SUSANA MARTINEZ
GOVERNOR

RICHARD E. MAY
CABINET SECRETARY

SAMUEL L. OJINAGA
ACTING DIRECTOR

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building, Suite 201 ♦ Santa Fe, New Mexico 87501
(505) 827-4950 ♦ FAX No. (505) 827-4948

The New Mexico Land Grant Council has printed this document, prepared by David Benavídez and Ryan Golten for the New Mexico Attorney General in August 2008, because it considers it to be one of the most important documents on the legal history and contemporary issues faced by community land grants. It is a response to another document, a report prepared by the U.S. General Accountability Office (GAO) in June 2004, which has received far greater circulation.

As stated in the GAO's letter to Senators Jeff Bingaman and Pete V. Domenici, and to then Congressman Tom Udall, the report was prepared at congressional request and sought to describe the confirmation procedures by which the United States implemented the property protection provisions of the Treaty of Guadalupe Hidalgo with respect to New Mexico community land grants, and to assess the results of those procedures. It also identified and responded to concerns regarding those procedures, as implemented between 1854 and 1904, and identified options Congress could consider in responding to the remaining concerns among community land grant heirs.

The GAO report concluded that the procedures employed to confirm community land grant claims between 1854 and 1904 did *not* violate due process. Also, the GAO purposely did *not* express an opinion on whether the United States fulfilled its Treaty obligations as a matter of international law. It recognized that Congress applied different standards for grant confirmation at different times but concluded that this fact "did not indicate any legal violation or shortcoming." While the U.S. has a fiduciary relationship with the Indian Pueblos in New Mexico and protects the common lands the Pueblos received under Spanish land grants, it affirmed that the U.S. does not have similar obligations to protect the common lands of non-Pueblo community grantees. The GAO report did acknowledge that there continue to exist concerns that the United States did not address community land grant claims in a fair and equitable manner, and offered five options that Congress could consider in response to those concerns, ranging from doing nothing to consider transferring federal land to communities that did not receive all of the acreage originally claimed or making financial payments to claimants' heirs for the non-use of land claimed but not awarded. These findings and options appear in *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico,* GAO-04-59, June 2004.

The report prepared by David Benavídez and Ryan Golten of New Mexico Legal Aid for the New Mexico Attorney General's Office is titled *Report to the New Mexico Attorney General -- 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* and was released in photocopy form in August, 2008. This report challenges many of the findings and legal arguments presented in the GAO report. We recommend its reading to you.

Sincerely,

The New Mexico Land Grant Council
Juan Sánchez, Chair
Lee Maestas, Vice Chair
Macario Griego
Leonard Martínez
Rita Padilla-Gutiérrez

Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

M E M O R A N D U M

TO: New Mexico State Legislators and Interested Persons
New Mexico Congressional Delegation: Senators Pete Domenici and Jeff Bingaman; Representatives Tom Udall, Heather Wilson and Steve Pearce

CC: United States General Accounting Office

DATE: August 14, 2008

RE: Report to the New Mexico Attorney General on GAO Land Grant Study

It is my honor as the Attorney General of New Mexico to present to you, "Report to the New Mexico Attorney General – 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.'" I provide this Introduction to the Report pursuant to NMSA 1978, § 8-5-18(C) (2006). I urge all Interested Persons, especially our New Mexico Congressional Delegation, to study the attached Report and consider all appropriate alternatives in deciding how best to address the historical treatment of Land Grants in New Mexico.

New Mexico has a very rich and diverse history. Our land has been shaped by many peoples and cultures. Many New Mexico families trace their ancestry back to the sovereigns of Spain and Mexico that governed this territory before it became part of the United States. Land grants have formed a critical part of our history.

From the end of the 17th Century to the mid-19th Century, Spain and then Mexico made land grants to individuals, groups and towns in New Mexico. Following the Mexican War (1846 - 1848), the United States and Mexico signed the Treaty of Guadalupe Hidalgo on February 2, 1848. The Treaty states that "Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, *retaining the property which they possess in the said territories*, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever."[1] In addition, "In the said territories,

[1] Treaty of Peace, Friendship, Limits and Settlement Between the United States of America and the Mexican Republic, art. VIII, U.S.-Mex., Feb. 2, 1848, 9 Stat. 922 (emphasis added).

property of every kind, now belonging to Mexicans not established there, shall be inviolably respected."[2] Whether the United States respected these rights and followed the terms of the Treaty has long been a source of much controversy.

Because of this longstanding controversy, New Mexico Senators Pete V. Domenici and Jeff Bingaman and Representative Tom Udall requested that the United States General Accounting Office ("GAO") study the issue in 2001.[3] The GAO issued two reports. In 2001 it identified lands in New Mexico which it considered to be community land grants.[4] In 2004, it issued a Final Report analyzing whether the United States Government legally complied with the terms of the Treaty.[5] The Report concluded that the Treaty was "implemented in compliance with all applicable U.S. legal requirements."[6] Nevertheless, the Report did mention options Congress could consider to resolve the issue of land grant losses. The Report recommended, among other options: (1) Establishing a Commission or other body to reexamine specific community land grant claims that were rejected or not confirmed for the full acreage claimed; (2) Consider transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants; and (3) Consider making financial payments to claimants' heirs or other entities for the non-use of land originally claimed but not awarded.[7]

In 2003, the New Mexico State Legislature created a Division in this Office titled "The Guadalupe Hidalgo Treaty Division," recognizing the importance of this issue to New Mexicans.[8] As Attorney General, I am charged with reporting the Findings and Recommendations of the Division to the State Legislature.[9] In 2007 the Attorney General received an appropriation of $20,000 for the operation of the Guadalupe Hidalgo Treaty Division.[10] Pursuant to the appropriation, I commissioned an independent Response to the 2004 GAO Report. Preparation of the Response was awarded by contract, pursuant to the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 to -199, to New Mexico Legal Aid. The research and analysis was undertaken by David Benavides, Esq. and Ryan Golten, Esq. of New Mexico Legal Aid. Mr. Benavides and Ms. Golten spent countless hours researching and writing this Response. The Response is an excellent and well-researched piece of historical and legal scholarship, and I am pleased to present it to the New Mexico State Legislature, our Congressional Delegation, the GAO and all persons interested in this important subject.

---

[2] Id.
[3] See 149 CONG. REC. E128 (daily ed. Feb. 4, 2003) (statement of Rep. Udall).
[4] U.S. Gen. Accounting Office, Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico (2001).
[5] U.S. Gen. Accounting Office, Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico (2004).
[6] Id. at 12.
[7] Id. at 12-13.
[8] NMSA 1978, § 8-5-18 (2003) (amended 2006).
[9] Id.
[10] Laws 2007, Chap. 21, Sec. 2.

New Mexico Legal Aid's Response raises serious questions and concerns about the GAO's legal conclusions, the basis for their reasoning and inequities affecting the historical treatment of Land Grants in New Mexico. While this Office has not independently researched the Response and all the items it cites, we have examined the Response thoroughly and believe the questions and concerns it raises are significant and legitimate and merit full review by all interested persons.

It appears to be especially appropriate for the United States Congress to consider all its legislative options to address this important matter. The ability of the Judicial Branch of government to address land grant claims has been severely limited by U.S. Supreme Court jurisprudence, as made very clear in both the GAO Report and the attached Response. With further litigation options effectively foreclosed by Supreme Court precedents, I believe that the most effective available remedies appear to lie in Legislation from the United States Congress. We therefore want to build upon the concerns expressed by the New Mexico State Legislature in its 2005 Joint Memorial and respectfully request that the New Mexico Congressional Delegation take a leadership role in studying the GAO Report and this Response to the Attorney General, and consider fully all appropriate remedies to address the historical treatment of Land Grant claims in New Mexico.[11]

GARY K. KING
Attorney General

[11] Following the issuance of the 2004 GAO report, the New Mexico Legislature passed a joint memorial requesting the United States Congress to support legislation to implement the options suggested by the GAO report. See H.J.M. 41, 47th Leg. (N.M. 2005).

REPORT TO THE NEW MEXICO ATTORNEY GENERAL -- 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"

By New Mexico Legal Aid
David Benavides, Esq.
Ryan Golten, Esq.

