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Taking Timber, Earth, and Water: The Denver and Rio Grande Railroad and the Struggle for New Mexico's Land Grants

ABSTRACT

The construction of the Denver and Rio Grande Railroad in northern New Mexico connected the region to distant markets and transformed the fortunes of Spanish and Mexican land grant communities. East Coast and European investors, keen to profit from northern New Mexico's abundant resources, poured money into railroad development as a prelude to more intense speculation in land grants. This paper examines railroad extension into New Mexico within the context of Spanish and Mexican land grant adjudication. The patterns of investment and adjudication reflect the underlying logic of an imperial imperative at work in nineteenth-century New Mexico, namely that the system of legal standards that governed the adjudication and distribution of resources was designed to advance commercial interests and industrial-scale development in the region.

I. INTRODUCTION

As William Jackson Palmer boarded an eastbound train in St. Louis in August of 1869, he may have been reconsidering his decision to give up a promising career with the Union Pacific Railroad. At the age of 29 he had left Union Pacific, which had just become the first transcontinental railroad in the United States, and set out to start a new railroad that would span the Rocky Mountains and tap the enormous commercial potential of the recently acquired western territories. On that August day, he was returning to the East Coast, after time in Colorado, to search for wealthy investors to finance his railroad. Palmer understood the importance of Eastern investment in Western expansion. In a letter he had sent years earlier to an uncle, Palmer demonstrated a keen understanding of how the West would develop, and what his role could be:

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Young men without money can only make a fortune by connecting themselves with capitalists. The heaviest of these reside in the East where they look after their own affairs. But the best place to invest capital is in the West. Eastern capitalists must therefore have representatives here to attend to their interests if they wish to invest heavily in the West. Such representatives, if able and correct, must acquire great wealth and influence with their distant principles—to a greater extent and more rapidly than if they lived in the East where the capitalist can judge for himself.¹

As the train picked up speed across Illinois, it may have been then that Palmer fell into conversation with fellow passenger William Proctor Mellen. Mellen, luck would have it, was a well-connected New York attorney and precisely the kind of “Eastern capitalist” Palmer had in mind. Mellen, by all accounts, liked what Palmer had to say about his plans for the railroad, and he agreed to become a financial partner in the scheme. The relationship drew Palmer into Mellen’s rarefied orbit of East Coast politicians and wealthy Eastern and European investors. Mellen put Palmer in touch with William Blackmore, a prominent British investor in the American West. Blackmore specialized in speculative investments in New Mexico’s many Spanish and Mexican land grants. Though the Treaty of Guadalupe Hidalgo—which ended the U.S.-Mexican War in 1848—obligated the United States to respect the many Spanish and Mexican property claims in lands newly transferred to the United States, speculative investors like Blackmore manipulated weak adjudication procedures to acquire vast land holdings. Investors like Blackmore recognized the value railroad transportation links could add to their investments in New Mexico’s remote land grants. Palmer found willing investors throughout southern Colorado and northern New Mexico. William Waddingham, a Dutch investor who also traded in New Mexico’s land grants, invested \$50,000 in Palmer’s railroad and staked his entire position in the Maxwell Land Grant, an amount of more than a quarter million dollars.²

Palmer enticed Blackmore and Waddingham to invest in a railroad he appropriately called the Imperial Pacific. The Denver and Rio Grande Railroad (D&RG), as it would eventually be called, made Palmer a wealthy and powerful figure in the history of Western development and transformed the fortunes of subsistence land grant communities in northern New Mexico. With the railroad came the possibility of an industrial-scale

1. JOHN STERLING FISHER, *A BUILDER OF THE WEST: THE LIFE OF GENERAL WILLIAM JACKSON PALMER* 127 (1981).

2. ROBERT G. ATHEARN, *REBEL OF THE ROCKIES: A HISTORY OF THE DENVER AND RIO GRANDE WESTERN RAILROAD* 10-11 (1967).

lumber trade, a lucrative coal mining industry, and a cheap and convenient transportation option for commercial cattle and sheep production. Before the railroad's arrival, the remote land grant communities of northern New Mexico were not only beyond the reach of British and East Coast capitalists but also, to some degree, beyond their interest. To most investors, New Mexico was nothing more than a remote outpost with limited investment potential and high transportation costs. The arrival of the railroad, however, changed that investment calculus and launched New Mexico's Spanish and Mexican land grants into a sea of global investment capital.

