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Righting the Record: A Response to the GAO's 2004 Report *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico*
David Benavides & Ryan Golten

APPENDIX
Land Grant Speculation in New Mexico During the Territorial Period

DAVID CORREIA*

INTRODUCTION

Much of the research on the adjudication problems that confronted Spanish and Mexican land grant heirs in New Mexico has focused on the conflicts between private and common property-tenure arrangements. While historians have focused on the patterns of speculation by Santa Fe Ring lawyers and commercial speculators, their emphasis has been on the almost impossibly contradictory and irresolvable conflicts that arose from the collision between Spanish and Mexican common property arrangements, and the largely fee-simple rubric found in Anglo law. Ebright said it most emphatically when he declared that "[t]he main reason for [land loss] was that the land grants were established under one legal system and adjudicated under another."¹ Likewise, Montoya made a similar argument in her discussion of the Maxwell land grant: "[t]he U.S. legal system could not incorporate the informal property regime that had evolved under Mexican law, and consequently the peones and settlers lost what few property rights they had established under Maxwell."²

While the close and careful empirical analyses of land grant adjudication in New Mexico have revealed important information regarding the legal and political landscape of territorial New Mexico, these and other studies have attributed perhaps too much weight to legal

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1. MALCOLM EBRIGHT, *LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO* 4 (1994).
2. MARIA E. MONTOYA, *TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840-1900*, 75 (2002).

explanations for adjudication failures. This explanation fails as a useful framework because it does not explain why some land grants survived the adjudication process and some did not. Why were some common property acres confirmed, for example, if these forms of land tenure were wholly incompatible?

In this Appendix, I examine dispossession of Spanish and Mexican land grants differently. Specifically, I want to acknowledge the importance of the arrival of Anglo land law. There can be no question that these privileged private property arrangements served the interests of commercial speculators. As Harris noted, “[w]hen English common law, a work of English centuries, was relocated overseas, a framework for the transplantation of English society had been introduced.”³ While Harris was referring to the operation of English colonialism in British Columbia, his point is surely germane to the experience in New Mexico. The ideology of U.S. imperialism as articulated in the rhetoric of Manifest Destiny, provided the momentum for military incursions and economic and political expansion in New Mexico. Speculators benefited from the full weight of the colonial infrastructure—political and economic. The dispossession of Spanish and Mexican land grants was a colonial process. Land grant communities owned extensive and valuable grazing, mining, and timber lands in New Mexico. Their subsistence lifeways, and therefore their property claims, stood in the way of an ideology of “progress” predicated on commercial (rather than subsistence) resource use. To explain away this loss as nothing more than a conflict between two different legal systems is to ignore the practices of colonialism. Furthermore, the legal explanation is an invitation to ignore the ways in which the ideology of imperialism empowered certain actors and methods in the dispossession of land and resources from land grant communities. For most community land grants, the various administrative agencies, or the courts and their legal decisions, were not the source of dispossession; the law merely established the conditions whereby dispossession could occur.

This may sound like a distinction cut too fine, but it suggests that dispossession happened because of the actions and practices of individuals operating in a climate that accommodated their interests. Further, the political and legal infrastructure of territorial New Mexico was expressly designed for the purposes of commercial development. This development could not happen without access to land. In this way, the dispossession of Spanish and Mexican land grants did not follow from, nor was caused by, the collision between two different legal systems. Rather, the colonial

3. Cole Harris, *How Did Colonialism Dispospossess? Comments from an Edge of Empire*, 94 ANNALS ASS'N. AM. GEOGRAPHERS 165, 177 (2004), available at <http://www.unc.edu/courses/2007fall/geog/804/001/Harris%202004%20How%20Did%20Colonialism%20Dispossess.pdf>.

infrastructure accommodated the interests of commercial speculators. They alone were seen by Anglo interests as those best capable of generating economic development in the region. For this reason, emphasizing the conflict between abstract legal concepts is not particularly helpful; it takes the focus away from where it should be: at the operation of power in territorial New Mexico. The purpose of this study, therefore, is to identify the agents and processes of dispossession. Who or what took the land? How was it taken?

Most importantly, it should be noted that the efforts of speculators to locate investors and acquire controlling interests in land grants were a process that happened out in the open.⁴ Democrats and Republicans alike, united in their drive for New Mexican statehood, agreed that higher and better uses for the land than subsistence alone were a necessary condition for New Mexico statehood. For this reason, there may never be a smoking gun; a damning piece of correspondence that finally brings the process into stark relief. The activities of the Santa Fe Ring were the accepted practices of the territory, the conventional wisdom of the time. The documentation offered here describes these efforts through a description of an accumulating series of practices and tactics of dispossession unleashed on the community land grants of New Mexico. They are compelling in their entirety and are meant to be read as a coherent whole—a larger pattern, carefully thought out, systematically and extensively applied.

MEXICAN COMMON PROPERTY LAND GRANTS

The unique characteristics of Mexican property-owning arrangements in New Mexico found expression in dozens of community land grants made between the years 1821 and 1848. It is no accident that all of the elements of Pueblo common property systems and Spanish private land-tenure arrangements can be found in the Mexican common property land grant. The form of Mexican land tenure in what is today New Mexico was a product of nearly 250 years of legal and social relations operating in a unique context of climate, cultural conflict, and frontier development. The common property elements of Mexican land grants developed both in relation to the ecological constraints of household production and in reaction to the political challenges of peopling the arid northern reaches of Mexico populated by nomadic tribes. New social categories of potential property-owning classes, a result both of Spanish strategies of settlement and conflict on the frontier, provided opportunities for subsistence settlers.

4. See HOWARD ROBERTS LAMAR, *THE FAR SOUTHWEST, 1846-1912: A TERRITORIAL HISTORY* (2000). The work of land grant speculation was accomplished by a cadre of lawyers, judges, politicians, and commercial speculators known as the Santa Fe Ring. *Id.*

Different though Mexican common property law was from the Anglo legal standards imposed following 1848, there were many similarities and these provided room for maneuver for a parasitic class of speculative opportunists during the Territorial period.