AUGUST 14, 2008

TABLE OF CONTENTS

INTRODUCTION[1]

Much has been said and written about the land grant confirmation process in New Mexico under the Treaty of Guadalupe Hidalgo ("Treaty"). In 2004, the federal government finally published a long-awaited study assessing whether the federal government fulfilled its obligations under the Treaty and U.S. Constitution, in light of the massive losses of community land grant lands in New Mexico following the Treaty. General Accounting Office, Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico, June 2004 ("GAO"). The GAO concluded the federal government fulfilled its duties under the Treaty and Constitution, and that any remedy for the land losses was up to Congress as a matter of policy. This Response is an attempt to address that conclusion and the GAO's analysis.

Our critique of the GAO Report is divided into the following topics: (1) the GAO's analysis of the duty owed under the Treaty of Guadalupe Hidalgo and its interpretation of the Congressional actions implementing that duty; (2) the fact that most community grants were not confirmed as they existed under Mexican and Spanish law and the disastrous effects of those mis-confirmations; (3) the GAO's mistaken reliance on the District Courts decision, *Montoya v. Tecolote,* later reversed (Ct. App.), cert. pending (NM SCt), and the notion that wrongful confirmations could be collaterally attacked in state court; (4) the fact that many post-confirmation land losses were direct results of the improper nature of confirmations, rather than attributable simply to the actions of land grant heirs themselves; (5) an analysis of the cases and

[1] The authors would like to acknowledge the contributions of historian Mark Schiller and University of New Mexico Law School students Kristina Fisher and Amanda Garcia, whose research assistance made this Report possible.

circumstances in which grants were improperly rejected and discouraged from being pursued; and (6) an analysis of due process under the federal confirmation process.

While this Response does not pretend to be the final word on the legal history of land grants in New Mexico, it is certainly one of the most extensive legal analyses that has been done to date. Similarly, while we do not pretend to address all of the topics and arguments exhaustively, our purpose was to critique the GAO Report where we disagreed with its analysis and conclusions, and to identify areas meriting further research.

Certainly the topic of the federal government's role in the loss of New Mexico's land grants, particularly in terms of common lands, is a significant one.

Our hope is to deepen the discussion and illuminate important points for Congress's consideration. More than anything, we hope to pave the way for meaningful redress for New Mexico's land grant communities, who have suffered terrible losses since the signing of the Treaty of Guadalupe Hidalgo.

I. The Treaty of Guadalupe Hidalgo and the Duty Owed

The GAO concludes the Treaty of Guadalupe Hidalgo was not self-executing, and consequently the federal government had no legal duty to land grantees to recognize land grants to the extent they would have been recognized by Mexico. In doing so, the GAO ignores the more nuanced historical question of whether Congress in fact intended, through the Treaty and subsequent legislation in 1854 and 1891, to protect land grants to the extent they would have been recognized by Mexico at that time. Arguably Congress intended to do so, as suggested by U.S. Supreme Court decisions during the first half of the 19th Century. It is certainly possible that later courts misinterpreted Congress's intent surrounding the Treaty and subsequent legislation, as pressure increased to settle and market Western lands. If the courts indeed

misinterpreted Congressional intent, Congress has the present-day prerogative to legislatively overrule such cases and restore its intent as articulated in the Treaty and Acts of 1854 and 1891. This discussion was entirely overlooked by the GAO and bears serious consideration.

A. Self-Executing Treaties and the Early Evolution of Supreme Court Decisions

According to the GAO, the Treaty of Guadalupe Hidalgo was not self-executing, and therefore Congress had discretion to craft a process for confirming land grants without any legal duty to do so as Mexico would have done. GAO at 99. Under this view, because there was no legal duty established by the Treaty, no legal rights could have been violated except for under the U.S. constitution, and any concern that the Treaty was breached is a matter for Mexico to raise in an international forum. GAO at 98-99. Thus, according to this view, however unfortunate or inequitable the federal process was, any flaws short of due process violations raise purely political rather than legal questions. GAO at 98-99.

There are a number of problems with this reasoning, beginning with the GAO's summary conclusion that the Treaty was not self-executing and therefore did not provide any legal duty or individual rights. As the GAO explains, whether a Treaty is self-executing depends on whether it "requires implementing legislation before becoming effective." GAO at 99. If a treaty does not require implementing legislation, individual rights are protected under the treaty itself and will be recognized by courts of law on that basis without further actions by Congress. *See United States v. Percheman*, 32 U.S. 51, 89, 91-92 (1833). However, whether a Treaty requires such implementing legislation is not so clear-cut as the GAO suggests. *See* Christine Klein, *Treaties of Conquest: Property Rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M.L. Rev. 201, 220 (1996).

No distinction was made between self-executing and non-self-executing treaties until the case of *Foster v. Neilson*, 27 U.S. 253, 314 (1829), where the Court began attempting to delineate a hierarchy between federal treaties and statutes. *See* Klein, 26 N.M.L. Rev. at 218-19. *Foster* held the 1819 Treaty of Cession between the U.S. and Spain, which governed the ceded territory of West Florida, did not "operate[] of itself without the aid of any legislative provision" because of its provision that Spanish land grants made prior to a specified date "shall be ratified and confirmed," essentially requiring some act of Congress before creating binding rights. *Id*. at 314-15.

Four years later, however, the Court reversed itself in *United States v. Percheman*, 32 U.S. 51, 89 (1833), holding that the same provision was in fact self-executing as to land grants that would have been entitled to recognition under Spain. The Court construed the treaty at issue in light of the rules and practices among nations that are so well-established as to be considered legally binding without any express treaty or act, also known as "customary international law" or the "law or nations." *See The Paquete Habana*, 175 U.S. 677, 708-12 (1900). Applying the customary international law of the time, the Court explained that land titles belonged to individuals, not the sovereign, and were to be unaffected by changes in sovereignty:

> A cession of territory is never understood to be a cession of the property of its inhabitants. The King cedes only that which belongs to him; lands he had previously granted were not his to cede… The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property.

Id. at 87. Applying principles of treaty construction, the Court rejected any construction of the Treaty that would have required a perfect title to be subject to investigation and confirmation by this government or be forfeited, since any such construction would run counter to this law of nations. *Id.* at 86-89. Congress, it stated, could not have intended to subject otherwise perfect

grants "valid under the Spanish government, or by the law of nations, to the determination of [the federal] commissioners." *Id.* at 91-92. Consequently, the Court held the language of the Florida treaty should have been translated to state that perfected grants "shall remain ratified," rather than "shall be ratified" by some affirmative act. *Id.* at 88-89.

Other U.S. Supreme Court decisions in the first half of the 19th century followed *Percheman* in emphasizing the customary international legal principle that perfect titles under a former sovereign retained their valid and perfect status under the new sovereign. *See Leitensdorfer v. Webb*, 61 U.S. 176, 177 (1857) (stating that, after the change in sovereignty, "private relations, their rights vested under the Government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged… This is the principle of the law of nations…"); *United States v. Wiggins*, 39 U.S. 334, 350 (1840) (stating that titles perfected under a foreign sovereign were "intrinsically valid ... and ... needed no sanction from the legislative or judicial departments of this country."); *accord United States v. Arredondo*, 31 U.S. 691 (1832).

Since that time customary international law has been held to be binding on U.S. courts in the absence of clear treaty language or domestic law to the contrary. *See The Paquete Habana*, 175 U.S. at 680 ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction…."); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 730 (2004) ("For two centuries we have affirmed that the domestic law of the United States recognizes the law of nations… It would take some explaining to say now that federal courts must avert their gaze entirely from any international norm intended to protect individuals.") (Citations omitted.)

