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Making destiny manifest: United States territorial expansion and the dispossession of two Mexican property claims in New Mexico, 1824–1899

David Correia

University of Maine, 270 Main Street, Farmington, ME 04938, USA

Abstract

In the aftermath of the war of expansion against Mexico, the United States undertook a lengthy adjudication process of Spanish and Mexican property claims throughout the newly acquired territory. In New Mexico, nearly all Spanish and Mexican community land grants were either rejected by U.S. courts or were acquired by commercial interests during a period of intense land speculation. In addition to legal explanations of dispossession, most historical land grant research has emphasized the role of commercial speculators in the dispossession of land grants. The Santa Fe Ring, a loose affiliation of lawyers, politicians, federal and territorial officials and commercial investors, became a potent political and economic force in New Mexico during the 19th century. This article explores the adjudication and speculation histories of two Mexican property claims: the Petaca and Town of Vallecito de Lovato. The dearth of historical knowledge of the practices and tactics of land dispossession in specific New Mexico land grants continues to obscure the full story of U.S. territorial expansion and the history of the transformation in property relations. This article sheds new light on the extent and intensity of commercial speculation and the contribution of those efforts to undermine legitimate claims.

Keywords: New Mexico; Manifest destiny; Colonialism; Land grants; Law

In the mid-1840s, the exceptionalist rhetoric of Manifest Destiny, particularly among Jacksonian Democrats, provided momentum for the 1846 military invasion of Mexico by the United States. Mexico stood in the way of a continental Unites States that war boosters described as inevitable. Using

E-mail address: david.correia@maine.edu

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claims of Mexican backwardness and the promises of American Progress, expansionists sought to impose a moral economy of production in the region dominated by free-hold yeoman farmers.

On the eve of war, General Steven Kearney and the Army of the West, camped along the Arkansas River, issued a proclamation to the Mexican citizens of the Mexican territory of *Nuevo Mexico* explaining that the coming invasion was 'for the purpose of seeking union with and ameliorating the condition if its inhabitants.'[1] The invasion that followed culminated in the annexation of nearly half of the Mexican nation and produced a continental United States. This paper examines the consequences of U.S. territorial expansion for preexisting property claims in New Mexico through a case study of the adjudication of two Mexican-era community land grants in what is today northern New Mexico. Far from *ameliorating* the conditions of New Mexico inhabitants, as Kearney promised, the Treaty of Guadalupe Hidalgo ushered in a tumultuous period of property expropriation and common property enclosures that transformed property relations in the region.

The treaty of Guadalupe Hidalgo and the adjudication of Mexican property claims

The signing of the Treaty of Guadalupe Hidalgo in February 1848 ended the war and cost Mexico 525,000 square miles, nearly half of its territorial extent. With the sweep of a pen, the Mexican North became the American Southwest. Though the treaty provided that Spanish and Mexican grants would be *inviolably respected* by the United States, the U.S. deleted Article X from the treaty, a provision that would have imposed a *prima facie* obligation on the United States to recognize all preexisting property rights in the region. Without Article X, the United States was free to design an adjudication process of its own choosing.

Much has been written on land tenure and the adjudication of Spanish and Mexican claims in what is today California. Much of the scholarship on Spanish settlement, Mexican independence, and the economic and social incorporation of California into the United States has focused on analyses of settlement patterns, new land tenure arrangements and public land policies, commercial speculation, natural resource exploitation, and class conflict.[2] Much less work has focused on New Mexico, despite the persistence of historic, and unresolved, claims regarding the disposition and ownership of adjudicated Spanish and Mexican claims.[3] Indeed, no political issue in New

[1] R. Ellis (Ed), *New Mexico Historic Documents*, Albuquerque, 1975.

[2] D.J. Weber, *The Mexican Frontier, 1821–1846: the American Southwest under Mexico*, Albuquerque, 1982; D. Hornbeck, The patenting of California's private land claims, 1851–1885, *The Geographical Review* 69 (1979) 434–448; D. Hornbeck, Land tenure and rancho expansion in Alta California, 1784–1846, *Journal of Historical Geography* 4 (1978) 371–390; D. Vaught, A tale of three land grants on the northern California Borderlands, *Agricultural History* 78 (2004) 140–154; R. Walker, California's golden road to riches: natural resources and regional capitalism, 1848–1940, *Annals of the Association of American Geographers* 91 (2001); R. Sauder, Patenting an arid frontier: use and abuse of the public land laws in Owens valley, California, *Annals of the Association of American Geographers* 79 (1989) 544–569.

[3] R. Dunbar-Ortiz, *Roots of Resistance: a History of Land Tenure in New Mexico*, Norman, 2007; M. Ebright, *Land Grants and Lawsuits in Northern New Mexico*, Albuquerque, 1994; S.S. Forrest, *The Preservation of the Village: New Mexico's Hispanics and the New Deal*, Albuquerque, 1989; P. Gonzalez, Struggle for survival: the Hispanic land grants of New Mexico, 1848–2001, *Agricultural History*, 77 (2003) 293–324; R. Rosenbaum and R.W. Larson, Mexican resistance to the expropriation of grant lands in New Mexico, in: C. Briggs and J. Van Ness (Eds), *Land, Water, and Culture: New Perspectives on Hispanic Land Grants*, Albuquerque, 1987; A.R. Sunseri, *Seeds of Discord: New Mexico in the Aftermath of the American Conquest, 1846–1861*, Chicago, 1979.

Mexico is more explosive, or long lived, than the question of whether the United States fairly adjudicated Spanish and Mexican land claims following the Mexican American War. In 2000, the New Mexico congressional delegation directed the General Accounting Office (GAO), the research arm of the U.S. Congress, to examine the adjudication of Spanish and Mexican land claims following the War with Mexico with an eye to providing recommendations for a final resolution. The subsequent GAO report emphasized what historians of 19th century New Mexico have long said. The years between the end of the War in 1848 and statehood in 1912 were a period of social upheaval and political uncertainty as U.S. land policy, property law and commercial land speculation transformed the region's common-property Spanish-derived land tenure into fee-simple, private property ownership. A recent study by historian Maria Montoya of the large Mexican-period Maxwell land grant emphasized the imperial nature of the struggle for land in New Mexico.[4] The failure of U.S. courts to properly translate Spanish or Mexican land policies arose, she argued, from the commercial, colonialist motivations of the United States 'The U.S. government acted in imperial and colonial ways that mimicked its European counterparts.'[5] The U.S.-designed land grant adjudication placed the burden of proof on the communities of Spanish-speaking, subsistence claimants. The process proved almost impossible for all but moneyed interests to navigate. The adjudication of property claims served the interests of commercial speculators and ushered in a period of rural enclosures. The commercial, legal and political practices and structures of territorial New Mexico mimicked, to use Montoya's word, the practices of European imperialism.