It is almost impossible to overstate the importance of the railroads in the development of New Mexico and the intermountain American West. Early investment in Western railroads produced transcontinental transportation linkages. Between 1870 and 1890, railway mileage in North America nearly doubled from 560,000 miles to 1,006,000 miles of track.³ To historian William Robbins, railroad construction opened up the region to industrial development and served as the "great agencies of change in the interior West."⁴ Indeed the first trickle of East Coast and European investment, from speculators like Blackmore and Waddingham, flowed into railroad projects. The railroad construction boom of the period could not have happened without British money. European investors saw the American West as a potential solution to the economic crises confronting European markets.⁵ This pattern was no different in New Mexico.

The first investments that extended railroads into the West made the flood of speculation that characterized 1890s New Mexico possible. Between 1879 and 1888, four railroads constructed lines through New Mexico and transformed the territory from a commercial backwater into an important node in the circulation of global capital. The Atchison, Topeka and Santa Fe Railway constructed more than 690 miles of rail connecting Santa Fe to the Chicago and East Coast lumber markets. The Atlantic and Pacific Railroad laid nearly 200 miles of lines in the early 1880s. The 167 miles of the Southern Pacific Railroad crossed through New Mexico along the 32nd parallel and connected southern New Mexico to West Coast markets. By 1883 the D&RG connected much of resource-rich northern New Mexico to this national network of rail lines. From 1881 to the end of the nineteenth century, this network of transportation linkages ratified the highly speculative investments in land grants that preceded railroad

3. ERIC HOBSBAWM, *THE AGE OF CAPITAL: 1848-1875*, at 54 (1975).

4. WILLIAM G. ROBBINS, *COLONY AND EMPIRE: THE CAPITALIST TRANSFORMATION OF THE AMERICAN WEST* 77 (1994).

5. *Id.* at 86.

development and, in turn, intensified commercial interest in the valuable resources controlled by subsistence land grant communities.⁶

The arrival of the D&RG in northern New Mexico forever altered the fortunes of Spanish and Mexican land grant communities. No longer were Spanish and Mexican land grant communities isolated from the circuits of capital. They suddenly found themselves (and their resources) in the path of railroad expansion and, in its wake, a flood of East Coast and European investors. These investors were often enticed to New Mexico by the Santa Fe Ring, a cadre of territorial elites motivated by the promise of personal wealth or notions of progress and American exceptionalism rooted in the logic of capitalist development. For the Santa Fe Ring, the railroad promised to link New Mexico to distant markets and thus unlock the resources of the isolated land grant villages in New Mexico. Toward this end, the Santa Fe Ring operated as a cabal of fiscal agents and speculators, prowling the territory for land. The legal and political manipulations of the Ring in the era of land grant dispossession in New Mexico are well described.⁷ In serving the interests of commercial speculators, they transformed land-tenure patterns in New Mexico. Much of the scholarship on economic speculation in New Mexico's land grants has illustrated the social and economic convulsions that followed for Spanish and Mexican land grant communities.⁸ The D&RG was at the very center of that transformation. While the Santa Fe Ring was a potent political, legal, and economic force in New Mexico, the Ring depended on railroad connections to convince investors that New Mexico's timber, coal, and livestock could be transformed into commodities of commercial value. In addition, the railroads acquired vast acreages and gained access to millions of board feet of timber for construction purposes.

This transformative process can be described through a focus on the patterns of resource extraction by the D&RG amid the legal adjudication of two Mexican-period community land grants in northern New Mexico, the Town of Vallecito de Lovato and La Petaca. At the same time that the Court of Private Land Claims (CPLC) and the U.S. Supreme Court rejected the claims of heirs to both land grants, U.S. courts expanded resource access and control of timber on both grants for the D&RG. The expansion of the railroad's timber rights, achieved through the contraction of Mexican

6. See DAVID MYRICK, *NEW MEXICO'S RAILROADS: A HISTORICAL SURVEY* (1990).

7. See MALCOLM EBRIGHT, *THE TIERRA AMARILLA GRANT: A HISTORY OF CHICANERY* (1993); VICTOR WESTPHALL, *MERCEDES REALES: HISPANIC LAND GRANTS OF THE UPPER RIO GRANDE REGION* (1983).