For the following several decades, including following the Treaty of Guadalupe Hidalgo, the Supreme Court closely followed its analysis in *Percheman* when construing treaties of concession and property rights in light of customary international legal principles. *See, e.g., United States v. Wiggins*, 39 U.S. at 350 (1840); *Leitensdorfer v. Webb*, 61 U.S. at 177 (1857); *United States v. Moreno*, 68 U.S. 400 (1863). However, in the later part of the 19th Century, the Court abruptly departed from this reasoning in *Botiller v. Dominguez*, 130 U.S. 238, 244 (1889), the case relied upon by the GAO for its conclusion that the Treaty of Guadalupe Hidalgo was not self-executing. In *Botiller*, the question was whether, under the Treaty, Congress could require otherwise perfected land grants in California to be presented to the land claims commission within two years or else forfeited. *See id.* at 246-47. The Supreme Court reversed the decision of the California Supreme Court, which had construed the Act of 1851 in light of the Treaty and underlying law of nations, holding that Congress could not have intended a perfected land grant from the Mexican government to be lost for failure to present the claim within the two-year deadline. *Minturn v. Brower*, 24 Cal. 644, 662-63, 672 (1864). In reversing, the Supreme Court omitted any discussion of customary international law in existence at the time of the Treaty. Instead, it concluded that Congress's two-year deadline for filing claims, whether perfect or imperfect, was a reasonable administrative requirement not in conflict with the Treaty's private property provisions. *Botiller*, 130 U.S. at 250. Further, if Congress violated the terms of the Treaty, this was strictly a matter of international law. *Id.* at 247.

Botiller marked a dramatic shift from the reasoning in *Percheman* and other treaty construction cases up to that point suggesting the Treaty provisions were self-executing as to perfect grants. It also signaled the Court's increasing willingness to defer to Congress on matters involving the settlement of Western lands, even when such decisions arguably went against its

earlier pronouncements involving treaty rights. *See* Klein, 26 N.M. L. Rev. at 222-23. Surprisingly, *Botiller* did not even mention *Percheman*, a decision decided only a decade before the negotiation of the Treaty of Guadalupe Hildalgo and still good law at the time.

Perhaps even more surprisingly, in relying on *Botiller* the GAO did not mention this notable omission or the long line of cases leading up to the Supreme Court's shift in *Botiller*. Nonetheless, in describing the history of the Treaty and the circumstances of its negotiation and signing, even the GAO acknowledges:

> Then, as now, international law generally required a successor sovereign to recognize the property rights of a former sovereign's citizens to the same extent provided under the laws and practices of the prior sovereign.

GAO at 27-29 (internal citations omitted). Further, even later Supreme Court cases emphasized these same international law principles when considering the validity of land grants under the Treaty, albeit inconsistently. *See, e.g., Ely's Administrator v. United States,* 171 U.S. 220 (1898) (emphasizing duty under Treaty and laws of nations to recognize grants to the extent Mexico would have) and related discussion below. Nevertheless, having omitted any critique of *Botiller*, the GAO then recounts a history of the Treaty as if the negotiators and Congress at the time did not believe they were bound by the fundamental principle of international law announced in the *Percheman* line of cases. Like the first, this second omission merits scrutiny.

B. The Signing of the Treaty of Guadalupe Hidalgo

As explained by the GAO, after the initial phase of negotiation, the Senate deleted Article X of the Treaty, which specifically protected land grants to the same extent as if the territory had remained under Mexico:

> All grants of land made by the Mexican government, or by the competent authorities in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, *shall be respected as valid to the same extent that the same grants would be valid if the said territories had*

> *remained within the limits of Mexico*. But the grantees of land in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited within the same respectively, such periods to be now counted from the date of the exchange of ratifications of this treaty...

Interstate Land Co. v. Maxwell Land Grant Co., 139 U.S. 569, 588-90 (1891) (emphasis added). The first part of the Article was similar to language in the 1819 treaty with Spain later held in *Percheman* to be self-executing as to perfect grants. See GAO at 28, 175; *U.S. v. Percheman*, 32 U.S. at 87-88. However, the U.S. commissioners explained to Mexico that Article X was deleted because of its provision allowing imperfect grants in Texas extra time to satisfy their grant conditions, nonetheless assuring the Mexicans that Articles VIII and IX "secured property of every kind belonging to Mexicans, whether held under Mexican grants or otherwise." GAO at 30; *see* Richard Griswold Del Castillo, *The Treaty of Guadalupe Hildago* 44, 48 (1992); *Interstate Land Co. v. Maxwell Land Grant Co.,* 139 U.S. at 588-90 (attributing elimination of article X to U.S. refusal to recognize imperfect land titles). President Polk provided the same explanation for the deletion of Article X, emphasizing that other language in the Treaty protected land grants to the extent they would have been recognized under Mexico:

> The objection to the 10th article of the original treaty was not that it protected legitimate titles, which our laws *would have equally protected without it*, but that it most unjustly attempted to resuscitate grants which had become mere nullities, by allowing the grantees the same period after the exchange of the ratifications of the treaty, to which they had been originally entitled after the date of their grants, for the purpose of performing the conditions on which they had been made.

See id. at 589 (emphasis added).

This explanation was reiterated in the Protocol of Querétaro, in which the Mexicans reiterated their understanding that the deletion of Article X was not intended to annul land grants and that such grants would retain their "legitimate titles."

> The American government by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul grants of lands made by Mexico in the ceded territories. These grants, not withstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.

GAO at 31, 178 (quoting Second Provision, Protocol of Querétaro). Because the U.S. Senate never voted on the Protocol, and it was not included in the ratified Treaty documents, it is disputed whether the Protocol was intended to be part of the Treaty. However, while Mexico considered the Protocol binding and relied on its assertions to preserve and protect land grants, the U.S. position is that the Protocol is not in any way binding. GAO at 31-32. *See* Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* 29-30 (UNM Press, 1994).

Certainly there is no clear answer for why Article X was deleted. On the one hand, officials including the President appear to have wanted to remove Article X because of concerns about the inchoate titles in Texas, as described above. Others, more interested in land speculation and clearing the way for manifest destiny in the West, may have wanted to exclude Article X because of its similarity to the language of the 1819 Treaty discussed in *Percheman* involving perfect titles. Once this language was deleted, it was easier to argue the Treaty was not self-executing, even as to perfect claims, so that Congress could unilaterally determine the scope of the Treaty's protections, despite the fact that such a construction was arguably contrary to principles of customary international law as discussed above.

The scope of the Treaty's land grant protections in the absence of Article X, and the legal significance of the Protocol, continues to be a matter of legal debate. *See, e.g.,* Ebright, *Land Grants and Lawsuits* at 35. Certainly after *Botiller* it became increasingly difficult to argue that the Treaty provided substantive rights to those it was initially intended to protect. This argument

was made more difficult by the ways in which courts narrowly interpreted the federal legislation designed to implement the Treaty in New Mexico.

C. The Court's Narrowing Implementation of the Federal Legislation

As described by the GAO, following the Treaty Congress established the Office of the Surveyor General to settle land grant claims in the Territory of New Mexico. The Act of 1854 directed the Surveyor General to "ascertain the origin, nature, character and extent of all claims to land under the laws, usages, and customs of Spain and Mexico" and to recommend such claims to Congress for confirmation or rejection. Act of 1854, ch. 108, § 8, 10 Stat. 308, 309. The Surveyor General was then instructed to report to the validity of these claims "under the laws, usages, and customs of the country before its cession to the United States." *Id.* Twice, the Act expressly directed the Surveyor General to examine land grants as the Spanish and Mexican governments would have, adding that the purpose of the Act was to "confirm bona fide grants and give full effect to the treaty." *Id*. There appears to have been little dispute at the time that Congress, in enacting the 1854 legislation, intended to recognize land grants to the extent that they would have been recognized under Spanish and Mexican law. *See* GAO at 56 (acknowledging Interior Department's instructions to Surveyor General to recognize grants in New Mexico "precisely as Mexico would have done").