The early Mexican-period land grants and the Mexican colonization laws of 1824 and 1828 are based on the melding of Castilian land law and the unique constraints of frontier development in New Mexico. The adjudication procedures in New Mexico, particularly under the 1891 Act establishing the Court of Private Land Claims (CPLC)⁵, froze in time an overly determined version of the colonization laws and thus stripped away its socio-geographical specificity. Lost was the social context of grant-making procedures that actually characterized the administration of land distribution in New Mexico.⁶

The legal entanglements that arose from adjudication conflicts reflect on-the-ground struggles over control of land and resources. It is precisely for this reason that analyses of adjudication irregularities must focus on the practices of dispossession. Histories of the legal entanglements must specify what was happening on the ground in these struggles or risk missing the actual events that produced dispossession. Lastly, it is important to recognize that the conflict over land during the adjudication period (roughly 1854-99) reflected a period of economic transformation in the region. This transformation was the explicit goal of U.S. expansion and was accomplished through the practices and administration of colonial authority.

This transformation is not an issue aside from the problem of land grant adjudication. The conflict over the adjudication of land grants was not merely a collision of conflicting legal theories and constructs for land, but rather a struggle over the social relations of production and the property relations that serve as the foundation of economic arrangements. As Van Ness reminds us, too often clashes between Anglo and Hispano interests were presented as cultural rather than economic conflict.⁷ Losing common lands forced whole communities off the land. Subsistence communities were stripped of their resource base. The result was the economic restructuring of production relations in New Mexico.

This Appendix seeks to identify the methods of dispossession in New Mexico. Who put the goals of imperialism into motion and how were the practices of colonialism applied? This Appendix identifies the primary

5. An Act to Establish a Court of Private Land Claims, ch. 539, 26 Stat. 854 (1891).

6. See Daniel Tyler, *Ejido Lands in New Mexico*, in *SPANISH AND MEXICAN LAND GRANTS AND THE LAW* (Malcolm Ebright ed., Sunflower Univ. Press 1989).

7. See John Van Ness, *Hispanic Land Grants: Ecology and Subsistence in the Uplands of Northern New Mexico and Southern Colorado*, in *LAND, WATER, AND CULTURE: NEW PERSPECTIVES ON HISPANIC LAND GRANTS* 141 (Charles Briggs & John Van Ness eds., 1987).

strategies of dispossession. In these methods, behind the backs of legitimate settlers and out of view of the courts and administrators, speculators conspired and colluded to acquire land legitimately owned by subsistence communities. They took advantage of language barriers, class divisions among Hispano communities, the limited knowledge of Mexican grant making, and legal contradictions in adjudication procedures. In all cases, the legal conflicts between Anglo and Mexican property law were a function, rather than a cause, of dispossession. The practices of dispossession were responses to local conditions in a given grant, and the constraints or opportunities of a given adjudication period.

I. ADJUDICATION UNDER THE OFFICE OF SURVEYOR GENERAL

Between 1848, when the Treaty of Guadalupe Hidalgo was signed, and 1854, no mechanism existed in the Territory to adjudicate land claims. In 1854, the U.S. Congress established the New Mexico Office of Surveyor General.⁸ One of the tasks of the Surveyor General was to receive claims on Spanish and Mexican grants, and then offer recommendations to Congress as to their validity. Congress would then act on each individual claim. The procedure proved difficult for the Surveyor General, as the office was given few resources for investigation. And for a variety of reasons, all well documented, the procedure was even more difficult for the heirs to land grants.⁹ Beginning in the late 1850s, the Surveyor General began to receive petitions for individual land grant claims.

TACTICS OF DISPOSSESSION UNDER THE SURVEYOR GENERAL

The adjudication procedures under the Surveyor General lacked a mechanism whereby claimants could make adversarial claims. As a result, given the lack of investigative resources in the Surveyor General office, the lack of knowledge of Spanish and Mexican land grants, and the lack of transparency in the Surveyor General system—a function of the non-adversarial process—merely getting a claim into the system was the best indicator of success (this became less true as the Surveyor General period wore on and, in fact, was the central motivating factor for reforming the system.¹⁰

8. An Act to Establish the Offices of Surveyor-General of New Mexico, ch. 103, 10 Stat. 308 (1854).

9. See EBRIGHT, *supra* note 1; David Correia, *Making Destiny Manifest: United States Territorial Expansion and the Dispossession of Two Mexican Property Claims: 1824–1899*, 34 J. OF HISTORICAL GEOGRAPHY 4 (2008).

10. See Correia, *supra* note 9.

A number of lawyers and speculators employed a tactic in which they would: (1) make a petition to get a grant into the adjudication system; (2) purchase (or fraudulently claim to have purchased) rights from only the named grant recipients; and, (3) acquire the recommendation of the Surveyor General for approval as a private (or if more than one claimant, a tenancy-in-common) land claim. This was an effective tactic for a number of reasons. First, there was no consistent format found in grant documents useful for the Surveyor General to distinguish private and community grants. Second, the Surveyor General had little familiarity with Spanish and Mexican land law. Third, three Surveyors General were active land speculators.

Speculators took advantage of the similarities between Spanish and Mexican private grants and Anglo fee-simple tenure arrangements. Many scholars have described this tactic.¹¹ Speculators claimed community grants were private grants and pursued deed purchases from the heirs of these named settlers. This tactic was plausible by virtue of the practice common in grant making to name only representatives of the community in the grant documents. The tactic was effective because of the lack of scrutiny available in the Surveyor General system of adjudication. Perhaps most importantly, the collusion of three Surveyor Generals in this tactic made this process easier. The following section offers documentary evidence illustrating this process.

