 - within New Mexico Attorney General’s office



Members of the Board of Trustees of the Merced de los Pueblos de Tierra Amarilla testifying in front of the Interim Land Grant Committee, 2019

Modern Land Grant Activism II

- New Mexico Land Grant Consejo Formed – 2006
 - statewide organization and successor to NM Land Grant Forum
- UNM Land Grant Studies Program Established - 2008
- NMAG commissions GAO response (Benavides & Golten) - 2008
- New Mexico Land Grant Council Formed – 2009
 - state agency charged with providing a program of support to land grants
- Local Gov't, Land Grants & Cultural Affairs Legislative Committee – 2019



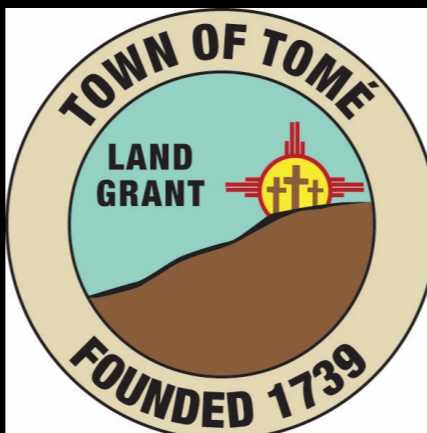
S. 2708 and H.R. 5493 - Land Grant-Merced Traditional Use Recognition and Consultation Act

- provides for greater consultation between the Federal Government and governing bodies
- requires the consideration of Historical Traditional Uses in federal land management planning
- requires the federal government to provide guidance on any permit requirements for qualified land grant-mercedes and traditional uses, including for routine maintenance, minor improvements, and major improvements



Land Grants-Mercedes Today

- ❖ Today there are approximately 35 lands grants with active boards of trustees.
- ❖ Collectively they manage approximately 200,000 acres of common land.



Entre la historia y la ley:
Land Grant History and the Law

Thank you. Any questions?



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