The GAO concluded, however, that Congress had a different, and significantly narrower, purpose in enacting the Act of 1891. Act of 1891, ch. 539, 26 Stat. 854. Following years of delay, resulting in part from the halt in land grant confirmations during the Civil War and large backlog of claims, and in part from the concern regarding fraudulent land speculation after the confirmation of a number of large private grants, Congress established the Court of Private Land Claims (CPLC) to resolve the numerous pending claims not yet resolved under the Surveyor General process. *See* GAO at 54-76; Ebright, *Land Grants and Lawsuits* at 45. CPLC proceedings and appeals to the Supreme Court were to be conducted "as courts of equity," and

were to be "guided" by the Treaty of Guadalupe Hidalgo, international law, and the laws of Mexico. Act of March 3, 1891, ch. 539, 26 Stat. 85 at 857, Section 7. Unlike the Act of 1854, however, the 1891 Act omitted the specific reference to custom and usage as a source of law. Instead, it instructed the CPLC to approve land grants "lawfully and regularly derived" under the laws of Spain and Mexico in accordance with Treaty provisions and principles of international and Mexican law. *See* GAO at 78; Act of 1891, 26 Stat. at 857, § 7 (directing the CPLC to evaluate claims "according to the law of nations, the stipulations of the Treaty. . . and the laws and ordinances of the Government from which it is alleged to have been derived…").

Although the 1891 legislation did not include equity as a distinct source of law, in contrast to the earlier legislation in 1851 and 1854 governing California and New Mexico land grant claims, proceedings were to be conducted "as courts of equity." As the GAO acknowledges, the scope of the courts' equity jurisdiction was unclear under the language of the 1891 Act. GAO at 81-82. Nonetheless, the requirement that courts evaluate claims in accordance with international law and Treaty provisions, and "according to the practice of the courts of equity," suggests courts were bound to honor titles to the extent they would have been recognized by Spain or Mexico, and to temper the "lawfully and regularly derived" directive with equitable considerations.

Indeed, some cases arising under the Act of 1891 applied principles of equity, the Treaty provisions, and the laws of nations to confirm grants with various technical infirmities. For instance, in *Ely's Administrator v. United States*, 171 U.S. 220, 223-24, 240 (1898), the U.S. Supreme Court held that the granting official had authority to issue the grant in light of the customary practice of doing so, even where the laws in place at the time were ambiguous as to his authority. The Court emphasized the duty under the Treaty and laws of nations to recognize

titles to the extent that Mexico would have, *id.* at 223 ("It was undoubtedly the duty of Congress…to recognize and establish every title and right which before the cession Mexico recognized as good and valid"), as well as the courts' equitable powers under the 1891 Act, to look behind the technical rules to ascertain the proper boundaries of a Mexican grant. *Id.* at 240 (under the 1891 legislation, the Court was "not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico"). In so doing, the Court underscored the following:

> It must be remembered, in this connection that by section 7 of the act creating the court of private land claims, it is provided 'that all proceedings subsequent to filing of said petition shall be conducted as near as may be according to the courts of equity of the United States.' Therefore in an investigation of this kind that court is *not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico*. It was doubtless the purpose of congress, by this enactment, to provide a tribunal which should examine all claims and titles, and that should, *so far as was practicable in conformance with equitable rules*, finally settle and determine the rights of all claimants."

Id. (emphasis added). Likewise, in *United States v. Chaves*, 159 U.S. 452, 456 (1895), a case involving the Cubero grant, the Supreme Court upheld a CPLC decision that oral evidence could be used in place of written documents to prove the existence of a valid land grant, based in large part on the laws of nations and Treaty obligation to recognize grants to the extent they would have been valid under Mexico. *See* Ebright, *Land Grants and Lawsuits* at 50-51.

These cases cast into doubt the GAO's assertions that Congress in the Act of 1891 simply precluded any consideration of equity and principles other than the letter of the law as it existed under Mexico. *See* GAO at 113-23 (relying on cases such as *United States v. Sandoval*[2], *Hayes v. United States*, and others that applied the earlier, technical holdings of *United States v. Vigil*, 80 U.S. 449 (1871), and *United States v. Cambuston*, 61 U.S. 59 (1857)). Contradictory

[2] As discussed in Section II.D. below, in addition to its treatment of equity, *Sandoval* has also been strongly criticized for its basic misunderstanding and misapplication of Spanish and Mexican law.

decisions during the CPLC era point less to any clear statement about Congress's intent in the 1891 legislation than to the lack of clarity in the statute regarding the role of equity, as well as an adversarial system in which the increasingly technical arguments of government lawyers, responding to pressure to keep as much land as possible in the public domain for settlement and speculation, were able to prevail. *See, e.g.*, Ebright*, Land Grants and Lawsuits* at 45-50, 136-39. Due process concerns regarding such a system are discussed in VI below.

To be sure, the U.S. Supreme Court increasingly rejected otherwise perfect grants based on technicalities that arguably would not have resulted in rejection under Mexico and may have been inconsistent with the Treaty and/or the law of nations. Reversing its analysis in earlier decisions such as *United States v. Chaves*, for instance, the Court in *Hayes v. United States*, 170 U.S. 637, 643-48 (1898), relied exclusively on the "lawfully and regularly derived" language in rejecting a grant made by the territorial deputation in 1825, before regulations were in place that may have prohibited such an entity from making grants in New Mexico. The Court disregarded that this appeared to be the customary practice of the time, implicitly sanctioned by Mexican government, as well as the fact that earlier courts had looked beyond similar technicalities under each of the federal acts for New Mexico and California land grants where a grant otherwise appeared to be valid. *E.g., Ely's Administrator*, 171 U.S. at 224 (just three years earlier, reaching opposite conclusion as *Hayes* under similar facts); *Fremont v. United States*, 58 U.S. 541, 561-62 (1854) (upholding validity of grant, even when territorial official dispensed with strict legal requirements in making grant, based on evidence of such customary practice in territory); *cf. Crespin v. United States,* 168 U.S. 208, 217 (1897) (rejecting grant on its facts, but recognizing that some grants made by otherwise unauthorized officials received approval of Mexican government); *see* Klein, 26 N.M.L. Rev. at 228, n. 206.

Similarly, later cases tended to narrowly interpret the 1891 Act as disallowing confirmations based on copies of grant documents where the originals had been lost or destroyed. GAO at 121-23 (discussing the Town of La Cieneguilla and Embudo grants, in which Supreme Court held that, where the original grant documents had been lost, copies of grant documents were insufficient to confirm the grant under the 1891 Act)**.** [3] Holdings such as these have been much criticized by legal scholars for being overly technical, in addition to being remarkably out of touch with the official custom and practice on the New Mexican frontier. *See id.* at 46-47, 137; John R. Van Ness, *Spanish American vs. Anglo American Land Tenure and the Study of Economic Change in New Mexico*, 13 Soc. Sci. J. 45, 48 (1976). Because there were no official notaries in the New Mexico territory, for instance, in many cases where original papers were lost or destroyed, descendants of the original grantees sought and received copies of the original document, along with a certification that the copy mirrored the original, from the highest local government official. *See* Ebright, *Land Grants and Lawsuits* at 130. By rejecting perfect land grants that had complied with such sanctioned practices, these decisions were arguably contrary to the statute and the laws of Mexico. These decisions also appear to run counter to principles of statutory construction that acts of Congress should be construed to the extent possible not to violate international law and norms. *Hartford Fire Ins. Co. v. Cal.*, 509 U.S. 764, 815 (1993) (internal quotations and citations omitted); *Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 118 (1804).

However, rather than criticize these cases as being arguably contrary to the Treaty, the law of nations, and Congress's intent in the 1891 statute, the GAO accepts the holdings from

[3] However, as even the GAO acknowledges, even as late as the 1890's the CPLC continued to confirm land grants where original grant papers were missing. Such cases included the La Majada, Cubero, Santa Cruz, Black Mesa and Town of Bernalillo land grants. *See* GAO at 121-22, table 26. In the case of Santa Cruz, the decision came even after the Supreme Court's seemingly contradictory decision in *Hayes v. United States*.

cases such as *Hayes* and *Sandoval* in determining that Congress intended to omit any consideration of equity from the 1891 legislation. In other words, although the GAO concedes that the implementation of the 1891 legislation resulted in unfortunate and even inequitable land losses, *see* GAO 7, 9, it concluded the result was perfectly legal. *See, e.g.,* GAO at 97, 99. The GAO ignores the possibility that some decisions misinterpreted or simply disregarded the Treaty and Act of 1891, or that these increasingly technical decisions resulted in sufficient inequities to cause Congress to reevaluate the propriety of such decisions.[4]

The language of both the 1854 and 1891 Acts suggests that Congress intended to confirm New Mexico land grants as Mexico would have, consistent with international law and the history of the Treaty. If this was the case, it is within Congress's purview to correct the courts' misinterpretation. Certainly such remedial legislation is worth Congress's consideration.