A. Getting the Grant into Adjudication

Throughout the late nineteenth century, speculators considered land grants investment-worthy once the Surveyor General offered Congress a recommendation for confirmation. During the tenures of Surveyors General Proudfit and Atkinson, intense speculation followed recommendations for approval.¹² Following Surveyor General recommendations, deeds were acquired and, regardless of their legitimacy, investors launched commercial activities, usually timber operations, grazing, and mining. Samuel Ellison was a prodigious land grant attorney in the 1870s and brought more land grants into the adjudication process than any other attorney.¹³ For some reason he has escaped careful scrutiny. He represented 23 of the 49 claims that came before Proudfit (and 13 of the 35 that came before Proudfit's successor, Atkinson). These claims followed a similar pattern in which Ellison made anonymous claims for land grants that

11. See EBRIGHT, *supra* note 1.

12. Proudfit (1872-1876); Atkinson (1876-1884). See Correia, *supra* note 9.

13. See VICTOR WESTPHALL, MERCEDES REALES: HISPANIC LAND GRANTS OF THE UPPER RIO GRANDE REGION app. III, at 282 (1983).

eventually were recommended as private land grants. The initial petitions for the Town of Vallecito de Lovato and the Petaca Land Grants, for example, included witness depositions for claims that Ellison himself provided.¹⁴ In both cases Samuel Ellison delivered to James Proudfit a petition *and* a series of witnesses. This pattern was replicated in other claims. Samuel Ellison had a unique knowledge of the system of Mexican land grants and understood evidence necessary to make claims for adjudication. Proudfit and Atkinson, meanwhile, actively invested in land grants and incorporated cattle companies in land grants petitioned by Ellison.¹⁵

1. Example: Vallecito

On May 20, 1875, almost 20 years into land grant adjudication in New Mexico, Ellison submitted to Surveyor General James Proudfit the first claim to the Town of Vallecitos de Lovato Land Grant.¹⁶ In the application, Ellison claimed to represent "the inhabitants of the town of Vallecito in the County of Rio Arriba."¹⁷ On the same day the application was made, Proudfit took depositions on Ellison's claim from four men. In each deposition, the witnesses claimed the Vallecito de Lovato had been continuously settled, save for the two-year Ute war. On October 13, 1875, Proudfit forwarded his sketch map and a half-page recommendation for approval to the U.S. Congress.¹⁸ The report was entirely based on Ellison's claim and the testimony of the witnesses deposed that same day.

2. Example: Petaca

On February 12, 1875, Ellison submitted to Proudfit a claim for the Petaca grant. In the petition, Ellison presented himself as the representative of the "heirs and legal representatives of the parties named as grantees."¹⁹ On the same day as Ellison's petition, Proudfit deposed two witnesses. On February 20th, Proudfit produced a sketch map of Petaca and wrote a half-page report to Congress, stating "I have no doubt that the papers of original title are genuine and that present claimants are acting in good faith, I therefore recommend that this grant be confirmed to Jose Julian Martinez and others named in the act of possession or their legal representatives by Congress."²⁰

14. See Correia, *supra* note 9.

15. See *id.*

16. Ellison Petition, Spanish Archives of N.M. (SANM) 23: 536-40 (May 20, 1875) (on file with the N.M. State Records Ctr. and Archives, Santa Fe, N.M. (NMSRCA)).

17. *Id.* at SANM 23: 536.

18. Proudfit Report, SANM 23: 577-78 (Oct. 13, 1875) (on file with NMSRCA).

19. Transcript of 1875 Ellison Petition, SANM 51: 654-63 (on file with NMSRCA).

20. Proudfit Report, *supra* note 18, at SANM 51: 663.

3. Example: Samuel Ellison

Ellison's petitions for Vallecito and Petaca were similar to one described in a May 11, 1877, letter from a clerk in the office of Colorado Surveyor General William Campbell. As the clerk describes to Ellison:

The Survey General has rec'd the long looked for instructions in regard to the grant and he will soon be ready to take action. I wish you would send me a document similar to the one you sent me for Searight, also any other items that would assist in starting the matter off right. Will you act as Atty in the case and as I am in the office I suppose it not be proper for me to do so, I think it would be best for you to appear as attorney.²¹

An August 11, 1874, letter from a grant speculator named C.P. Elder to Ellison further spelled out the tactic:

Glad to know that the papers for Grant have gone on to Washington. Referring to that portion of your letter where you suggest that it would be well for us to get the affidavit of Anto. Jose Ortiz, I desire that you would look after the securing of this paper: As you are familiar with the entire subject and know just what the paper should state and just what it should not state, I will be glad if you draw up such an affidavit as you desire and send up to Señor Ortiz for his signature.²²

B. Getting the Grant into the Hands of Speculators

Spanish and Mexican land grants, with extensive resources in timber, minerals, and rangelands, proved attractive investments. A flood of investment in New Mexico, accommodated by railroad extensions in the late nineteenth century, involved a variety of legal and extralegal tactics of land speculators to consolidate titles to the vast community land grants spread throughout the northern stretches of the Territory.

1. Example: William Blackmore

William Blackmore was one of the first to employ this tactic. As early as 1872, Blackmore was soliciting investors in grants he claimed either to partly own, or could acquire with sufficient capital. In one such solicitation, Blackmore offered five grants for investment, including the

21. Letter from the Office of Colo. Surveyor Gen. to Ellison (May 11, 1877) (on file with the Center for Southwest Research, Univ. of N.M., Albuquerque, N.M. (CSWR), Catron Collection, Ellison Papers, MSS 29 BC, ser. 715, folder 2).

22. Letter from C.P. Elder to Samuel Ellison (Aug. 11, 1874) (on file with CSWR, Catron Collection, Ellison Papers, MSS 29 BC, ser. 715, folder 2).

Maxwell, Mora, Cebolla, and Los Luceros Land Grants. In his sales pitch, he described the unusual investment potential that New Mexico offered British investors:

An interest in either of these properties can not be acquired for a few shillings an acre, whilst I believe that from the rapid development and opening up of the country by means of Railways now in course of construction, the price now paid will be tripled and quadrupled and in some cases increased tenfold in the course of a few years.