The practices of colonialism opened a space for commercial speculation and resource expropriation, and in doing so produced intractable legal disputes over land. Historians of 19th century New Mexico have closely examined the social consequences of land loss. Land grant scholar Malcolm Ebright has shown how the failure of the United States to meet its treaty obligations stemmed from the collision of two vastly different legal and judicial systems and forms of property relations. 'The main reason for [land loss]' he argued, 'was that the land grants were established under one legal system and adjudicated under another.'[6] Territorial administration in New Mexico created extended legal and social conflicts that G. Emlen Hall described as a 'colossal confusion in land administration.'[7] One estimate suggested that nearly 80% of all legitimate Spanish and Mexican community land grants were lost to corrupt officials, a poorly designed adjudication system or commercial speculators.[8]

Subsistence Spanish and Mexican land-grant communities owned extensive and valuable grazing, mining and timberlands in New Mexico. Their property claims and subsistence livelihoods were in the way of commercial exploitation. The logic of colonial expansion was expressed through the application of land policies that privileged private property arrangements over Spanish and Mexican common property. The establishment of these new property relations was accomplished through the on-the-ground practices of a cadre of lawyers, commercial speculators

[4] M. Montoya, *Translating Property: the Maxwell Land Grant and the Conflict over Land in the American West, 1840–1900*, Berkeley, 2002.

[5] Montoya, *Translating Property* (note 4), 9.

[6] Ebright, *Land Grants and Lawsuits* (note 3), 3.

[7] G.E. Hall, *Four Leagues of Pecos: a Legal History of the Pecos Grant, 1800–1933*, Albuquerque, 1984, 367.

[8] V. Westphall, *The Public Domain in New Mexico, 1854–1891*, Albuquerque, 1965, 49.

and territorial officials. While much is known about the impact of U.S. land policies on the adjudication of Spanish and Mexican claims, much less is known about the practices of speculation in specific New Mexico land grants. Thus, I focus on the process of adjudication as a mechanism of resource expropriation. As Cole Harris has suggested, 'at these sites of colonial dispossession, it seems particularly fruitful to ask by what means [dispossession] came about.'[9]

In this paper, I examine the adjudication of two Mexican-era community land grants, the Town of Vallecito de Lovato and La Petaca. These contiguous grants, nestled in the Ponderosa Pine forests of northern New Mexico's Tusas Mountains, were at the center of almost four decades of struggle over legal control. Those struggles occurred both inside and outside the official procedures for adjudication. A detailed examination of the adjudication of Petaca and Vallecito illustrates the lasting legacy of on-the-ground struggles for control of the land grant among settlers, commercial speculators and government officials. Such a focus provides a fuller accounting of the contested and contingent nature of U.S. colonial practices and territorial expansion, themes of particular importance to historical geographers of 19th century North America. This study also seeks to contribute to land grant research on the particular histories and political geographies of territorial New Mexico and highlights more general processes in the revolution in land tenure, resource use and settlement in New Mexico that severed subsistence communities from the common property resources upon which they depended.

Mexican settlement in *Nuevo Mexico*: Petaca and Vallecito

Under both Spain and Mexico, community grants in New Mexico were dispersed following a general pattern. A petitioner, or small group of petitioners, would represent a larger community requesting from the Territorial Governor a grant of land to establish a new village. The Governor would direct the local political chief, the *Alcalde*, to investigate for any adverse claims on the land. If the subsequent report supported the petition, the Governor would direct the Alcalde to place the settlers in possession of the grant. The grant papers, or *muniments*, reflected this three-part process. The petition described the grant, often listing only the name of the representative, leaving the rest of the community unnamed. An additional paper, signed by the Governor, directed the Alcalde to make an investigation. A third paper placed the settlers in possession. Under both Spanish and Mexican law, the official archives retained one copy of the muniments, while the recipients possessed a second copy. Despite precise legal standards under both Spain and Mexico, the actual production of the muniments—the wording, the structure and the format—differed according to local customs, and changed across space and over time. This often meant that each land grant reflected an idiosyncratic representation of Mexican grant making.[10]

The granting of the Town of Vallecito de Lovato in 1824 and of La Petaca in 1836 were idiosyncratic but reflected this general pattern. Vallecito was granted to a group of 24 settlers during a tumultuous period in Mexican history. Just years after Mexico's independence from Spain, New

[9] C. Harris, How did colonialism dispossess? *Comments from an Edge of Empire, Annals of the Association of American Geographers* 94 (2004) 167.

[10] Weber, *The Mexican Frontier* (note 2); Ebright, New Mexican land grants: the legal background, in: C. Van Ness and J. Van Ness (Eds), *Land, Water, and Culture* (note 3).

Mexico's political and economic landscape was in flux, particularly regarding the administration and disposition of land grants. Though land grant making continued between 1821, when Mexico declared its independence, and 1824 when Mexico first promulgated land codes to govern the distribution of land, the interim processes were a Spanish and Mexican hybrid that resulted in irregular grant documents based on uniquely local forms of grant making. Just days after the Vallecito petition, the Territorial Governor issued a decree—left unsigned—granting the land to 'Jose Rafael Samora, together with the twenty-five individuals in his petition.'[11] The local Alcalde officially placed the petitioners in possession of the grant, measuring out *solares*, or private home sites, along the Rio Ojo Caliente where the village would be established.