D. Federal Remedies

The GAO's conclusion that the Treaty was not self-executing is far from unassailable. In light of the legal context of the time, Congress may well have intended the Treaty to be consistent with the customary international legal principle that lands that would have been valid under Mexico were required to be recognized to that same extent under the new sovereign. Further, contemporary courts recognize that, even where treaty provisions themselves are not clearly binding, domestic law should be interpreted and applied to be consistent with legal norms articulated by the treaty. *See Lobato v. Taylor*, 71 P.3d 938, 947 (Colo. 2002) (stating "[i]t would be the height of arrogance and nothing but a legal fiction" to interpret a 19th century land grant

[4] The one exception is the *Sandoval* case, where the GAO suggests that Congress, if it disagrees with the decision, may want to consider legislatively overruling this decision. GAO at 161. However, as even the GAO acknowledges, even as late as the 1890's the CPLC continued to confirm land grants where original grant papers were missing. Such cases included the La Majada, Black Mesa, Town of Bernalillo, Santa Cruz, and Cubero, land grants. *See* GAO at 121-22, table 26, Appendix A. In the case of Santa Cruz, the decision came even after the Supreme Court's seemingly contrary decision in *Hayes v. United States*.

document "without putting it in its historical context," informed by international law as well as Mexican law and custom).

Such an analysis calls into question the holding from *Botiller* and suggests, a century later, that Congress may want to consider reviewing and possibly overruling this decision through affirmative legislation. The GAO report fails to critique and analyze not only the *Botiller* decision, but any obligations the U.S. may have based on the intent and spirit of the Treaty, particularly in light of existing customary international law. Such an omission should be corrected and brought to light.

II. Grants Improperly Counted by the GAO as "Confirmed"

In its discussion of confirmed land grants, the GAO inadequately addresses the fundamental problem of lands grants not being awarded correctly, using statistics and drawing conclusions that fail to evaluate the extent to which erroneously confirmed land grants led to land loss.

Further, based on an incomplete and at times flawed historical and legal analysis, the GAO erroneously determined that improper confirmations could be corrected in the courts, and that many of the losses of confirmed grant lands were due to the acts or omissions of land grantees and heirs themselves.

The GAO identifies as two of the primary long-standing concerns that prompted its Report the fact that (1) many valid community land grants were denied confirmation, and (2) even where there was confirmation of valid grants, many were confirmed to the wrong person. GAO at 8-10. While the GAO's stated purpose is to assess these concerns, its assessment is surprisingly incomplete. Concluding that a substantial number of land grants were confirmed, and suggesting the federal government largely succeeded in its obligation under the Treaty, the

GAO largely ignores and fails to provide similar data relating to the large numbers of community land grants that were confirmed *improperly*, i.e., not as Mexico would have done, based on errors in the confirmation process and a failure to apply the proper legal standards. The GAO also fails to acknowledge the effect of these wrongful confirmations in causing massive dispossession of land grant heirs without any legal recourse in the courts, based on much-criticized Supreme Court decisions that Congress never acted to rectify. This Section discusses the incomplete and sometimes misleading way in which the GAO treated this problem of incorrectly confirmed community grants.

A. Historical Context of Community Land Grants

In emphasizing the number of community grants that were confirmed, even if they were confirmed improperly as private grants or tenancies in common, the GAO first seems to overlook the essential quality of a community land grant which distinguishes it in critical ways from a private land grant or from a tenancy-in-common landholding pattern. In general, land grants were either private grants (also called "individual grants") or community grants. Spanish and Mexican granting documents did not use the distinguishing terms "community" or "private" grants, so both types of land grant claims were brought into the confirmation process without these labels. Under Spanish and Mexican land law and legal custom, the two types of grants differed significantly in terms of ownership patterns within the boundaries of the grant, use patterns, whether lands could be sold, and decision-making in general. In confirming land grants under the federal process following the Treaty, federal officials were charged with familiarizing themselves with these Spanish and Mexican laws and customs.[5]

[5] Written instructions from the General Land Office in 1854, just after the Office of the Surveyor General was established, directed that "Among the 'necessary acts' contemplated by the law and required of you, is, that you shall: (1st) Acquaint yourself with the land system of Spain as applied to her ultra-marine possessions, the general features of which are found -- modified, of course, by local requirements and usages -- in the former provinces and

A community land grant was a very distinct type of land ownership pattern in New Mexico from an individual grant. Under Spanish and Mexican law, community land grants were designed to directly provide the necessary resources to sustain an entire community. The key land ownership feature for community grants was *true common lands*, meaning lands that were not privately owned but were community-owned and freely used by all grant residents. A small portion of the lands within community grants were private, e.g, house lots and privately owned irrigated lands, but those private lands were surrounded by much larger expanses of common lands, to which all land grant residents had free access and which were critical to successful small-scale farming and stockraising activities upon which the local economy was based. Land grant boundaries were deliberately designated so as to encompass the various ecological zones that would contain the whole array of critical resources.[6] The common lands could not be sold but were to be held in perpetuity by the land grant in its corporate capacity as a quasi-public entity.

In contrast, an individual land grant was regarded as private land in its entirety. Private grants were the private property of the grantee in their entirety, and their use, ownership, and

---

dependencies of that monarchy on this continent...". The instruction further clarified that "It is obligatory on the government of the United States to deal with the private land titles and the 'pueblos' precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done -- to go that far and no further. This is the principle which you will bear in mind in acting upon these important concerns." Instructions to the Surveyor General of New Mexico, General Land Office, August 21, 1854. GAO at 193-99.

[6] Researchers have identified the different resources available from the privately held lands (e.g., irrigated agricultural products) versus those available from the common lands (e.g., forest products, pasture, wild game), and have described how the land grant residents made use of these different resources at different times over the course of a year . John R. 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 of Hispanic Land Grants 141-214 (Charles L. Briggs & John R. Van Ness eds., University of New Mexico 1987). These studies have concluded that for land grant communities and community members to survive in the non-cash economies prior to the mid-20th century, it was essential that they have access to the common land resources which interplayed with the resources of their own private inholdings to produce a complete resource base for successful small-scale family farming and stockraising activities. For this reason, a "correct" confirmation of a community land grant was more than simply the historically valid thing to do, it was necessary for the communities to survive.

marketability were purely private decisions. All decisions regarding the grant, e.g., who could enter and use the grant, or the sale of any portion of the grant, were the grantees' decision alone.

Although the Report focused specifically on *community* land grants and the concerns related to the federal confirmation process establish under the Treaty, the GAO did not appear to regard it as a failure of the confirmation process when community land grants were awarded to individuals or as tenancies-in-common, or where common lands were otherwise privatized, despite these critical differences in land tenure. On the one hand, the GAO acknowledged that grantees are concerned that many community land grants were not confirmed to the "rightful owners," GAO at 8, meaning that community lands grants were confirmed in ways that did not preserve the community-owned nature of the common lands. However, the GAO then fails to analyze these concerns in any meaningful way. Such an analysis is critical to an understanding of the failures in the federal confirmation process.

B. Erroneous Confirmations of Community Grants to Individuals as Private Grants

In a number of cases, community land grants were improperly confirmed as individual grants. This was done when the confirmatory document used language assigning ownership of the grant to "the heirs, assign and legal representatives of" some named individual, rather than to "the Town of _____" This confirmatory language became the legal basis for the individual's claim to the entire grant. *See, e.g., Reilly v. Shipman*, 266 F. 862 (8th Cir. 1920) (language in confirmatory document is determinative in questions as to whom title to a land grant was vested). Typically the individual who was awarded the grant was the *poblador principal*, whose name appeared prominently in the Spanish and Mexican granting documents as the person petitioning for the grant. It was not uncommon that a single person (or a small number of people) would initiate the petition to the Spanish or Mexican government for a community grant on behalf of

themselves and a larger number of settlers. The grant would mistakenly be awarded to that individual if the U.S. official reviewing those documents erroneously overlooked references to the purpose of the grant as one of establishing a settlement, or references to other settlers joining the poblador principal, or other evidence of a community grant.