8. See generally SARAH DEUTSCH, *NO SEPARATE REFUGE: CULTURE, CLASS, AND GENDER ON AN ANGLO-HISPANIC FRONTIER IN THE AMERICAN SOUTHWEST, 1880-1940* (1987); SUZANNE FORREST, *THE PRESERVATION OF THE VILLAGE: NEW MEXICO'S HISPANICS AND THE NEW DEAL* 20 (1989).

common-property land tenure, constitutes the deeper logic of a system of legal standards designed to advance commercial interests and industrial-scale development in New Mexico.

II. LAND SPECULATION IN NEW MEXICO AND THE DENVER AND RIO GRANDE RAILROAD

Railroad expansion into New Mexico played a central role in the patterns of land speculation in the territory. The same East Coast and British investors who built the railroads invested in the resources those railroads opened up. As the careers of men like Blackmore and Waddingham illustrate, investments in railroads were often a prelude to larger investments in New Mexico's extensive Spanish and Mexican property claims. During the 1880s and 1890s, land speculators sought control of New Mexico's many common-property land grants, including the Town of Vallecito de Lovato and La Petaca Land Grants. These adjacent community grants, situated north of the Chama River and west of the Rio Grande, were distributed to subsistence settlers during Mexico's period of control of the region. A group of 24 settlers petitioned for Vallecito and officially received the grant in February of 1824, just months before Mexico promulgated new laws governing the distribution of land in the territory.⁹ In March of 1836, a group of 36 petitioners received La Petaca. The grant documents described Vallecito de Lovato as the western boundary.¹⁰ In the documents for both grants, the upland resources were described as common property and reserved for community access and use. Despite minor differences in procedure and paperwork, both grants were recognized by Mexico as valid and legitimate land grants.

The U.S. invasion of Mexico in 1846, however, threw into doubt thousands of land claims in New Mexico. With the U.S. military serving as an occupying force in most of Mexico's major cities, including Mexico City, the Mexican government ended the war and agreed to the harsh terms of the Treaty of Guadalupe Hidalgo. The Treaty ceded hundreds of thousands of square miles to the United States, including the territory of New Mexico, and gave the United States the right to impose a property claim adjudication procedure of its own design. The terms of the Treaty and the resultant adjudication procedures made clear that the U.S. intent behind the

9. Order of Governor Bartolome Baca (Feb. 27, 1824), Spanish Archives of New Mexico [hereinafter SANM] 21: 535 (on file with the N.M. State Records Ctr. and Archives, Santa Fe, N.M. (NMSRCA)).

10. PETACA GRANT SURVEYOR, GENERAL REPORT NO. 105 SANM 23: 232 (Mar. 25, 1823), (on file with NMSRCA).

war with Mexico was territorial expansion, but with a caveat: the United States wanted Mexican land, not Mexican citizens and property claims.¹¹

After the signing of the Treaty, but before the adjudication of most land claims in northern New Mexico, the D&RG extended rail lines into New Mexico. As with all railroad construction, the D&RG was authorized to acquire building materials within a 100-foot right-of-way along the track and, "the right to take from the public lands *adjacent* thereto, stone, timber, earth, water, and other material required for the construction and repair of its railway and telegraph line."¹² The D&RG entered New Mexico along two routes. The first route entered Chama, New Mexico, in late winter 1880. A second route connected Antonito, Colorado, with Española, New Mexico, in 1881. The choice of routes reflected the D&RG's focus on mining, lumber, and livestock. Neither route provided the opportunity for heavy passenger travel, therefore Palmer focused on commercial uses and "furnish[ed] promptly to every mining camp, whose business under the facilities afforded by railroad carriage promises to warrant the expenditure, a branch from one of its trunks."¹³ As the railroad built track in New Mexico, it acquired construction materials from a number of lumber operators. Along the Chama route, the railroad acquired timber and ties from Edgar Biggs and his New Mexico Lumber Company. Along the Española route, the railroad bought ties and construction materials from lumbermen in Tres Piedras, including H.S. Buckman, and Lowell and Henry Bacheldor. Once the lines were constructed and trains were running, the D&RG purchased coal from Thomas Catron's Monero Coal and Coke Company, a mining operation located on the Tierra Amarilla Land Grant.¹⁴