As a rule, large tracts of land in a body are only rarely met with in the United States and in almost all cases the title to these large tracts of land is derived from an early French, Spanish or Mexican Grant made prior to the acquisition of these portions of the territory by the United States Government.²³

2. Example: Surveyor General Irregularities

In addition to locating individual investors, Santa Fe Ring members established financial holding companies with the help of federal officials. The New Mexico Land and Livestock Company, for example, a firm incorporated by New Mexico Surveyor General Henry Atkinson, Assistant Surveyor General William McBroom, and land speculator Joseph Bonham, traded in a number of land grants, including the Anton Chico Grant—a grant Atkinson had recommended for confirmation to Congress while, at the same time, holding a financial interest.²⁴ In 1886, Thomas Benton Catron joined with Atkinson, along with speculators Henry Warren and William Slaughter, to operate the American Valley Company. With the combination of Catron's political connections and Atkinson's authority related to land claims and surveys in the Territory, the American Valley Company consolidated homestead and pre-emption claims through fraudulent entities.²⁵ These holding companies allowed Santa Fe Ring attorneys to pool resources and thus afford the upfront costs of establishing grants. Once confirmed, grant ownership could be managed more effectively among many investors using this corporate structure. In addition, this approach served as a means to attract investment in a manner more acceptable to investors from outside the region. Rather than purchasing land, potential investors could purchase shares in holding companies that managed the timber, grazing, and mining resources of land grants.

23. Letter from William Blackmore to L.H. Lloyd, Esq. (Feb. 14, 1872) (on file with NMSRCA, William Blackmore Collection 77).

24. See EBRIGHT, *supra* note 1.

25. See VICTOR WESTPHALL, *THE PUBLIC DOMAIN IN NEW MEXICO 1854-1891* (1965).

In 1876, Proudfit resigned under pressure from the General Land Office. Proudfit was forced out of office after the General Land Office determined that Proudfit was, as historian Malcolm Ebright described, a "blatant land speculator."²⁶ Henry Atkinson was named as Proudfit's successor. Atkinson proved to be more corrupt than Proudfit. He entered into investment relationships with land grant attorneys, purchased deeds for land grants under consideration by his office and actively recruited buyers for land grant investments.²⁷

3. Example: Petaca

Only after the recommendation for confirmation of Petaca did speculators begin to acquire deeds. On June 4, 1877, Ellison wrote Atkinson asking that Proudfit's recommendation be amended, particularly in relation to the location of Petaca's northern boundary. Proudfit's sketch map described a land grant roughly 15 miles north-to-south and five miles east-to-west. Atkinson's subsequent re-survey increased Petaca to more than 185,000 acres.²⁸ Shortly after the 1877 re-survey, a group of prominent ranching and mining speculators, led by Santa Fe attorney Charles Gildersleeve began purchasing deeds for Petaca. In the original *muniments* for the grant three men were named as the principle petitioners, Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio. Ignoring the rights of the 36 unnamed settlers, Gildersleeve began to buy deeds from the heirs of these three men, none of whom lived in Petaca. Gildersleeve purchased the rights of Jose Julian Martinez from his heirs, Juana and Silverio Valdez. He sold this claim to mining speculator William Stout.²⁹ On August 27, 1878, Gildersleeve wrote Atkinson requesting another re-survey, this time of the western boundary.³⁰ Atkinson re-surveyed Petaca for a second time, increasing the size of the land grant once again. The resulting re-surveys, however, produced inconsistency between land grant surveys and township plats. On March 22, 1883, N.C. McFarland, the Commissioner of the General Land Office in the U.S. Department of the Interior chastised Atkinson for his re-survey practices:

You must adopt a more careful and searching method of examination of the re-survey made by your deputies before forwarding them to this office. Your particular attention is called to the matter in order that the frequent misreferences

26. See EBRIGHT, *supra* note 1

27. *Id.*; see WESTPHALL, *supra* note 25.

28. Letter from Samuel Ellison to Henry Atkinson, SANM 23: 264-65 (June 4, 1877) (on file with NMSRCA).

29. Petaca Deeds, SANM 49: 284-371 (on file with NMSRCA).

30. Letter from Charles Gildersleeve to Henry Atkinson, SANM 23: 280 (Aug. 27, 1878) (on file with NMSRCA).

of the public surveys with surveyed private land claims may be avoided. The examinations of the survey as made in your office are by no means satisfactory and an improvement in that respect is earnestly desired. Please consult the original records and report on the above cases; meanwhile withdraw the triplicate plats from the local land office.³¹

Despite the concerns of the Land Office, Atkinson did not reduce the size of the last survey, and Gildersleeve continued to broker land sales. Francisco Antonio Atencio's claims were acquired through a series of deed transfers that included a purchase by John Thomson in June of 1883. Thomson, a commercial grazing operator, was a partner with Thomas Catron and Atkinson in the Boston and New Mexico Cattle Company, a firm that traded in land grants throughout the Territory. Thomson sold his deed two weeks later to Atkinson's Assistant Surveyor General William McBroom, a man later convicted of land fraud in the Territory. Gildersleeve acquired the remaining interests of Antonio Martinez by purchasing deeds from Jose Maria Lucero, a prominent Abiquiu resident and sometime land speculator.³² In 1883, with the deeds of the three principle petitioners consolidated, Atkinson, while acting as the current Surveyor General in New Mexico, solicited S.S. Farwell, a Chicago-based investor to purchase the Petaca Land Grant. S.S. Farwell's son, M.Z. Farwell, who later acquired the Grant from his father, discussed Atkinson's role in the sale of the Land Grant during the Court of Private Land Claims case: "[S.S. Farwell] had some correspondence with the Surveyor General, Mr. Atkinson, who had invited him to come out, and told him that there were some very nice properties for sale."³³ Upon being contacted by Atkinson regarding Petaca in 1883, Farwell hired L. Bradford Prince, a Santa Fe attorney, judge, and territorial governor to investigate the Petaca claim prior to a purchase. Prince's detailed report, which included a genealogy of the heirs of the three named petitioners, was favorable.³⁴ In an 1883 letter from Prince to Farwell, however, it appears that Gildersleeve's claims of purchasing all deeds from the heirs of the named petitioners was not entirely correct.