The most well-known case of this was the Tierra Amarilla Grant. Published legal histories of this grant demonstrate that this was a land grant given for the purposes of founding a settlement but that confirmation of the grant was sought by Francisco Martinez, solely in his name, as an heir of Manuel Martinez, the poblador principal. *See e.g.,* Malcolm Ebright, *The Tierra Amarilla Grant: A History of Chicanery* 14-20 (Santa Fe: The Center for Land Grant Studies, 1993). The granting documents related that the grant was given by the Mexican government in 1832 to "the related petitioners and the rest which may join together" with the directive that "the pastures, watering places and roads shall be free according to the custom prevailing in all *settlements*." *Id*. at 13 (emphasis added). Histories such as Ebright's demonstrate that the Surveyor General overlooked important features of the granting documents indicating it should have been regarded as a community grant. *Id.* Similarly, in the case of the Juan Bautista Valdez Grant, the grant was confirmed to Juan Bautista Valdez despite the fact that nine other named individuals were put in possession of lots on the grant as part of the act of possession by the Spanish granting official. Decision of the Court of Private Land Claims, June 1898, Juan Bautista Valdez Grant, PLC 179, Roll 50, frames 474-476.

The most important consequence of any mistaken confirmation of a community grant to an individual was the legal conversion of the common lands of the land grant to ownership by a single individual as private property. Spain and Mexico never intended that such common lands be privately held. Of course, private ownership meant that the individual owner could sell the

former common lands, something that would not have been permitted to happen to community grant common lands under Spain or Mexico. Ebright, *Land Grants and Lawsuits* at 38. Even if it did not happen immediately, ultimately the lands would pass to an owner who would enforce his or her private rights and exclude or fence out the residents who depended on the common lands for their livelihoods.

This is precisely what happened with the Tierra Amarilla Grant, which was the subject of a long line of legal decisions involving a series of non-residents, beginning with Thomas B. Catron, who had purchased the interests of the Francisco Martinez heirs and claimed thereby to own all 594,515 acres of the grant. Each time, the Tierra Amarilla Grant residents asserted their rights to the common lands the court based its denial on the U.S. confirmation language which vested ownership of the grant in Francisco Martinez. *Martinez v. Rivera*, 196 F.2d 192 (10th Cir. 1952); *Flores v. Bruesselbach*, 149 F.2d 616 (10th Cir. 1945); *Payne Land & Livestock Co. v. Archuleta*, 180 F. Supp. 651 (D.N.M. 1960); *Martinez v. Mundy*, 295 P.2d 209 (N.M. 1956); *H.N.D. Land Co. v. Suazo*, 105 P.2d 744 (N.M. 1940). Thus the mistaken confirmation resulted in a radical and legally enforceable change in ownership of lands that were clearly intended by Spain and Mexico to be freely open to land grant residents in perpetuity.

The GAO did not provide any real analysis of this problem. The Report simply recounted the general facts relating to the awarding of the Tierra Amarilla Grant and the unsuccessful attempts by the heirs to recover their rights to the common lands. GAO at 105. Although the Report noted the "concern" over confirmations that were not made to the rightful owners, the Report failed in any way to assess the validity of that concern or attribute the loss of the Tierra Amarilla Grant common lands land to the incorrect confirmation of the grant as a private grant.

Rather, the GAO attempted to characterize the loss of lands in cases such as these as a "post-confirmation" problem brought on by grantees themselves. See Section IV.B. below. In its general discussion of the concerns over misconfirmations, the GAO concluded – incorrectly – that at least some of those incorrect misconfirmations could be corrected by present-day court action, and that the federal government had thereby provided a remedy by which such misconfirmations could be corrected and the lands finally awarded in the proper ownership. The invalidity of this conclusion is further explored in Section III.C. below. In general, the GAO sidestepped any in-depth evaluation of the source and scope of this problem.

C. Erroneous Confirmations of Community Grants as Tenancies in Common, Setting in Motion the Privatization of Otherwise Community-Owned Lands

Another way in which land grant common lands underwent a radical redefinition in ownership by the U.S. government was when they were erroneously converted from community-ownership to a type of private ownership called a tenancy-in-common. Once the common lands were erroneously privatized in this way, private "shares" or "interests" in the common lands came into existence and became the object of speculative activities by non-residents of the grant. This privatization of the common lands also led in some cases to the loss of the entire common lands through a type of lawsuit called a partition suit.

Partition suits derive from Anglo-American law, and are filed when a tract of undivided private land is held jointly by a number of co-owners and one co-owner wants to "cash out" his or her share of the land, but the co-owners cannot agree on a buy-out. In this event, the individual can force the entire parcel of land to be sold at a public auction, and each co-owner gets his or her proper share of the proceeds of the sale. It is a fairly drastic measure, because the suit can force the sale of the land out from under all the remaining co-owners at the instigation of a single co-owner, even if all the other co-owners want to remain owners of the land and don't

want it to be sold. A common scenario for a partition suit is when a tract of family land has been passed from the parents to all the siblings, and each sibling has a fractional share of the undivided piece of land. If one sibling wants to "cash out", and if they cannot come to any agreement whereby that sibling gets bought out by another, the one sibling can force the sale of the land by filing a partition suit. This type of jointly-owned private land is said to be a *tenancy-in-common.*

The common lands of community land grants should never have been subject to a partition suit because they were not tenancies-in-common under Spanish and Mexican law; they were not private lands held by distinct co-owners. They were lands owned by the land grant itself as a public corporate body. This distinction is critical. Land grant common lands were analogous to a city-owned park. If there are 100 residents of a city, there is no right in any resident to assert that he or she "owns" one percent of the park, the way a family member might own a share of the family land. Legally, the city owns it, and the residents only have the right to use the park. Because city-owned lands are not tenancies-in-common no one can file a partition suit to have them partitioned. There is only one owner – the city. Similarly, Spanish and Mexican land grant common lands were owned by the land grant itself in its corporate capacity. The residents had the right to use them, but had no ownership over them.[7]

In New Mexico the fatal act that led to the partitioning of community land grant common lands occurred when the U.S. government erroneously created a tenancy-in-common by confirming the grant to a group of individuals rather than to the community land grant itself.

[7] J. Van Ness, Hispanic Land Grants: *Ecology and Subsistence in the Uplands of Northern New Mexico and Southern Colorado*, in C. Briggs and J. Van Ness, eds, *Land, Water, and Culture: New Perspectives on Hispanic Land Grants, Albuquerque* (1987); Daniel Tyler, *The Spanish Colonial Legacy and the Role of Hispanic Custom in Defining New Mexico Land and Water Rights*, Colonial Latin American Historical Review; Daniel Tyler, *Ejido Lands in New Mexico, in Spanish and Mexican Land Grants and the Law* (Malcom Ebright ed., Sunflower University Press, 1989).

This did not happen in every instance, but it happened in a significant number of them. *See* Appendix A. Often, the government erroneously awarded the grant to the original settlers named in the grant documents. In doing so, the government created a tenancy-in-common that had never existed by dissolving the community ownership of the grant and completely privatizing the common lands.[8] Certain heirs were now suddenly the private owners of a fractional share in the common lands. As such, the common lands, or shares of them, could be sold to non-residents. A single heir or a buyer of an heir's share of the co-tenancy could now sue to partition the land grant and force the sale of what had been the common lands without the consent of the other heirs. These processes and transactions would have been legally impossible under the community-ownership pattern created by Spain or Mexico at the inception of the land grant. In the city-park analogy described above, it was as if the U.S. Government had decreed that all city residents now owned one percent of the park and could do with their one percent whatever they wanted, including filing a partition suit and forcing the sale of the park to the highest bidder.

i. Tenancies-in-Common: A Federal Invention for Community Land Grants

No community land grant ever should have been confirmed or patented as a tenancy-in-common, as there was no support in prior law or customary practice for the notion that such common lands were tenancies-in-common under Spain or Mexico. The confirmation of community grants as tenancies-in-common was a monumental error on the part of the U.S. confirmation process which led to disastrous consequences for land grant heirs in nearly every case in which it occurred. That the GAO failed to recognize this in any meaningful way is an

[8] Up to that point the only private lands within the grant would have been each resident's own irrigated lands and house lot. Conversion of a community grant to a tenancy-in-common did not change the status of those private lands, but privatized the remainder of the grant by giving a fractional share to each named grantee.

omission that must be clarified in considering possible remedies for the loss of land grants in New Mexico.