A series of land transfers after 1830 demonstrate that the community met the requirements of Spanish settlement.[12] In addition, the deed transfers provide further proof that the community was organized around communal management of the uplands, as each conveyance transferred not only private property, but also the rights and obligations for access to the resources on the common uplands.[13]

The pattern of settlement from the granting of Vallecito in 1824 to the arrival of U.S. troops in 1846 is not entirely clear, although deed transfers and testimony before the Surveyor General, and later the Court of Private Land Claims show that the Vallecito de Lovato was continuously settled from the date of possession in 1824 until 1844, when villages throughout the north fled the Tusas Mountains to escape a region-wide escalation of Mexican-Ute hostilities precipitated by a Mexican militia attack on a Ute and Navajo party.[14]

The Petaca settlers followed a similar path to grant ownership. In March 1836, after an official request, 36 petitioners, led by three named peititoners, walked the boundary of the Petaca land grant with the Alcalde of Abiquiu.[15] As they walked, the Alcalde measured out the small, private home lots along the Rio Petaca. The men and their families celebrated their grant and 'plucked up herbs, leaped, cast stones, and shouted with joy.'[16] As was the custom and practice of community land grant making in the period, the individual lots came in addition to a large commons suitable for community grazing, hunting, gathering, and collecting. According to Petaca grant documents, grantees understood 'that the pastures, forests, waters, and watering places are in common.'[17] While title to private lots, or solares, were transferable after a short period of continuous settlement, under Spanish law, and local custom, the commons could not be severed from the grant. The Petaca grant documents named Vallecito as its Western boundary.

The pattern of settlement in the decade after 1836 is not as clear in Petaca as it is in Vallecito. From the beginning, settlers clashed with nomadic Indian tribes in the region and appear to have abandoned Petaca briefly in 1844.[18] In 1848, as the American military presence ended Ute

[11] 27 February 1824 order of Governor Bartolome Baca, Santa Fe, Spanish Archives of New Mexico (SANM) 21: 535. New Mexico State Records Center and Archives (NMSRCA), Santa Fe, New Mexico.
[12] September 1897 Court of Private Land Claims filing, SANM 48: 587–588.
[13] Vallecito de Lovato deed transfers, SANM 48: 635–678.
[14] 26 August 1896 Court of Private Land Claims testimony of Merejildo Martinez, SANM 48: 600.
[15] 29 January 1836 petition of Jose Julian Martinez, Spanish Archives of New Mexico (SANM) reel 23:225–226, NMSRCA.
[16] 25 March 1836 Alcalde report, SANM 23: 228, NMSRCA.
[17] 25 March 1836 Alcalde report, SANM 23: 228, NMSRCA.
[18] 26 August 1896 Court of Private Land Claims testimony of Merejildo Martinez, SANM 48: 600, NMSRCA.

hostilities, a group of former residents returned to the grant and, with the consent of the Prefect of Rio Arriba County, expanded the local population.[19]

The political economy of adjudication in New Mexico

Spanish and Mexican land grants, with extensive resources in timber, minerals, and rangelands, proved attractive investments in the years following the Mexican–American War. Assisted by railroad extensions in the late 19th century, land speculators employed a variety of legal and extralegal tactics to consolidate titles to the vast community land grants spread throughout New Mexico. This speculation, fueled by economic uncertainty in Britain and the eastern United States in the late 19th century, benefited from weak adjudication procedures, and aggressive speculation tactics.

Between 1848 and 1854, there was no mechanism to adjudicate land claims in New Mexico. California was the prize of the War and garnered most of the immediate interest. In 1854, U.S. Congress established the New Mexico Office of Surveyor General, the federal official charged with administering the adjudication process. One of the tasks of the Surveyor General was to receive claims on Spanish and Mexican grants and forward recommendations to Congress as to their validity. Congress reserved final authority to confirm or reject claims. The procedure proved less than equitable. Three Surveyors General were active land speculators while in office. In Petaca the Surveyor General actively pursued investors and brokered the sale of the grant while serving as the official federal adjudication authority in the Territory. Many of the brokers pursuing land grants were Santa Fe attorneys or business agents for investment firms. In the speculation of both Petaca and Vallecito, a prominent Santa Fe attorney, and chairman of the New Mexico Democratic Party, Charles Gildersleeve, served the financial interests of commercial speculators in efforts to acquire the grants.

Gildersleeve, as with all the land grant brokers, was a member of the Santa Fe Ring, a group of prominent lawyers, businessmen and federal officials. The Ring pursued Eastern U.S. and British investors with brochures touting the rich resources and prime investment potential available in New Mexico.[20] They scoured their networks and connections in pursuit of capital to purchase timber, mining and grazing lands. They profited by their ability to serve as the middlemen for outside financial interests. Speculating in land grants required placing Spanish-speaking brokers in the field to acquire titles, locate grant papers, or negotiate legal or purchase agreements with land grant communities, activities impossible for most investors. As adjudication procedures changed over time so too did speculation tactics and investment patterns. These tactics confused and tangled the histories of deed transfers and settlement patterns, often throwing legitimate claims in doubt. Amado Chaves, a mayor of Santa Fe during the territorial period and the first secretary of Education for New Mexico after statehood, was one such broker. Chaves 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. Chaves pitched community land grants to prominent territorial politicians and claimed expertise in an elaborate scheme to acquire vast acreages of common-property lands:

[19] Translation of 20 March 1848 decree of Salvador Lucero, SANM 44: 238, NMSRCA.
[20] H. Lamar, *The Far Southwest: 1846–1912, A Territorial History*, Albuquerque, 2000.

> 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 Chaves] 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.[21]

For British and East Coast investors, brokers such as Chaves made legible the complex legal, cultural, and political matrix of land grant property relations and adjudication procedures. Their efforts exposed land grant communities to the predatory efforts of speculative investors. They manipulated legal procedures and used political cronies so that in many cases, Petaca and Vallecito included, legitimate claims were, effectively, lost before ever entering official adjudication procedures.