The railroad's arrival in New Mexico increased the commercial potential of timber in the region. The investment pressure that followed overwhelmed the meager resources and procedures that governed land grant adjudication in the territory. The office of the New Mexico Surveyor General, the institution responsible for property claim adjudication in New Mexico, was understaffed, underfunded, and, perhaps most importantly,

11. See RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT* (1990).

12. Act to Amend Act Granting to Railroads the Right of Way Through the Public Lands of the United States of 1872, ch. 126, 19 Stat. 405 (1877); Act Granting to Railroads the Right of Way Through the Public Lands of the United States of 1872, ch. 354, 17 Stat. 339 (1872).

13. ATHEARN, *supra* note 2, at 98.

14. See generally Bartlett Collection, SANM (on file with NMSRCA); Catron Collection, Correspondence, (on file with Center for Southwest Research, Univ. of N.M., Albuquerque, N.M. (CSWR)).

populated by corrupt officials.¹⁵ In the early 1880s, Charles Gildersleeve, a prominent attorney and territorial politician, benefitted from the corruption of the administrations of Surveyors General James Proudfit and Henry Atkinson. Gildersleeve purchased deeds to both Vallecito de Lovato and Petaca, intending to sell the grants to investors back East. Gildersleeve worked closely with Surveyor General Henry Atkinson to market Petaca. Eventually, at Atkinson's urging, a prominent and politically connected Chicago investor named L.Z. Farwell and his son purchased Petaca, largely for the potential timber revenues.¹⁶ The Farwells thought they were purchasing timberlands that stretched from the village of Petaca in the south to the Colorado line in the north. Petaca, in the form Gildersleeve and Atkinson presented to Farwell, was a result of a series of fraudulent surveys. By 1883, Atkinson had expanded the Grant to over 190,000 acres and claimed it was a private grant now owned in its entirety by Farwell, not a community land grant.¹⁷

In 1889, S. Endicott Peabody, representing the Rio Grande Irrigation and Colonization Company, purchased Gildersleeve's interests in the Vallecito de Lovato Land Grant. Peabody's parent company was a Boston-based firm created solely to serve as a vehicle for investments in New Mexico land grants. Peabody's speculation in New Mexico's land grants was closely tied to his family's railroad interests. The Peabodys, one of the wealthiest families in the United States, made a fortune in railroad and banking enterprises. A great uncle founded the Eastern Railroad of Massachusetts in 1836 and Endicott Peabody's cousins were among the directors of the Atchison, Topeka and Santa Fe Railway.

Both Farwell and Peabody purchased land in New Mexico with the intent to develop the timber, mining, and grazing potential. Both men began selling timber to lumber operations in the late 1880s. In 1885 Farwell sold timber rights on the Petaca Grant to Lowell and Henry Bacheldor. The Bacheldors paid Farwell \$5,000 to cut 100,000 narrow-gauge railroad ties destined for D&RG track. Three years later, Farwell and the Bacheldors again entered into a contract for 100,000 ties, this time at \$.04 per tie. Meanwhile, in and around the Vallecito Land Grant, by 1899 three mills

15. VICTOR WESTPHALL, *THE PUBLIC DOMAIN IN NEW MEXICO 1854-1891*, at 75-76, 86-89 (1956) (unpublished doctoral dissertation on file with CSWR). See also MALCOLM EBRIGHT, *LAND GRANTS AND LAWSUITS IN NORTHERN NEW MEXICO* (1994). Both Ebright and Westphall noted that three New Mexico Surveyors General, including Proudfit and Atkinson, were active land speculators while in office. In addition, staffers in the office participated in land grants speculation and colluded with Santa Fe Ring members.