The fact that community land grant common lands were truly communal lands, and were not held as private fractional shares, was an elemental aspect of Spanish and Mexican property law at the time of the change in sovereignty. Tyler, *The Spanish Colonial Legacy and the Role of Hispanic Custom in Defining New Mexico Land and Water Rights* at 2; Tyler, *Ejido Lands in New Mexico*. In many cases, the Spanish and Mexican granting documents themselves contained language that made it manifestly clear that the common lands were not private lands, and these documents were always closely reviewed by the relevant U.S. officials. Federal personnel delved into much more arcane nuances of Spanish and Mexican land grant law, albeit not always correctly, such as exactly who could authorize a land grant, the legal maximum size a land grant could be, or how long the grantees had to reside on the grant before it vested. The fact that land grants were originally granted either as private grants or as community grants – but virtually never as tenancies-in-common – was basic by comparison.[9] Given this and the fact that the Surveyor General was specifically mandated to settle land claims "precisely as Mexico would

[9] Spanish and Mexican granting documents did not use the distinguishing terms "community" or "private" grants to differentiate grants that had true common lands from purely privately-held grants. However, there were often clear indications in the granting documents as to the community nature of a particular land grant, which would have indicated that these grants were not tenancies-in-common under Spanish and Mexican law. For example, the GAO considered a land grant to be a community grant if any one of the following three criteria were met in the original grant documents: (1) the grant documents declared part of the grant to be for communal use, using such terms as "common lands" or "pasturage and water in common", (2) the grant was made for the purpose of establishing a new town or settlement, or (3) the grant was issued to 10 or more settlers. GAO Report, *Definition and List of Community Land Grants in New Mexico* at 7-8 *(*September 2001). Had federal officials used even this simple criteria to designate "original document" community grants, and been consistent in ruling out a tenancy-in-common land tenure for those grants, many land grants would have been spared the problems and losses that accompanied confirmation as a tenancy-in-common.

have done had the sovereignty not changed",[10] it is hard to understand this wholesale misconstruction of the basic land tenure pattern under Spain and Mexico.

Yet of the 131 non-Pueblo community lands grants identified by the GAO, U.S. decision-makers awarded fewer of them as true community land grants (20) than as tenancies-in-common (27) – an astounding statistic when one considers that tenancies-in-common were a land tenure pattern not used by Spain or Mexico for community grants. Each of these tenancies-in-common recast the common lands as a set of fractional, highly-marketable private shares – a far conceptual cry from the Spanish and Mexican idea of common lands as an intact and inalienable pool of publicly-owned resources.

Why this happened is certainly an issue that would benefit from further research. In some cases, it is clear that land speculators with connections to decision-makers in Washington influenced the outcome so that certain community land grants were confirmed as tenancies-in-common despite the residents' wishes to the contrary. An example of this is discussed below in the case of the Mora Grant. The obvious motivation for a land speculator would have been that the speculator understood that a tenancy-in-common would have afforded several types of opportunities to detach the former common lands from the community and release them into the market. All the speculator had to do was acquire a share of the tenancy-in-common from any heir and force a partition suit, and he could make a profit on his acquired share or put in a

[10] Written instructions from the General Land Office in 1854, just after the Office of the Surveyor General was established, emphasized that the Surveyor General was to thoroughly familiarize himself with the Spanish land system ("Among the 'necessary acts' contemplated by the law and required of you, is, that you shall: (1st) Acquaint yourself with the land system of Spain as applied to her ultra-marine possessions, the general features of which are found -- modified, of course, by local requirements and usages -- in the former provinces and dependencies of that monarchy on this continent..."). The Surveyor General was also to defer to Mexican law and custom ("It is obligatory on the government of the United States to deal with the private land titles and the 'pueblos' precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done -- to go that far and no further. This is the principle which you will bear in mind in acting upon these important concerns.") Instructions to the Surveyor General of New Mexico, General Land Office, August 21, 1854, GAO at 193-99.

speculative bid on the entire common lands.[11] See Appendix B, David Correia, "Land Grant Speculation in New Mexico During the Territorial Period" (hereinafter, "Correia, Appendix B") at 21-23. Or, if the speculator were a lawyer, which was not uncommon, he could facilitate the process without having to make an initial purchase by encouraging a grantee to file a partition suit and by representing him or her in that suit.[12] In contrast, a community land grant confirmed with intact, community-owned common lands would not have been subject to partitioning and would not have provided these types of speculative opportunities.[13]

---

[11] In the case of the Mora Land Grant, a partition suit was filed by Stephen B. Elkins, a non-resident land speculator, and Vicente Romero, a resident, both of whom had bought a number of fractional interests in the grant (see inset, case study on Mora Grant). Elkins, an attorney, had also acquired an interest in the grant as payment for representing a grant resident in a criminal case. The partition suit for the Domingo Fernandez (a/k/a San Cristobal, a/k/a Eaton) Grant was filed by non-resident Thomas B. Catron after he acquired an interest by purchase. The Santa Barbara Grant was represented by attorney Napolean Bonaparte Laughlin before the Court of Private Land Claims, for which he received a fee of an undivided one-third of the grant. The grant was confirmed as a tenancy-in-common, which made Laughlin a 1/3 co-owner of the common lands, and therefore a potential initiator of a partition suit. Three years after confirmation and receiving his fee, he sued for partition, and the entire common lands of his former clients were sold. Laughlin himself was the high bidder at the auction, so he bought the grant and reportedly sold it five years later at more than 400 percent profit. Obviously it was a serious ethical violation for an attorney to take land as payment and then file a suit that resulted in the sale of his clients' land out from under them. Yet this occurred in a number of cases. David Benavides, *Lawyer-Induced Partitioning of New Mexico Land Grants: An Ethical Travesty* (Guadalupita, Center for Land Grant Studies, 1994). All three of these grants were considered "original documentation" community grants by the GAO, but were confirmed as tenancies-in-common.

[12] Attorney Alonzo B. McMillen represented the petitioner in the suit to partition the Town of Las Trampas Land Grant. McMillen's law partner was the sole bidder at the auction. The court, however, determined that this setup was fraudulent and ordered a new sale. At the time the Alameda Grant was partitioned and ordered sold, McMillen, who again represented the party petitioning for partition, was found to be the owner of just under one-half of the common lands of the grant, which he had received "for legal services rendered and by purchase." *Montoya v. Heirs*, 16 N.M. 349,358, 120 P. 676 (1911). Thus through the partition suit McMillen hoped to receive just under half of the proceeds of the sale. (In that case, however, the court decided there were no common lands to partition, so there was no sale.) McMillen also represented the petitioners in the suit to partition the Cañon de San Diego Grant. This time McMillen, as the only bidder at the auction, did purchase the grant and the purchase was not set aside. Taylor, G., "Notes on Community-Owned Land Grants in New Mexico, at 8 (University of New Mexico Law Library, 1937). These three grants were considered community grants by the GAO, with the Las Trampas Grant and the Cañon de San Diego Grant being "original document" community grants.