I beg leave to make the following preliminary report as to the Petaca Grant. In Taos I found now deeds conflicting with those held by Mr. Gildersleeve, very few deeds relating to this property being on record there, as by a strange mistake the people at Petaca have been in the habit of recording in Rio

31. Letter from Comm'r N.C. McFarland, Dep't of the Interior, Gen. Land Office, to Henry Atkinson, SANM 23: 282-83 (Mar. 22, 1883) (on file with NMSRCA).

32. Petaca Deeds, *supra* note 29.

33. Transcript of CPLC Testimony, SANM 44: 153 (June 7, 1895) (on file with NMSRCA).

34. L. Bradford Prince Papers (on file with NMSRCA, file 13988, folder 4).

Arriba although Taos was the proper County for all the property down to February 1880, and is the proper one for part of the premises still.

[Prince then went to Colorado looking for Maria Juana Martinez and her husband Silverio Valdez]

... from whom Mr. Gildersleeve derived his most important title. Here, to my surprise, I found that so far from her father Jose Julian Martinez being the only heir of his father Antonio Martinez, there were two other heirs, Maria Dolores and Gertrude, both of whom were married, died, and left a number of heirs. I also found that Maria Juana, instead of being the only...[remainder of letter is missing]³⁵

It is not clear whether Prince colluded with Atkinson regarding the Petaca Land Grant or offered an independent opinion on Petaca. Prince was, however, an active member of the Santa Fe Ring, working often with a prominent Hispano attorney named Amado Chavez in acquiring and selling community land grants.

Prince served as Farwell's attorney in the patent claims that followed the purchase. On June 26, 1883, Farwell purchased deeds from McBroom. On May 25, 1883, Farwell purchased deeds from Gildersleeve. On January 12, 1887, Farwell purchased deeds originally from Gildersleeve, that were transferred to Farwell through an investor named Hitchcock.³⁶ Atkinson, as Farwell's initial contact, likely brokered the sale of the deeds. Perhaps the most damning evidence in the Petaca case came from an April 25, 1883, letter from Farwell to Prince in which Farwell wrote that, "[t]he drafts to pay for the Petaca Grant were forwarded to Gen. Atkinson last Saturday. I trust Mr. Gildersleeve will take measures to perfect the title he assured me he had as the amount of money is so large it is attended with considerable loss to have it remain idle."³⁷ Atkinson was the current Surveyor General at the time.

After brokering the purchase by Farwell, Atkinson used his position as Surveyor General to further consolidate Farwell's claim. On July 28, 1883, Farwell petitioned Atkinson to re-evaluate Proudfit's recommendation

with a view to determining whether a mistake was made by the then Surveyor General in recommending that the title to the whole grant be vested in the said nine persons, instead of

35. Letter from L. Bradford Prince to S.S. Farwell 2 (Apr. 23, 1883) (on file with NMSRCA, L. Bradford Prince Papers, file 13988, folder 4).

36. Petaca Deed Transfer Records, SANM 44: 38-52 (on file with NMSRCA).

37. Letter from L.Z. Farwell to L.B. Prince (Apr. 25, 1883) (on file with NMSRCA, L. Bradford Prince Papers, file 13988).

the three persons who made application for the grant and were directed to be placed in possession by the ... Governor of New Mexico.³⁸

For the third time, Atkinson undertook a review. On August 1, 1883, Atkinson made a report that, not surprisingly, fully supported Farwell's claims. In the report, Atkinson argued that the named representatives were the sole recipients of the common lands of the grant:

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...[b]ut such persons held no interest in the general commons of the grant, and were not beneficiaries there under ...[o]n the record in the case, it is my opinion that the legal and equitable title to his grant was vested in Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio, as the sole grantees, and recommend that the same be confirmed to them, as the grant is undoubtedly valid.³⁹

In addition to help from Atkinson, the Farwell's political connections served them in other ways as well. A May 1883 letter from Farwell to Edward Bartlett detailed the legal strategy for their petition:

In regard to filing the petition for the Petaca Grant I think it should be done at once. My father met Justice Reed in Council Bluffs [Iowa] a few days ago and he advised that the claim be filed and continued from time to time as long as possible, or until a precedent has been established in a Mexican Grant case. The present owners of the Petaca Grant are LZ Farwell of Freeport, Ill., and myself. In a letter of the 23rd, Mr. Farwell instructs me to retain Mr. T. B. Catron on our case and I have written to him to that effect. He will [illegible] confer with you and Genl Bartlett about the matter."⁴⁰

In 1885 Farwell sold timber rights on the Petaca to Lowell and Henry Bacheldor, two Tres Piedras operators. The Bacheldor Brothers paid \$5,000 to cut 100,000 narrow-gauge railroad ties on the grant. Three years later, Farwell and the Bacheldor Brothers again entered into a contract for 100,000 ties, this time at \$.04 per tie. In 1891 and again in 1892, the

38. Letter from S.S. Farwell to Henry Atkinson, SANM 23: 282, 355 (July 28, 1883) (on file with NMSRCA).

39. Report by Atkinson, SANM 23: 287-94 (Aug. 1, 1883) (on file with NMSRCA).

40. Letter from Farwell to Edward Bartlett (May 11, 1883).

Bacheldor Brothers paid \$.04 per tie for a contract to cut an additional 15,000 ties.⁴¹