16. Letter from L.Z. Farwell to L.B. Prince (Apr. 25, 1883), SANM, L. Bradford Prince Collection (on file with NMSRCA).

17. HENRY M. ATKINSON, *SURVEYOR GENERAL'S REPORT* (Aug. 1, 1883), SANM, 23: 287-94 (on file with NMSRCA).

were processing over 850,000 board feet of lumber per month.¹⁸ Farwell harvested timber for narrow-gauge railroad ties well into the 1890s. In 1891 and again in 1892, the Bacheldors paid \$.04 per tie for a contract to cut an additional 15,000 ties, and eventually contracted to cut over 230,000 ties from the Petaca Land Grant.¹⁹ In addition to timber, Farwell sold grazing leases on the Petaca Grant and later, despite not having a patent for the Land Grant, sold 4,000 acres to the St. Anthony Crystal Mica Mining Co.²⁰

Biggs's New Mexico Lumber Company cut timber from the Vallecito de Lovato Land Grant. On March 14, 1893, the D&RG appointed Biggs its agent. In a period from 1894 to 1895, the New Mexico Lumber Company cut more than 7.5 million board feet (mmbf) of lumber along the D&RG's Chama route in New Mexico.²¹

III. THE STRUGGLE FOR RESOURCES IN VALLECITO DE LOVATO AND PETACA

In 1893, Farwell began to suspect that the Bacheldors were harvesting ties on Petaca in violation of their contract.²² In June of 1893, Farwell received an injunction against the Bacheldors. The complaint claimed that

against the consent [of Farwell] and without [his] knowledge, [the Bacheldor Brothers], with a large force of men, teams, wagons and appliances, entered into and upon the said tract of land...and began to fell the growing timber and trees thereon for the purpose of converting the same into rail road ties,...destroying the value of said land, committing waste thereon....²³

While Farwell struggled to control timber cutting on Petaca, the U.S. Timber Agent in Santa Fe began an investigation in late 1894 of

18. Letter from Broad to Catron (Aug. 15, 1898), Catron Collection, Correspondence, reel 1: 140, 141 (on file with CSWR).

19. Letter from Walcott & Vaile to Bartlett (July 9, 1894), SANM, Bartlett Collection, box 1, folder 4 (on file with CSWR), box 2, folder 28 (on file with NMSRCA).

20. Letter from M.Z. Farwell to Edward Bartlett (July 3, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA); Letter from Farwell to Bartlett (Oct. 14, 1899), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

21. *Denver & Rio Grande Ry. Co. v. U.S.*, 54 P. 241, 242 (N.M. Terr. 1898). One million board feet is enough timber for approximately 70 typical houses or more than 70,000 narrow gauge railroad ties.

22. Letter from M.Z. Farwell to Edward Bartlett (June 23, 1893), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

23. Brief for the Petitioner, *U.S. v. Bacheldor* (N.M. 1st Jud. Dist. 1893), *aff'd*, 48 P. 310 (N.M. Terr. 1897), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

possible timber theft by the D&RG from public lands in and around Vallecito and Petaca. The investigation focused on Biggs and the Bacheldors, as official agents of the D&RG, and the taking of timber from the public domain. Only 2.1 mmbf of the 7.5 mmbf Biggs cut in 1894 and 1895 was delivered to the railroad. The Bacheldors were investigated for cutting ties from the public domain at distances of more than 25 miles outside the railroad's 100-foot right-of-way. Initially, the railroad dismissed the investigation as the work of Catron. The D&RG suspected Catron instigated the investigations in retaliation for Catron's loss of business. The D&RG attorney believed that "it is likely that Mr. Catron is at the bottom of this attempt to stir up trouble for Mr. Biggs and the D&RG Co."²⁴ Their suspicions stemmed from a long simmering animosity that had developed between the railroad and Catron. In the summer of 1888, the railroad confronted Catron for selling coal to the railroad laced with dirt and rock.²⁵ Unable to resolve the dispute, the railroad eventually canceled its contracts with Catron and purchased coal from the San Luis Coal Company.²⁶