Vallecito and Petaca entered the adjudication process during the first months of 1875. More than 20 years after the Office of Surveyor General was first established, an attorney named Samuel Ellison submitted separate claims for both grants to Surveyor General James Proudfit. In the Vallecito application, Ellison claimed to represent 'the inhabitants of the town of Vallecito in the County of Rio Arriba.'[22] In the Petaca petition, Ellison presented himself as the representative of the 'heirs and legal representatives of the parties named as grantees.'[23] In both cases, Proudfit deposed witnesses on the same day Ellison filed the claim. In February Proudfit produced a sketch map of Petaca (Fig. 1), 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.'[24] In October Proudfit forwarded his Vallecito de Lovato sketch map (Fig. 2) to Congress along with a half-page report recommending the approval of the Vallecito claim.[25] In both cases, the recommendations were based on the testimony of the witnesses Ellison delivered to Proudfit.

Congress ignored Proudfit's reports. In previous cases, confirmed claims were later shown to be fraudulent and Congress looked with increasing scrutiny at recommendations for confirmation.[26] While Proudfit has received scrutiny in his role as a participant in land grant rejections, Ellison has not. Yet his role in Vallecito and Petaca, particularly in light of the unusual recommendation procedures and the intense speculation that followed, is suspicious: Ellison made an anonymous

[21] Amado Chaves Papers, 1698–1931, Box 1, NMSRCA.
[22] 20 May 1875 Ellison petition, SANM 23: 536–540.
[23] Transcript of 1875 Ellison petition, SANM 51-654-663, NMSRCA.
[24] 13 October 1875 Proudfit report, SANM 51: 663, NMSRCA.
[25] 13 October 1875 Proudfit report, SANM 23: 577–578.
[26] Montoya, *Translating Property* (note 4); Ebright, *Land Grants and Lawsuits* (note 3).

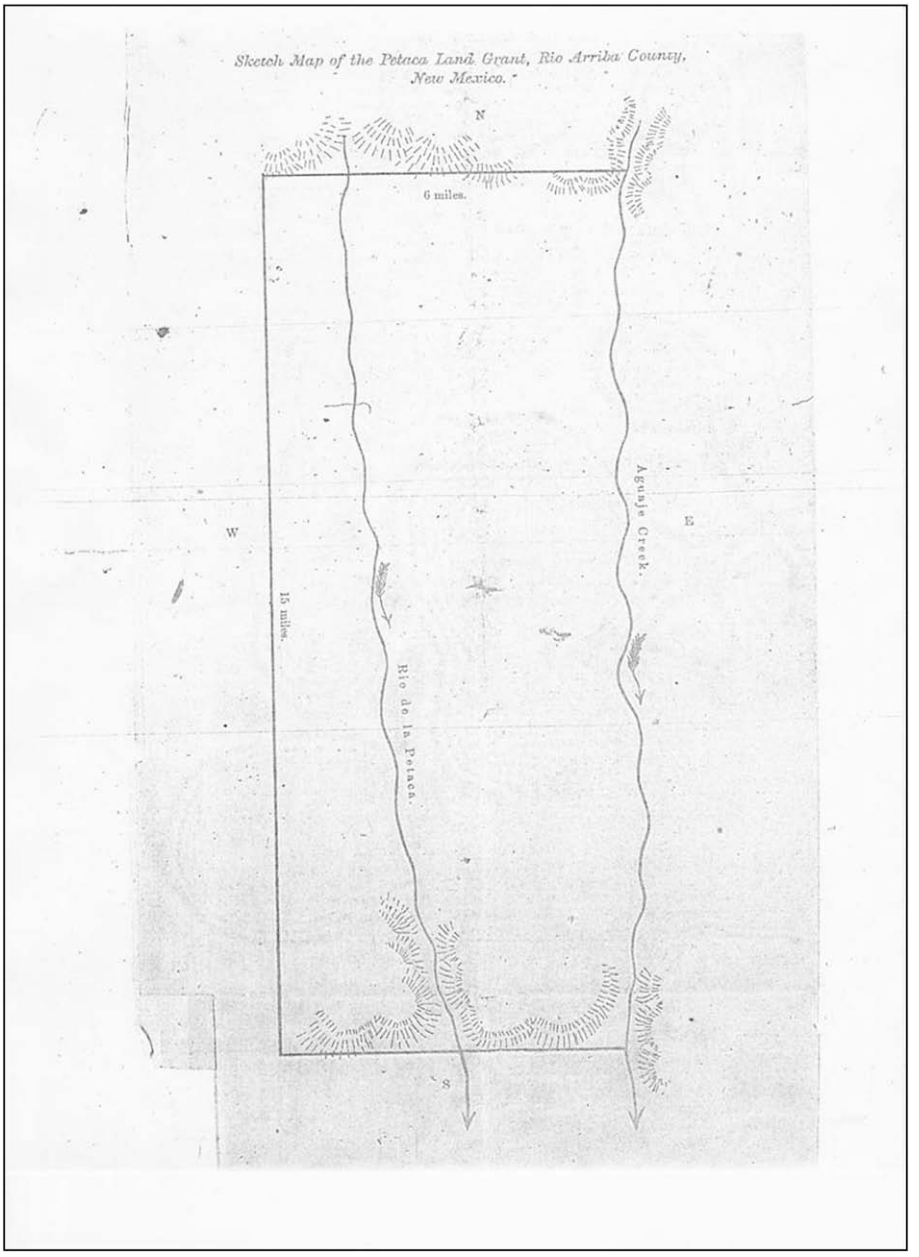

Fig. 1. Surveyor General sketch map for the Petaca land grant.

claim; Proudfit accepted affidavits of unknown witnesses; a recommendation for confirmation followed. While Proudfit was an active land speculator, the Surveyor General had no authority to recommend the confirmation of land grants until a claim for the land grant was filed. The anonymous claim by Ellison served two important purposes. First, no market in land grants could exist