In only seven years, the Bacheldor Brothers cut at least 230,000 ties from the grant. In 1893, Farwell sued the Bacheldor Brothers claiming the Bacheldor's cut in excess of 230,000 ties, failed to make full payments for two timber contracts, and continued harvesting trees on the grant after the last of four contracts expired.⁴² In the transcript of the case, Farwell claimed that the Bacheldor Brothers began cutting in excess of the contract amount in February of 1893. As the petition read: "against the consent of Farwell and without his knowledge, [the Bacheldor Brothers] entered the grant with a large force of men and began to fell the growing timber and trees thereon for the purpose of converting the same into rail road ties...[d]estroying the value of land, committing waste thereon."⁴³ Farwell received an injunction against the Bacheldors in June of 1893. The following year, Farwell sent investigators to the Grant (Farwell never lived on the Grant, never living closer than southern Colorado) who found crews cutting trees throughout the Grant.⁴⁴ In a letter to his lawyer, Edward Bartlett, on November 12, 1895, Farwell complained that "[i]t seems that a man who is inflicted with a land grant is always in trouble...Bacheldor has been slaughtering timber ever since the case was tried last June."⁴⁵ The Denver and Rio Grande Railroad (D&RG) constructed and operated tracks throughout the Petaca Land Grant. Farwell's investigators found the Bacheldors' crews were stacking lumber along the D&RG tracks to ship ties out of the grant. When it became clear that the Bacheldor Brothers were selling some ties to the D&RG, the railroad blamed their purchasing agent, E. M. Biggs, in an effort to distance it from culpability.⁴⁶ In December of 1885, Farwell considered suing the D&RG, as legal proceedings had thus far failed to stop the Bacheldor Brothers. On January 13, 1896, Farwell directed Edward Bartlett to "again notify the Denver and Rio Grande R.R. Co. of the continuance of our action and state that we will look to them for a complete reimbursement of the stumpage we have lost through the Bacheldors."⁴⁷ The D&RG had been

41. Letters from Farwell to Edward Bartlett (1895, 1896) (on file with CSWR, Bartlett Collection, MSS 153 BC, box 1, folder 4 & NMSRCA, Bartlett Collection, box 2, folder 28).

42. Petition by Edward Bartlett, N.M. Dist. Ct. (1893) (on file with NMSRCA, Bartlett Collection, box 2, folder 28).

43. *Id.*

44. Affidavit of Jose Sena (Dec. 7, 1895) (on file with NMSRCA, Bartlett Collection, box 2, folder 28).

45. Letter from Farwell to Edward Bartlett (Nov. 12, 1895) (on file with NMSRCA, Bartlett Collection, box 2, folder 28).

46. Letter from Edward Wolcott, D&RG Gen. Counsel, to Bartlett (Feb. 19, 1895) (on file with NMSRCA, Bartlett Collection, box 2, folder 28).

47. Letter from Farwell to Edward Bartlett (Jan. 13, 1896) (on file with CSWR, Bartlett Collection, MSS 153 BC, box 1, folder 4).

given right-of-way through the Petaca and Vallecito de Lovato land grants beginning on March 3, 1877. The grants included access to resources in a right-of-way, 100 feet on either side of the tracks, for the development of the railroad. The D&RG had the right to take "timber, earth, water and other materials required for the construction and repair of its railway and telegraph lines."⁴⁸ In the court case, it was revealed that the railroad contracted with the Bacheldors for timber resources on the Petaca, and contracted with the New Mexico Lumber Company for timber on the Vallecito de Lovato Land Grant.

In addition to timber, Farwell also leased grazing and mining rights on the Petaca. In July of 1895 Farwell sold a 10-year grazing lease on the Petaca Grant to Las Vegas, New Mexico, rancher W.H. Denton. The contract allowed Denton to run a 27,000-head herd of cattle onto the Grant.⁴⁹ In addition to grazing, Farwell sold nearly 4,000 acres in the Petaca for \$5,000 to the St. Anthony Crystal Mica Mining Co. in October of 1899.⁵⁰ Mica mining activity was extensive on Petaca as Gildersleeve, who had retained mineral rights to the Petaca in his sale to Farwell, actively mined mica on the Land Grant throughout the 1890s.⁵¹

Throughout the intensive commercial timber and grazing that occurred in the decades following the Proudfit and Atkinson recommendation, none of the commercial operators or speculators held patent on the Land Grant. They had proceeded without waiting to see if the pending confirmation would actually affirm their ownership interests as they perceived them, which it did not in the end. The CPLC's 1896 decision to affirm the Grant as a community grant meant they had not in fact acquired any valid private interest in any of the lands on which these operations had taken place.

4. Example: Vallecito

With the appointment of Atkinson, Vallecito became a prime target of speculators. In the late 1880s, Gildersleeve targeted the Town of Vallecito de Lovato Land Grant. On July 9, 1889, the Boston-based Rio Grande Irrigation and Colonization Company hired Gildersleeve to consolidate the deeds to two New Mexico land grants, the Ojo del Espiritu del Santo, and

48. United States v. E.M. Biggs (N.M. Sup. Ct. 1896) (on file with NMSRCA, N.M. Sup. Ct. Archives, box 66, folder 702).

49. Letter from M.Z. Farwell to Edward Bartlett (July 3, 1895) (on file with NMSRCA, Bartlett Collection, box 2, folder 20).

50. Letter from Farwell to Edward Bartlett (Oct. 14, 1899) (on file with NMSRCA, Bartlett Collection, box 2, folder 20).

51. Letter from Farwell to Edward Bartlett (Mar. 2, 1898) (on file with NMSRCA, Bartlett Collection, box 2, folder 20).

the Town of Vallecito de Lovato.⁵² Gildersleeve was directed to obtain and transfer title for both grants to S. Endicott Peabody, an agent of the Boston firm and a member of one of the wealthiest and most prominent Boston-area families.⁵³ Less than two months after Rio Grande hired him, Gildersleeve brokered the sale of Vallecito de Lovato between John O.A. Carper and Peabody on August 23, 1889. Carper was the last in a line of a series of deed holders traced back to a September 22, 1883, sale of the Grant by Maria de Jesus, the daughter of Jose Raphael Samora. Samora's daughter never lived on the Grant and sold her claim in 1883 to John Pearce, a resident of Santa Fe.⁵⁴ Atkinson recommended the Grant as a private land grant, now owned in total by Endicott Peabody. Following these recommendations, commercial activity began on the Vallecito de Lovato Grant. An 1896 case before the New Mexico Supreme Court involving a timber operator and the D&RG reveals that active timber harvesting occurred on the Vallecito Grant throughout the early 1880s.⁵⁵ In addition, a series of conflicts between the Monero Coal and Coke Company, a mining firm operated by Thomas Catron, and the D&RG reveals that extensive coal mining occurred on the Grant.⁵⁶