As the investigation proceeded, however, the railroad worried that the grand jury might indict some of its officers along with Biggs and the Bacheldors.²⁷ The D&RG attempted to distance itself from both men claiming that the agents acted alone and without prior knowledge by the railroad in taking timber in the public domain. By February of 1895, however, the railroad anticipated an indictment on illegal timber cutting and began to prepare a defense against potential legal action.²⁸

While the D&RG was preparing a defense against a criminal charge of timber theft, Farwell continued his battle against the Bacheldors. In a letter to his lawyer, Farwell complained, "Bacheldor has been slaughtering timber ever since the case was tried last June."²⁹ In desperation, Farwell sent an investigator to the Grant in December of 1895. According to the investigator, the Bacheldors "never stopped from cutting ties within the said Petaca Grant."³⁰ The investigator's report described an operation in which hundreds of newly cut ties were stacked at D&RG loading points

24. Letter from Wolcott & Vaile to Edward Bartlett (Feb. 19, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

25. Letter from J.W. Gilluly to Frank Clancey, Treasurer, Monero Coal and Coke Co. (Aug. 13, 1888), Catron Collection, Correspondence, reel 1: 134 (on file with CSWR).

26. Letter from Wolcott & Vaile to Edward Bartlett (May 11, 1892), SANM, Bartlett Collection, box 3, folder 60 (on file with NMSRCA).

27. Letter from Wolcott & Vaile to Edward Bartlett (June 11, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

28. Letter from Wolcott & Vaile to Edward Bartlett (Feb. 19, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

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

30. *Id.*

throughout the Grant.³¹ The investigation revealed to Farwell that the Bacheldors were cutting ties as an agent for the railroad. Farwell directed his attorney to "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."³²

IV. THE LEGAL FIGHT FOR LAND AND TIMBER

In 1896, the focus of the investigation regarding timber theft expanded from Biggs and the Bacheldors to include the D&RG. In June of that year, Biggs helped move those efforts along by cooperating with the government in its case against the railroad. Through intermediaries, the railroad received information that Biggs was, "playing into the hands of the government, against the railroad company."³³ The railroad's attorneys hired New Mexico investigators to find out what Biggs had told the government: "If he is going to be against us...we simply want to be prepared to meet him."³⁴ Late in 1896, the railroad was indicted in both cases. While the railroad tried to distance itself from Biggs and the New Mexico Lumber Company, it took a more direct approach in the Bacheldor case. In the Bacheldor trial, the railroad admitted that it had authorized Bacheldor to cut timber at distances of more than 25 miles from the railroad's track, but argued that this was nonetheless consistent with the language in the act of Congress granting the railroad right-of-way. Railroad officials felt confident that the act granting license to timber "adjacent" to the track placed an almost impossible burden of proof on the United States. As long as the United States could not prove timber cuts were in excess of timber needs, they could not be convicted. As the attorney for the railroad suggested, the United States needed to "prove its case against us on the *public* domain. So far they have no idea of what has been done by us. It is important that this should be kept very quiet."³⁵

In 1896, a New Mexico district court jury convicted the D&RG of timber theft in the *Bacheldor* case. The jury rejected the railroad's arguments on adjacency and concluded that within the context of the tiered system of township boundaries, the railroad had no legal right to timber so far from

31. Letter from Jose Sena to Bartlett (Dec. 7, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

32. Letter from Farwell to Bartlett (Jan. 13, 1896), SANM, Bartlett Collection, box 1, folder 4 (on file with CSWR).

33. Letter from Wolcott & Vaile to Bartlett (June 4, 1896), SANM, Bartlett Collection, box 1, folder 4 (on file with CSWR).

34. *Id.*

35. Letter from Bartlett to Wolcott and Vaile (Feb. 21, 1896), SANM, Bartlett Collection, box 1, folder 4 (on file with CSWR).

its right-of-way.³⁶ The railroad appealed the decision. On January 15, 1897, the district court of the First Judicial District of New Mexico convicted the D&RG of timber theft in authorizing the New Mexico Lumber Company to cut 7.5 mmbf of timber on public lands. In that case, the jury concluded that the railroad could not demonstrate any need for 7.5 mmbf of timber.³⁷ In both cases, New Mexico juries relied on a strict reading of the act of Congress that granted the railroads access to resources on the public domain. Shortly after the Biggs conviction, the railroad lost its appeal in the Bacheldor case. The New Mexico Supreme Court affirmed the district court decision in a March 1897 opinion in which it suggested that although the railroad should be given wide latitude, "the condition of the country can not make lands adjacent which are not."³⁸ The railroad filed a writ of error in the case asking the U.S. Circuit Court of Appeals to interpret what "adjacency" meant in the federal statute.