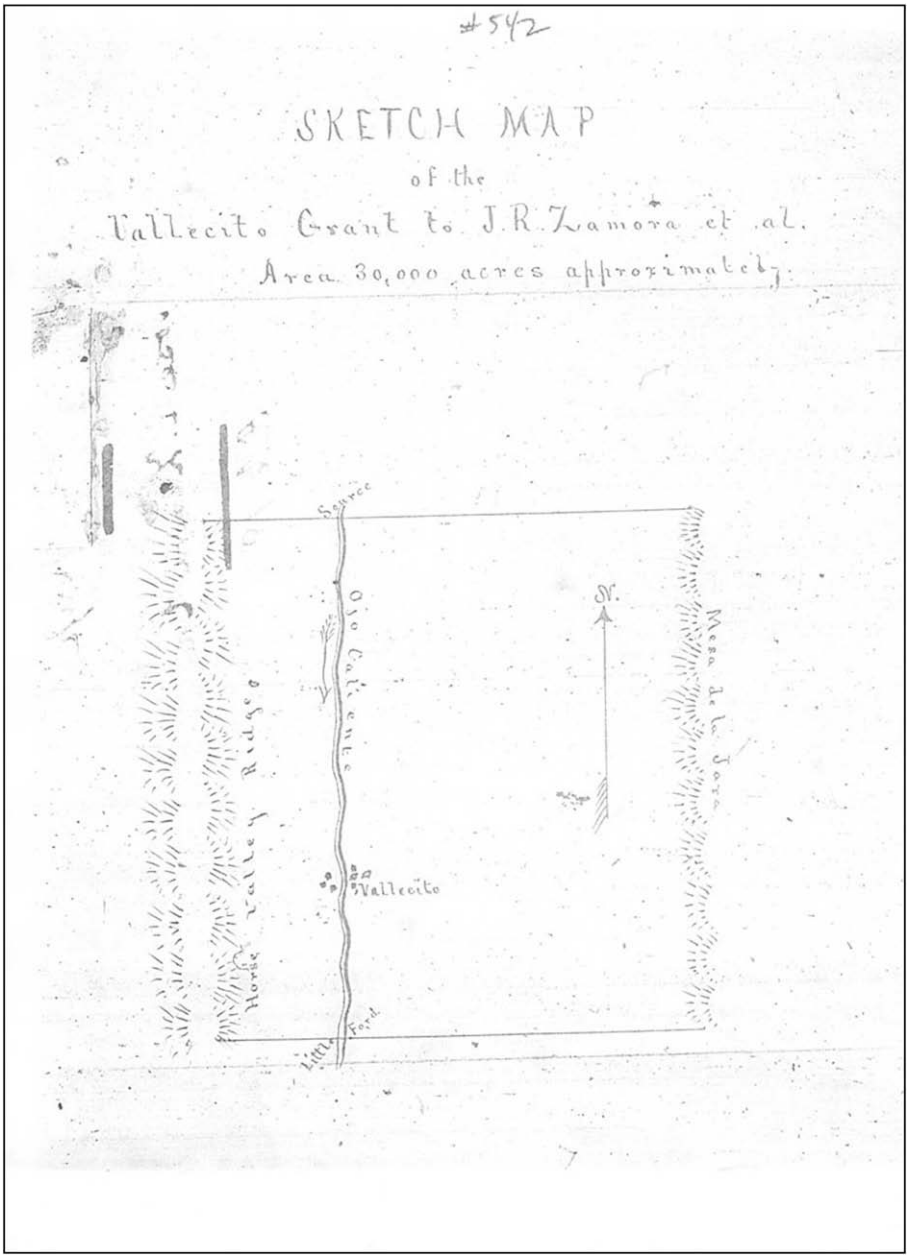

Fig. 2. Surveyor General sketch map for the Town of Vallecito de Lovato land grant.

until petition was filed with the Surveyor General. Investors hesitated to invest in grants that were not, at the very least, recommended for confirmation. Prior to Ellison's petitions, no Petaca deeds had changed hands; following Ellison's application and Proudfit's recommendation, an active market in deeds began. Second, by making an anonymous claim, the market in deeds could

operate without the knowledge of current Petaca residents. As this case study documents, speculators did not purchase deeds from Petaca residents but instead from the non-resident heirs of the original settlers named on the Mexican grant documents, a strategy that kept locals in the dark. Ellison held financial interests in land grants in New Mexico, investigated investment opportunities for land grant speculators, and delivered affidavits to witnesses in support of claims. In Petaca and Vallecito, he played a critical role.[27]

Proudfit resigned in 1876 under pressure from the General Land Office and was replaced by Henry Atkinson who almost immediately ran afoul of the General Land Office. In a number of cases he submitted expanded resurveys for grants owned by business associates. He co-owned four companies that invested in land grants, actively recruited buyers for land grants under adjudication in his office, and in the case of two grants, Petaca included, purchased deeds and allowed staff members to purchase deeds for land grants under consideration by his office.[28]

The speculation of Petaca and Vallecito

Atkinson got right to work on Petaca, expanding Proudfit's 48,000-acre sketch map to more than 185,000 acres.[29] Shortly thereafter, a group of prominent ranching and mining speculators, led by Gildersleeve, began purchasing Petaca deeds from the nonresident heirs of the men named in the original Mexican muniments.[30] This was a common tactic among the Santa Fe Ring and would usually culminate with a claim before the Surveyor General that the grant was a private grant given only to the individuals named in the grant documents. The purchasers of Petaca included Gildersleeve, John Thomson (a commercial grazing operator and partner with Thomas Catron, the most notorious member of the Santa Fe Ring, and Surveyor General Atkinson in the Boston and New Mexico Cattle Company), and William McBroom, Atkinson's assistant Surveyor General and a man later convicted of land fraud in the Territory. With the rights of the original heirs consolidated in Gildersleeve's control, he formally requested another re-survey.[31] For the second time, Atkinson increased the size of the land grant. Atkinson took over from there and solicited an Iowa investor named S.S. Farwell to purchase the grant.[32] Farwell made the purchase and notified his attorney 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.'[33]

Gildersleeve's role in the Petaca speculation was similar to the role he played with the Vallecito de Lovato land grant. In 1889, a group of Boston investors hired Gildersleeve to consolidate the

[27] Catron File, Ellison Papers, MSS 29 BC, Series 715, folders 1 and 2, Center for Southwest Research (CSWR), University of New Mexico Libraries, Albuquerque, New Mexico.

[28] Ebright, *Land Grants and Lawsuits* (note 3); V. Westphall, *Mercedes Reales: Hispanic Land Grants of the Upper rio Grande Region*, Albuquerque, 1983.

[29] 4 June 1877 letter from Ellison to Atkinson, SANM 23: 264–265, NMSRCA.