II. ADJUDICATION AFTER 1891: THE COURT OF PRIVATE LAND CLAIMS

The operation and administration of the Court of Private Land Claims (CPLC), which was established in 1891, made the obfuscation strategy detailed above almost impossible. The opportunity the Court afforded claimants to make an adversarial claim, impossible under the Survey General system of adjudication, made the obfuscation ploy perfected by Gildersleeve, Catron, and Chavez difficult and, ultimately, very costly. While one set of tactics became more difficult, however, new ones became possible. The CPLC was based on the development of a number of legal theories that provided new opportunities for speculators. Unlike the instructions given to the Surveyor General to consider "the laws, usages, and customs of Spain and Mexico" when adjudicating land grants,

52. Proceedings of *Rio Grande Irrigation & Colonization Co. v. Charles Gildersleeve* (on file with NMSRCA, N.M. Sup. Ct. Archives, box 59, folder 643).

53. Peabody, the founder of Groton, the elite preparatory school in Massachusetts and a partner of J.P. Morgan, was a descendant of John Endecott (1588-1665), a governor of the Massachusetts Bay Colony, and the grandfather of Endicott Peabody (1920-1997), governor of Massachusetts in the 1960s.

54. Vallecito de Lovato Deeds, SANM 51: 676-81 (on file with NMSRCA).

55. *United States v. E.M. Biggs* (N.M. Sup. Ct. 1896) (on file with NMSRCA, N.M. Sup. Ct. Archives, box 66, folder 702).

56. N.M. Sup. Ct. Archives, (on file with NMSRCA, box 59, folder 643).

the act creating the CPLC was bound by no such standard.⁵⁷ This change was consistent with the efforts of Surveyor General Julian and Matthew Reynolds, the U.S. Attorney for the CPLC. With the arrival of the CPLC, Julian's theories on common property as public domain became codified through the work of Reynolds, who compiled an interpretation of Spanish and Mexican property law that became the standard for the Court.⁵⁸ The book, however, was an interpretation of Spanish and Mexican law that misconstrued common property systems as nothing more than a permit for temporary possession.

TACTICS OF SPECULATION IN THE CPLC ERA

A number of Santa Fe Ring lawyers exploited adjudication procedures administered by the CPLC. George Hill Howard made a living by offering his services to communities in return for a one-third stake in common property. As Van Ness and Van Ness described, "the expense of filing a claim and successfully seeing it through to confirmation was beyond the means of most Hispanic communities and individuals, for it meant hiring attorneys and often even securing a congressional lobbyist in Washington. Many Hispanos found that their only avenue to meet these expenses was to agree to deed one-third or more of the land confirmed to the attorneys to pay their fees."⁵⁹

1. Example: George Hill Howard

For speculators and their lawyers, land was a fungible commodity and one-third interest in a large community land grant was a potential financial windfall. The tactic pursued by George Hill Howard required extensive fieldwork and contact with heirs and grant members to acquire contracts with as many grant members as possible. In the contracts, Howard received, "*una tercera parte indivisa de su derecho e interes, en y a la dicha merced o sitio, e recompense a dicho Howard por sus servicios* (one-third part to the rights and interests of the grant of land as compensation to Howard for his services)."⁶⁰ Under Spanish and Mexican law, the common lands of a land grant could not be sold. An 1876 Territorial statute, however, provided for

57. Act of July 22, 1854, ch. 108, § 8, 10 Stat. 308, 309 (establishing the Offices of Surveyor-General in New Mexico, Kansas, and Nebraska); An Act to Establish a Court of Private Land Claims, ch. 539, 26 Stat. 854 (1891).

58. See MATTHEW G. REYNOLDS, *SPANISH AND MEXICAN LAND LAWS: NEW SPAIN AND MEXICO* (1895).

59. *SPANISH AND MEXICAN LAND GRANTS IN NEW MEXICO AND COLORADO 10* (John Van Ness & Christine Van Ness eds., 1980).

60. Legal Contract for George Hill Howard & Petaca Claimants (Jan. 14, 1893) (on file with NMSRCA, L. Bradford Prince Collection).

a part owner of common property to sever interests through auction. Partition suits were used frequently by attorneys such as Howard and Catron to acquire land grant property from grant heirs. As Ebright explained, "[t]he grantees would receive a small amount of money for their valuable resource, and the attorney who had secured confirmation of the grant would end up owning most of the grant himself."⁶¹ The tactic was risky because no financial benefit could be realized without confirmation of a community land claim. Whereas under the obfuscation ploy, speculators assumed ownership as soon as deed transfers were accomplished from the heirs of the primary settlers. Howard's ploy rested on his ability to line up investors for purchase upon a successful partition suit that could only occur after a successful petition claim before the court. If the grant could be confirmed, a Territorial statute provided Howard with the wherewithal to demand liquidation of the asset thus reimbursing himself for legal services. So, this was a two-man operation: Howard worked to represent the interests of the community while Chavez worked to line up potential investors ready to purchase the grant at auction. It is for this reason that Howard's representation, on the surface, appears to truly represent the interests of the legitimate grant heirs. Meanwhile, Chavez was working to line up investors and obtain initial retainers to continue to pay the costs of this expensive fieldwork. Chavez was prolific in his ability to acquire titles, negotiate legal contracts between Anglo attorneys and Hispano settlers, attract investors, and quiet title to community land grants. Chavez brought potential clients to Anglo attorneys.