The railroad cases were being decided during the adjudication of Vallecito de Lovato and Petaca. At the same time that New Mexico courts restricted the resource claims of the D&RG, the CPLC heard testimony in the adjudication of Petaca and Vallecito. In the Petaca case, Farwell claimed all 190,000 acres of the Grant, arguing that it was a private land grant. The government showed that the original Mexican grant documents had been doctored, specifically in the description of the northern and eastern boundaries of the Grant. The changes extended the Grant north into the valuable timberlands along the D&RG route and likely occurred during Atkinson's tenure as Surveyor General. The court reduced the size of the Grant and confirmed Petaca as a community land grant, rejecting Farwell's exclusive claim. The reduced boundaries made Farwell's investment worthless: "[a]ll the timber cut since we owned the grant has been cut north of this [Kiowa] mountain, and I would not give \$25.00 for the entire portion of the grant lying south of that point."³⁹ The decision ratified the common property claims of Mexican grant recipients, and relied on prima facie evidence of a grant in existence at the time of the signing of the Treaty of Guadalupe Hidalgo.⁴⁰

The two judgments against the D&RG, particularly within the context of the CPLC's confirmation of Petaca as a community land grant, illustrated the contradiction between federal policies and local interests. The decisions of New Mexico juries not only restricted the D&RG's access to

36. United States v. Bacheldor, 48 P. 310, 310-11 (N.M. Terr. 1897).

37. Denver & Rio Grande Ry. Co., 54 P. 241, 242 (N.M. Terr. 1898).

38. *Bacheldor*, 48 P. at 311.

39. Letter from Farwell to Bartlett (Feb. 20, 1895), SANM, Bartlett Collection, box 2, folder 28 (on file with NMSRCA).

40. CPLC opinion, authored by Justice Sluss (Sept. 5, 1896), SANM, 44: 54-67 (on file with NMSRCA).

timber but also, more importantly, challenged the underlying logic of federal land policy in the American West. The primary objective of railroad development was the expansion and national integration of local and regional markets. The prospects for this resource-led development depended on the transfer of subsistence resource rights to commercial interests. The 1872 railroad right-of-way act of Congress granting license to resources and land for railroad expansion was designed to implement this transfer. As the court cases described above make clear, however, local and regional court decisions offered a stricter reading regarding land-tenure claims and resource rights.

As the D&RG appealed the decisions to courts outside New Mexico, however, the strict reading of the statute gave way to a broader interpretation of the government's intention. Conversely, but to the same effect, federal courts applied a far more stringent set of standards to common-property land claims in New Mexico. For example, despite prima facie evidence of a community land grant, the CPLC rejected outright the claims of heirs on the Vallecito de Lovato Land Grant. The decision relied on legal arguments that applied a strict reading to the Mexican colonization laws and provided the United States a legal theory to reject common property claims. Claimants appealed the decision to the U.S. Supreme Court, which heard this case along with the Petaca case, which was appealed by the United States in the 1899 session. In both cases, the U.S. Supreme Court rejected the claims of settlers for the common lands of both land grants. The rejection of Vallecito was affirmed⁴¹ and the confirmation of Petaca was overturned.⁴²

At the same time that U.S. courts rejected the settlers' claims to Spanish and Mexican land grants, the rights of the D&RG were being expanded. The string of judgments against the railroad ended in August of 1898. The New Mexico Supreme Court agreed with the D&RG and overturned the conviction in the Biggs case. The railroad found success in the Bacheldor case as well. The eighth circuit court of appeals reversed the judgment against the Bacheldors and the D&RG explaining that,