[30] Petaca deeds, SANM 49: 284–371, NMSRCA.

[31] 27 August 1878 letter from Gildersleeve to Atkinson, SANM 23: 280, NMSRCA.

[32] 7 June 1895 transcript of CPLC testimony. SANM 44: 153, NMSRCA.

[33] 25 April 1883 letter from LZ Farwell letter to L.B. Prince. NMSRCA; L. Bradford Prince file, 13988, NMSRCA.

deeds of two New Mexico land grants, the Ojo del Espiritu del Santo grant, and the Town of Vallecito de Lovato.[34] In the case of Vallecito, Gildersleeve was directed to obtain and transfer title to S. Endicott Peabody, an agent of the Boston firm and a member of one of the wealthiest and most prominent Boston-area families.[35]

It took Gildersleeve less than two months to purchase the interests in Vallecito from Maria de Jesus, the daughter of the only man named in the Mexican grant muniments, and a woman who never lived on the grant.[36] With the grant ownership in the name of Peabody, Gildersleeve and Atkinson expanded the survey of Vallectio. The General Land Office, however, refused Atkinson's resurvey:

> 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.[37]

Atkinson ignored the GLO protests and proceeded to change the status of both Petaca and Vallecito from a community to a private land grant. The change was important because it meant the difference between sharing the unalienable common lands with dozens of other claimants or owning the valuable timber stocks and grazing lands outright. In August of 1883, Atkinson recommended that Congress change the status of both grants. In doing so he concocted a theory that dismissed the entire concept of the community land 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… But such persons held no interest in the general commons of the grant, and were not beneficiaries there under… On 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 recommends that the same be confirmed to them, as the grant is undoubtedly valid.[38]

The adjudication of Petaca and Vallecito de Lovato

Atkinson's tenure as New Mexico Surveyor General ended in 1884. George Julian, appointed in 1885 after the short tenure of Clarence Pullen, was appointed as a reformer and sent to New Mexico to eradicate the influence of the Santa Fe Ring. Shortly after arriving in New Mexico,

[34] Proceedings of the Rio Grande Irrigation and Colonization Company v. Charles Gildersleeve, New Mexico Supreme Court Archives, NMSRCA: Box 59, Folder 643.

[35] Peabody, the founder of Groton, the elite preparatory school in Massachusetts, was a descendent 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.

[36] Vallecito de Lovato deeds, SANM 51: 676–681.

[37] 22 March 1883 letter from Commission N.C. McFarland, Department of Interior, General Land Office Atkinson, SANM 23: 282–283.

[38] 1 August 1883 report by Atkinson, SANM 23: 287–294, NMSRCA.

Julian published an article in *The North American Review* that made clear his position on the problem of the Santa Fe Ring in the territory:

> They have hovered over the territory [of New Mexico] like a pestilence. To a fearful extent they have dominated governors, judges, district attorneys, legislatures, surveyors general and their deputies, marshals, treasurers, county commissioners, and the controlling business interests of the people. They have confounded political distinctions and subordinated everything to the greed for land. The continuous and unchecked ascendancy of one political party for a quarter of a century has wrought demoralization in the other. [Thomas] Catron is a leading Republican, and [Charles] Gildersleeve, an equally prominent Democrat, but no political nomenclature fits them. They are simply traffickers in land grants, and recognized captains of this controlling New Mexican industry. This tells the whole story. They have a diversity of gifts, but the same spirit. They are politicians for revenue only.[39]

Julian's contempt for the Santa Fe Ring didn't translate into sympathy for common-property grant heirs. Julian was devoted to the homestead principle and the large community land grants did not fit that framework.[40] In the Petaca reevaluation, Julian suggested that a strict reading of the Mexican colonization laws demanded that 'the grant cannot be held legally valid.'[41] Julian acknowledged, though, that the laws governing the distribution of land under Mexico were not rigorously applied in New Mexico. Despite his reservations, the documents were unchallenged by the Government's experts and so Julian suggested that '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.'

The size of the claim was another matter. 'Stretching grants by extravagant surveys,' he wrote 'involves this grant in suspicion, and strengthens the reason I have given for the necessity of a resurvey.' The GLO shared Julian's concern but also concurred with Julian that the claim appeared to be a valid and common-property land grant. The GLO 'recommended the confirmation of the claim as a community grant for an area not to exceed four square leagues.'[42]

The Town of Vallecito de Lovato land grant, however, received a more critical reception. 'It seems hardly necessary to take time or space to show that a grant was never made in this case,' wrote Julian, in noting the irregularity of the grant muniments. 'The papers show the fact as plainly and nothing can be said to make it more apparent.'[43] In rejecting Vallecito, however, Julian confronted two adjudication standards that favored the grant: (i) the grant was settled continuously after 1824 and (ii) *prima facie* evidence existed of a land grant at the time of U.S. control of the Territory in 1848. Both standards were established during the adjudication of California claims and previous New Mexico Surveyors General invoked the California standards in all New Mexico adjudications. Preexisting settlements at the time of U.S. authority were universally recommended for approval. All previous Surveyors

[39] G. Julian, Land-stealing in New Mexico, *The North American Review* 145 (1887) 25.
[40] H. Williams, George W. Julian and land Reform in New Mexico, 1885–1889, *Agricultural History* 41 (1967) 71–84.
[41] 17 April 1886 report by Julian, SANM 23: 296–305, NMSRCA.
[42] 30 June 1887 report of the Secretary of Interior, as cited in: J.J. Bowden, *Private Land Claims in the Southwest*, Master's thesis, Southern Methodist University, 1969, 1040–1041.
[43] 12 May 1886 report by Julian, SANM 23: 587–594.

General held that the existence of a land grant in 1846 provided *prima facie* evidence of a legitimate land grant.