On February 17, 1893, Serafin Peña along with the heirs and current residents of Petaca, represented by attorney George Hill Howard, filed a claim for Petaca with the Court of Private Land Claims.⁶² On March 3, 1893, L.Z. Farwell filed a claim for Petaca. A third claim was filed two days following Farwell's claim by Jose Garcia.⁶³ The claim filed by Howard on behalf of Peña, et al., was the first occasion residents of Petaca made an official claim to the United States for the land grant. In the winter of 1892 and 1893, Petaca residents had individually entered into legal services contracts with Howard. In the contracts, the attorney received, "*una tercera parte indivisa de su derecho e interes, en y a la dicha merced o sitio, e recompense a dicho Howard por sus servicios.*"⁶⁴

Howard, along with Amado Chavez, entered into contracts with petitioners in 1894 on the Piedra Lumbre Land Grant. After securing a confirmation on that Grant, Hill filed a partition suit in New Mexico district

61. See EBRIGHT, *supra* note 1.

62. Serafin Peña Petition, SANM 44: 7-17 (Feb. 17, 1893) (on file with NMSRCA).

63. Transcript of 1896 CPLC trial, SANM 44: 99-236 (on file with NMSRCA).

64. Legal Contract for George Hill Howard & Petaca Claimants, *supra* note 60.

court.⁶⁵ In July of 1903, Chavez wrote to Howard congratulating him on their success with the Piedra Lumbre partition, "I have copied a few lines from the report of the Commission that made an actual partition of the land. I send you that copy in order that you may see that we got the best part of the grant. The partition was actually made and the grant is not now in common at all."⁶⁶

2. Example: Amado Chavez

In 1901, Chavez prepared a prospectus of community land grants for a prominent Territorial politician and potential investor. He offered the commons of the 30,000-acre Santa Barbara Grant which had been rejected by the Court of Private Land Claims; in an auction he suggested he could guarantee \$.25 per acre. He exaggerated the Cebolleta Grant in his description as "about 30,000 acres of fine pine timber and the balance is excellent for grazing and farming. Great quantities of coal crop out on all sides of the grant." On the 818,000-acre Mora Grant, Chavez offered "from 50,000 to 100,000 acres of this grant without having to pay the same for proving it up." Chavez described the scheme in detail to the investors:

If you will get your friends to employ me with a salary of one hundred and fifty dollars per month and actual traveling expenses I will at once start and secure the interests and get them under contract. I can secure one third of all the interests for proving them up. And will secure contracts to buy the other two thirds very cheap, not to exceed fifty cents per acre. I can in this way secure not less than one hundred thousand acres the work of proving up would be done through Mr. A.B. McMillan as atty. When the work is done I would agree first to have all the money advanced returned to the party who advanced the same and then divide profits as follows. One third to the parties who furnished the money, one third to McMillan for his services in doing the legal work and one third to A C [Amado Chavez] for doing the field work. The parties advancing the money to secure contracts would have to furnish the necessary expenses for getting the witnesses to attend court and for publication. This would be a nominal expense compared with the value of the land to be acquired.⁶⁷

For British and East Coast investors, brokers such as Chavez made legible the complex legal, cultural, and political matrix of land grant property relations and adjudication procedures. In 1899 Chavez solicited

65. Amado Chavez Collection (on file with NMSRCA, box 2, folder 17).

66. Letter from Amado Chavez to George Hill Howard (July 21, 1903) (on file with NMSRCA, Amado Chavez Collection).

67. Amado Chavez Papers, 1698-1931 (on file with NMSRCA, box 1).

then Governor Prince's legal assistance in selling land grants. In a letter, Chavez described in detail a pattern of speculation tactics similar to Petaca:

For some time past I have been trying to interest a gentleman from the east to take an interest in some land grants in this territory but he hesitates because the whole matter is something new to him and he does not seem to care to put his money in experiments that are not with his line of business, yet he says that he may take interest in some one grant and if it comes out as I represent to him he will then aid me in forming a company with sufficient capital to handle all the good grants that may come within our reach. I have suggested the Jemez grant to him as a starter and he wants to know whether I can get a good attorney to take charge of the suit for partition for a reasonable fee. His idea is this: to pay an attorney a retainer of say \$250, and to give him at the end of the suit one eighth of the land that he may acquire or five hundred dollars at his option. He proposes to put in the field a man to secure all the interest he can and to deposit in the bank here subject to your credit some money, say about \$750, to be paid by you to his agent on duly certified vouchers for his traveling and other necessary expenses. That is if you accept the proposition and undertake to manage the suit for him. If this experiment is successful he will at once organize a company that will be ready to handle any good grant that may be suggested to him.⁶⁸

CONCLUSION

There can be no doubt, as a huge body of scholarly research has documented, that Spanish and Mexican grant heirs confronted a nearly impossible adjudication process during New Mexico's Territorial period. Legitimate land grant heirs in northern New Mexico found themselves squeezed between two forces of dispossession. On one side were the Santa Fe Ring land speculators, lawyers, and politicians who sought to overcome legitimate community-based claims in pursuit of large tracts of the most valuable timber, grazing and mining land in the Territory. They capitalized on the lack of consistent format and wording in land grant *muniments* as a means to acquire titles during the confusing early years of adjudication. On the other side the General Land Office, and later the Court of Private Land Claims, sought to overcome legitimate claims in pursuit of settlement patterns consistent with established U.S. property law. Surveyors General

68. Letter from Amado Chavez to L. Bradford Prince (on file with NMSRCA, L. Bradford Prince Papers, file 13980: 10).

and the U.S. Attorney for the Court of Private Land Claims denied the very existence of common property land tenure. The result for community land grant claimants was intense speculation *and* the development of dubious legal theories all unleashed on common property land grants during the Territorial period. The pressures of aggressive speculation and onerous adjudication procedures combined with contrived legal rationales put forth in the rejection of legitimate claims led to the rejection of millions of acres of legitimate common property claims.