Congress intended to offer substantial inducements for the construction of railroads in certain sections of the country where timber suitable for railroad construction was known to be scarce...It accordingly authorized timber and other materials to be taken from adjacent lands, leaving those whose duty it would be to see that the right was not abused, but was exercised in a reasonable manner, to decide in any given case whether the land from which material had been

41. Peabody v. United States, 175 U.S. 546, 552 (1899).

42. United States v. Peña, 175 U.S. 500, 509 (1899).

obtained was adjacent to the right of way, within the spirit and intent of the act.⁴³

The court of appeals agreed with the railroad that cutting timber 25 miles from the right-of-way was not unlawful. "Adjacency," it turns out, was a useful concept for the railroad. The reversal meant that, in practical terms, the D&RG had legal access to timber from almost all of northern New Mexico including the Vallecito de Lovato and Petaca land grants.

V. CONCLUSION

The expansion of the D&RG railroad into northern New Mexico transformed the economic fortunes of the region. The 1872 railroad act established the necessary incentive to spur railroad development in the American West. For the politically connected Santa Fe Ring lawyers, judges, and attorneys, the railroad was a necessary condition for land speculation. Spanish and Mexican land grants were of little commercial value without the transportation connections necessary for industrial-scale extractive industries. Tied into global financial markets, East Coast investors, such as Peabody and Farwell, invested in lands newly opened to resource extraction.

When the railroads arrived in New Mexico, nearly all of the valuable timber, mining, and grazing lands were tied up in large Spanish and Mexican community land grants. As many scholars have shown, despite treaty assurances protecting those property rights, common property land-tenure patterns were rejected in favor of fee simple private property tenures more conducive to investment. In the case of *Petaca* and *Vallecito*, prima facie evidence supporting the claims of settlers was ignored in favor of a strict interpretation of Mexican grant-making procedures. This strict reading led to the rejection of claims to the common lands of both grants. The strict readings applied to land grant cases, however, gave way to broad interpretations when it came to interpreting the resource claims of the D&RG. In the cases against Biggs and the Bachelors, U.S. courts relied on the same logic they rejected in the land grant cases. The courts drew on prima facie evidence to broadly interpret the resource rights of the D&RG in terms favorable to the railroad. The act of Congress that gave the railroad access to timber in the right of way also provided "the right to take from the public lands adjacent thereto."⁴⁴ The New Mexico Supreme Court, in its interpretation of "adjacent," gave wide latitude to the resource claims of the D&RG:

43. *Bachelder v. United States*, 83 Fed. 986, 987-88 (8th Cir. 1897).

44. Act to Amend Act Granting to Railroads the Right of Way Through the Public Lands of the United States of 1872, ch. 126, 19 Stat. 405 (1877); Act Granting to Railroads the Right of Way Through the Public Lands of the United States of 1872, ch. 354, 17 Stat. 339 (1872).

if it is shown that defendant was lawfully on said premises and that he had a lawful right to cut timber for the purpose for which he was there, then there is a presumption that whatever cutting he did was in furtherance of such purpose.⁴⁵

In other words, the statute giving a grant of license to the D&RG was a de facto resource grant.

The protections afforded Spanish and Mexican land grants in the Treaty of Guadalupe Hidalgo were too vague to actually provide protection. As the land grant adjudication and grants of license to resources for the D&RG shows, U.S. courts interpreted vague legal standards in ways that benefited commercial interests. These patterns reflected the underlying logic of an imperial imperative at work in nineteenth-century New Mexico, namely that the system of legal standards that governed the adjudication and distribution of resources was designed to advance commercial interests and industrial-scale development in the region. The New Mexico Supreme Court, in fact, acknowledged this imperative: "the statute [An Act Granting to Railroads the Right of Way Through the Public Lands of the United States] should receive such a liberal construction as will carry out the objects intended."⁴⁶ The *objective intended* was the opening up of the West to settlement and commercial resource extraction. This imperial imperative, expressed through legal decisions that denied common-property land claims and expanded commercial access to resources, overwhelmed Mexican community land grants and reshaped the economic landscape of northern New Mexico.

45. Denver & Rio Grande Ry. Co., 54 P. 241, 243 (N.M. Terr. 1898).

46. United States v. Bacheldor, 48 P. 310, 311 (N.M. Terr. 1897).



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