As to the first issue, the Town of Vallecito de Lovato land grant was mentioned in the *muniments* of the 1836 Petaca land grant. This along with additional evidence and testimony proved continual settlement, a point on which Julian agreed. As to the second issue, Julian agreed that the land grant was occupied when the U.S. invaded New Mexico and when the U.S. signed the Treaty of Guadalupe Hidalgo. Julian overcame the issue by advancing a new legal theory to explain the appearance of common property land tenure arrangements:

> It may be claimed that as the evidence shows, there was a settlement on the land at the time the United States authorities took possession of this Territory, this is sufficient proof of a grant, under the instructions issued by the Interior Department for the Government of this office. I am not of this opinion. The instructions referred to contain these provisions: existence of city at time of U.S. control 'may be considered by you as prima facie evidence of a grant to such corporation, or to individuals under whom the lot holders claim…' It is quite evident that the cities and villages referred to in the instructions are those and those only, that were recognized as such by the Spanish and Mexican governments, and to which were granted rights and privileges as cities and villages.

Julian recommended in his 1886 report that if the General Land Office adopt a prior settlement doctrine in the adjudication of the Town of Vallecito de Lovato, it should do so only in regard to the village proper, excluding the common lands. 'The parties who took possession of [Vallecito]', Julian speculated in his report, 'may have been trespassers.'

Despite Julian's reports, Congress continued to ignore New Mexico. Rather than continue with adjudication through the office of the Surveyor General, Congress had begun to consider a different approach. Following the recommendation of the territorial Governor, Congress created the Court of Private Land Claims (CPLC) in 1891 and charged it with the task of adjudicating all Spanish and Mexican land grants made in the territories of New Mexico, Arizona, and Utah and the states of Nevada, Colorado, and Wyoming. With the new court, land grant heirs were now required to make adversarial claims before a five-judge panel appointed by the President and approved by the Senate, with the interests of the United States represented by an attorney appointed by the President. Perhaps most importantly, where the Surveyor General adjudicated claims according to 'the laws, usages, and customs of Spain and Mexico,' the CPLC followed a new directive: 'all claims confirmed had to be lawfully and regularly derived from Spain, Mexico, or a State of Mexico having power to make grants.'[44] The attorney appointed by the President to represent the interests of the United States, Matthew Reynolds, interpreted this provision as a new, more stringent standard for land grant adjudication.[45] During his tenure he opposed every common-property claim before the CPLC. He rigorously applied Julian's theory that Spanish and Mexican common property land grants were only temporary permits for possession and thus fell into the public domain following the treaty.

[44] R. Bradfute, *The Court of Private Land Claims: the Adjudication of Spanish and Mexican Land Grant Titles, 1891–1904*, Albuquerque, 1975.

[45] M. Reynolds, *Spanish and Mexican Land Laws: New Spain and Mexico*, St. Louis, 1895.

The court of private land claims

The CPLC transformed the patterns of speculation in land grants. The Court made life difficult for people like Gildersleeve. Under scrutiny, claims to make community land grants private were easily overcome. A new tactic of dispossession, however, took its place. Early in 1893, an attorney named George Hill Howard, working with Amado Chaves, filed claims for both Petaca and Vallecito. These were the first claims made by the actual residents of Vallecito.[46] In the winter of 1892 and 1893, dozens of Petaca and Vallecito residents 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* (one-third part to the rights and interests of the grant of land as compensation to Howard for his services).'[47]

Howard, along with Amado Chaves, entered into a similar legal arrangement with residents on the Piedra Lumbre land grant in 1894. After confirmation was won, Hill filed a partition suit in New Mexico district court.[48] Under Spanish and Mexican law, the common lands of a land grant could not be sold. An 1876 Territorial statue, however, provided for a part owner of common property to sever interests through auction. 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.'[49] On Piedra Lumbre, Chaves and Howard 'got the best part of the grant. The partition was actually made and the grant is not now in common at all.'[50] Howard held the same contracts with Petaca and Vallecito residents. The Petaca case went to trial in 1896.

Reynolds attacked the claims of Farwell and the actual residents living in Petaca:

> It is contended on behalf of the United States, that if the Governor had any power to make the grant at all, which it denies, still it is an imperfect grant, not having been confirmed by the Territorial Deputation, or proper authority, and that in no event, if it be confirmed at all, can it be confirmed for more than eleven leagues. Next, that it was one of the conditions and terms of the grant, that they should settle it within five years, that this grant was not settled until after the occupation of this country by the United States.[51]

Reynolds also argued that Spain and Mexico never intended to provide title to the common lands. '[T]he persons placed in possession are entitled only to the allotments which they received and are not entitled to the lands within the out-boundaries, the disposition of which was retained by the authorities of Mexico, and passed to the United States.' Finally, Reynolds challenged the survey, relying on evidence of forgery that, he argued, explained why the boundaries expanded following requests for re-surveys by Ellison, Gildersleeve, and Farwell: 'it is contended that the boundaries in this case have been changed. Next, it is further contended that there has been

[46] 17 February 1893 petition, SANM 44: 7–17, NMSRCA.
[47] 14 January 1893 legal contract for George Hill Howard and Petaca claimants, L. Bradford Prince collection, NMSRCA.
[48] Amado Chaves collection, box 2, folder 17, NMSRCA.
[49] Ebright, *Land Grants and Lawsuits* (note 3), 43.
[50] July 21, 1903 letter from Amado Chaves to George Hill Howard, Amado Chaves collection, NMSRCA.
[51] Transcript of 1896 CPLC trial, SANM, 44: 99–236, NMSRCA.

a forgery in this case, that an erasure has been made in the title papers, and that alteration has been made in one of the boundaries, which may be plainly seen by anyone.'

The court rejected Reynolds' arguments and confirmed Petaca as a common-property land grant.[52] Farwell owned only the private plots of the three men named in the muniments and therefore shared use rights for the commons with all the residents of Petaca. The Chief Justice explained in the opinion that

> '[t]he testimony… shows that Jose Julian Martinez and Francisco Antonio Atencio were a committee on behalf of the proposed settlers to petition for the grant on their behalf. It was not an unusual thing in Spanish and Mexican custom… From the time of delivery, etc. the original settlers began to occupy, cultivate and improve…This occupancy was not continuous, nor was the improvement great. The condition of Indian hostilities during all that period necessarily precluded the continuous occupation and cultivation of the land. But there is nothing in the case to show that the settlers did not take the land in good faith, and make every reasonable effort to occupy and cultivate it, and the fact that there is now found upon the tract a considerable community, in part at least descended from those same original settlers ought to remove any doubt upon that subject.'[53]

The Vallecito case was not tried before the CPLC until October of 1897. Just prior to the trial, the U.S. Supreme Court rendered a decision in Sandoval v U.S., a case concerning the San Miguel del Bado land grant. The Sandoval decision gave legal life to Reynolds's theory on Spanish and Mexican common property and rejected claims for the common portion of the grant. In rejecting the common-property claims, the Court effectively invalidated the very existence of common-property ownership during Spanish and Mexican grant making.[54]

With case law now established, Reynolds advanced a series of arguments in the Vallecito case. First, Reynolds argued that no authority in New Mexico existed to provide grants of land between 1821 and 1824. He based this argument on the discrepancy between grant muniments and Mexican property law. The Vallecito de Lovato grant was made after Mexican Independence, but before Mexico promulgated laws covering the disposal of the public domain. While Mexico recognized all grants made between 1821 and 1824, Reynolds suggested U.S. Courts should not. Even if the grant was judged valid, Reynolds argued that the language in the granting papers only provided possession, not title, of the grant, as per the Sandoval decision. The entire grant should be invalidated, he argued, or, at the very least, the commons should fall into the United States public domain. The CPLC, hemmed in by the Sandoval decision, agreed with Reynolds's entire argument and rejected all claims for the Town of Vallecito de Lovato, including the individual private lots on which settlers still lived.[55] Peabody appealed the Vallecito de Lovato case to the Supreme Court. In 1899, the Supreme Court affirmed the decision of the Court of Private Land Claims. Again, all claims, even those for homesites in the village on the grant were denied. The entire grant fell into the public domain.[56]

[52] 5 September 1896 Opinion authored by Justice Sluss, SANM I, 44: 54–67, NMSRCA.
[53] 5 September 1896 Opinion authored by Justice Sluss, SANM I, 44: 54–67, NMSRCA.
[54] U. S. v. Sandoval 1897, 167 U.S. 278.
[55] SANM I, 48: 586–604.
[56] S. Endicott Peabody v. U.S. 175 U.S. 546 (1899).

Having won in the Vallecito case, Reynolds turned his attention back to the Petaca case. According to provisions in the act establishing the Court of Private Land Claims, parties had six months following the filing of a CPLC decision to file an appeal before the Supreme Court. Reynolds was responsible for filing CPLC decisions. He did not file the Petaca decision until almost three years later, after the Sandoval decision. With the Sandoval decision in place, Reynolds filed the 1896 CPLC decision and immediately appealed the case. Farwell's attorney argued to the Supreme Court that the appeal was impossible given the six-month rule. The Supreme Court, however, noted that the six-month period commenced following the filing of the ruling, not the date of the ruling.[57]

The case covering the Petaca claims appeared before the Supreme Court in 1899. The justices agreed with Reynolds and reversed the CPLC decision. The result was a grant reduced to 1392.1 acres, the total acreage of private homesites.[58] The commons fell into the public domain. CPLC Justice Wilbur Stone, who had voted with the majority in confirming Petaca as a community grant, condemned the outcome:

> [Petaca] had been bought by one of 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 [Supreme] court found that the original grant comprised only a paltry strip about five miles long and a few rods wide, embracing the little garden patches on the Cañon of Petaca Creek, belonging to some poor Mexicans, who were made all the poorer by having the ownership decreed to them by the 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.[59]

Conclusion

The Treaty of Guadalupe Hidalgo ceded the Mexican territory of *Nuevo Mexico* to the United States. But it took the actions of speculators and federal officials to produce the transformation in property relations that allowed for administrative control. 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, the Santa Fe Ring and commercial speculators pursued the most valuable timber, grazing and mining land in the territory. One the other side, federal officials in the General Land Office and the Court of Private Land Claims sought to overcome common-property claims in pursuit of settlement patterns consistent with U.S. land policy. They denied the very existence of common-property land tenure. The pressures of aggressive speculation, onerous adjudication procedures and contrived legal theories of Spanish and Mexican grant making led to the rejection of millions of acres of common-property claims.

[57] U.S. v Pena, 175 U.S. 500 (1899).
[58] U.S. v. Peña, 175 U.S. 500 (1899).
[59] Bowden, *Private Land Claims in the Southwest* (note 42), City, 1045.

Petaca and Vallecito were not unusual cases. As with many community land grants in New Mexico, lawyers adept at manipulating legal adjudication procedures, and at least three Surveyors General, pursued legal and extra-legal means to control resources, acquire titles and legal contracts from heirs and profit from the market in land grants. These actions, committed before heirs had a chance to access the courts, established the conditions of dispossession for the common portions of the grants. Gildersleeve and Surveyors General Proudfit and Atkinson manipulated land grant adjudication procedures in Petaca and Vallecito. Their machinations muddled the adjudication process, and contributed to the rejection of both claims. The transformation of the land grant commons from a village-level, subsistence resource to an investment arena for commercial interests was a direct result of intense investment speculation and the failure of the United States to live up to its treaty obligations.

The U.S. Congress briefly understood the importance of the political context of adjudication and the question of fairness and equity in considering land claims. Adjudication reforms begun in the late-1880s stemmed from a crisis in confidence of the Surveyor General system of adjudication to 'inviolably respect' Spanish and Mexican land claims. While the shift to the Court of Private Land Claims established a set of requirements that proved more onerous for legitimate claimants, it should be noted that the intent was to reform an unworkable process. The Santa Fe Ring, however, found new ways to manipulate the system. George Hill Howard and Amado Chaves represented Petaca and Vallecito residents, as well as the claimants of other land grants, for a one-third stake in the common property. Had those claims been confirmed, Howard could have filed partition suits in New Mexico courts to receive payment for services. Thus even confirmed common-property claims were often privatized.

The legal, political and social structures of territorial New Mexico arranged and aligned adjudication procedures in anticipation of investment and resource exploitation. The 'oligarchy of land sharks,' to use Julian's phrase for the Santa Fe Ring, conspired with the most powerful federal officials to bend, break and evade legal standards and benefited from adjudication procedures practically designed for commercial speculation.[60]

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[60] Julian, *Land-stealing in New Mexico* (note 39), 29.