[13] The partitioning of the Town of Tome Grant was halted when the grantees attempting to sue for partition were held to have no interest in the common lands because all legal title in the common lands was vested in the incorporated town. *Bond v. Unknown Heirs of Barela*, 16 N.M. 660, 120 P. 707 (1911) *aff'd*, 229 U.S. 488 (1913). This same description of community-ownership of the common lands -- and the absence of private ownership in the common lands -- was determined for the Town of Atrisco Grant, *Armijo v. Town of Atrisco,* 56 N.M. 2, 239 P.2d 535 (1951), the Town of Chilili Grant, *Shearton v. Town of Chilili Land Grant*, 2003-NMCA-120; 134 N.M. 444, 78 P.3d 525, the Town of Belen and Town of Casa Colorado Grants, *Yeast v. Pru,* 292 F. 598 (D.N.M. 1923) and the Anton Chico Grant, *Reilly v. Shipman*, 266 F. 862 (8th Cir. 1920). Also *Cubero v deSoto*, 76 N.M. 490,491, 416 P.2d 155 (1966). These were all cases of grants confirmed as community land grants and not as tenancies-in-common. None of these grants was successfully partitioned. Proper confirmation a community land grant, therefore, tended to be a shield against partitioning. The only instance of a partitioning of a community land grant confirmed

That still begs the question, however, as to why federal officials would have entertained the proposition that common lands could be held as tenancies-in-common, especially given the absence of either Spanish or Mexican law or customary practice recognizing this type of land tenure among land grants. The GAO suggests that because of the quitclaim language in the confirmatory acts and in patents, it was of little consequence if federal officials got the ownership wrong. According to the GAO, the true owners could have their day in state court after the federal confirmation process and ultimately have the grant awarded to the proper owners or in the proper land tenure pattern. GAO at 66, 107, 132. If this explanation were true, it would mean, in effect, that the federal government felt it was discharging its treaty obligation even if it was negligent in awarding land grants and even if the rightful owners were thereby forced to initiate a completely different court process to get back the grant from the individual to whom the federal government had improperly awarded the grant.

It does not appear, however, that the federal government actually relied on the existence of state court corrective action to make up for any lack of federal rigor in applying Spanish and Mexican law. If it had, the federal government would have made dramatic changes in the wake of the *Tameling* decision to conform its subsequent confirmations more closely to Mexican law. As discussed in Section III of this report, the U.S. Supreme Court's 1876 decision in *Tameling* made it clear that the courts had no jurisdiction to review an allegedly incorrect land grant confirmation by Congress. Contrary to the GAO's theory, however, there is no record of this ruling resulting in a systematic review of federal recommendations to look for possible mistakes to avoid those mistakes being set in stone once Congress acted, nor was there a halt to the confirmation of community lands as tenancies-in-common.

---

as such is the partial partitioning of the Cebolleta Land Grant, in which the common lands were not sold as a block by the court, but large tracts were awarded to private non-resident individuals and attorneys, leaving the grant itself with only about 16% of its former common lands.

In fact, the federal government often took less interest in correctly determining the nature of a grant's land tenure than in correctly determining other aspects of the grant. The case of the San Joaquin de Nacimiento Grant illustrates this pattern.[14] The grant was submitted to Surveyor General T. Rush Spencer in 1871. Spencer found the grant to be valid and drafted a decision approving the grant. He died before the decision was formally issued. His successor as Surveyor General, James K. Proudfit, issued the formal decision approving the grant in 1872, and submitted it to Congress. The decision confirmed the grant, incorrectly, as a tenancy-in-common, to "the thirty-six original grantees and their heirs and legal representatives."[15] The grant was surveyed in 1879 for 131,725 acres.[16]

Tension arose on the grant because of the presence on the grant of settlers who had no connection with the original 1769 settlement, some of whom had recently been given small holding claim permits by the General Land Office.[17] At the same time, the grant had seen a steady influx of descendants of the original settlers re-occupying the grant as conditions became safer for permanent occupation in the outlying areas of the territory. Had the grant been understood to be a community grant, it is possible that the community could have accommodated new settlers, provided them with unallotted lands or unoccupied lands that were not re-settled, and integrated them into the grant. This happened on a number of grants. *See* case study on the Mora Grant, below. But the combination of the tenancy-in-common designation, in which only

---

[14] This grant centered around present-day Cuba, N.M.

[15] The Spanish granting documents made clear that the grant was for the purpose of establishing a settlement, and that the grant was being made to 36 heads of family. The GAO considered this grant as an "original document" community grant. See fn 8.

[16] J.J. Bowden, "Private Land Claims in the Southwest," 6 vols., Master's thesis, Southern Methodist University, 1969, 1384.

[17] The 1854 Surveyor General Act sought to prevent the unnecessary creation of competing claimants for the same lands by making claimed land grant lands were off limits to distribution by the GLO under homestead and similar laws. The GLO reported in 1885, however, that its employees had routinely disregarded that prohibition during this time period, which created unnecessary internal problems for many land grants. H.M. Teller (Secretary of the Interior), "Report upon the subject of fraudulent acquisition of titles to lands in New Mexico," 3 March 1885, 48th Congress, 2nd Session, Ex. Doc. No. 106.

descendants of the original grantees had rights to the land, and the unlawful yet federally issued small holding claim permits for some of the same land created what seemed to be irreconcilable claims. Here was a perfect opportunity for the federal government to properly recognize the grant as a community grant, undo the tenancy-in-common designation, affirm the common lands as a public resource and perhaps resolve a locally-contentious issue that it helped create in the first place.

Surveyor General Julian and his staff conducted significant field research in an 1886 re-examination of the claim, but his decision compounded the errors of his predecessors by reversing their approval of the grant and holding that the grant was invalid "by reasons of non-compliance with the conditions prescribed". Not only were the three reasons given fairly technical ones (non-compliance with the four-year residency requirement; that the town itself did not conform to the design or size as set forth in the Spanish granting papers; and that "[t]he names of the present claimants of the land are not given and there is no proof that they are the heirs and legal representatives of the grantees"), but the second reason was not a valid reason for denying a land grant, and the first one was not supported by the evidence.[18] But it is Julian's third point that was collateral to the issue of the grant's validity. If the grant had been correctly confirmed to "the Town of San Joaquin del Nacimiento," or "the inhabitants of San Joaquin de Nacimiento", as other correctly-identified community grants had been, rather than as a tenancy-in-common to "the thirty-six original grantees and their heirs and legal representatives", the

[18] Julian based his finding of non-compliance with the four-year residency rule "most probably on account of the hostility of the Indians". None of the affidavits upon which Julian relied related to the four-year period after the grant was made (1769-1772). The affiants only could attest to the condition of settlement of the grant in the 1800s, when it appears there were alternating periods of abandonment and resettlement of the grant. On the other hand, multiple births and marriages were recorded in archdiocese records for the period 1769-1786 among residents identified as being from San Joaquin del Nacimiento; many of the original grantees named in the Spanish granting documents are named in these records. Thus records existed that supported the settlers' compliance with the four-year residency requirement. Julian, without any evidence to the contrary, simply chose to believe otherwise.

question of who was descended from the original grantees would have been moot. But since Julian's investigation focused more effort on finding technicalities for invalidating the grant than on determining the proper ownership pattern under Spanish law, this solution was never reached. Instead, Julian's decision, had it been adopted by Congress, would have meant that the entire land grant would have been U.S. public domain.[19]

In this and other cases, U.S. officials showed themselves quite capable of delving into the minutiae of Spanish and Mexican land law, but it appears they did so selectively. In the Nacimiento case, one sees a very rigorous analysis, albeit incorrect, regarding the validity of the grant. The same attention was not consistently given to the land tenure question, which could have ensured greater conformity with the community-ownership patterns established under Spanish and Mexican law. Having earlier determined a tenancy-in-common where one had never existed, federal officials found "problems" regarding the validity of the grant, some of which in fact were problems arising only as a consequence of the tenancy-in-common designation. These "problems," as well as conflicts on the ground, all could have been resolved by simply abandoning the tenancy-in-common notion. But the land tenure question did not seem to carry the same importance to federal decision-makers, although it was critically important in terms of the ultimate fate of the grant itself.

ii. Consequences

Because tenancies-in-common and partition sales were completely foreign to the Spanish and Mexican way of regarding community land grants, it was rare that the Mexican claimants understood the legal ramifications of the precise wording of the confirmation enough to timely

[19] That was the ultimate fate of the grant, even though Congress did not act on any of the Surveyor General recommendations. The Court of Private Land Claims rejected the grant on the basis of lack of the authority of the re-granting Spanish official. *See* Section V.

challenge the determination of the surveyor general.[20] Certainly it is difficult to imagine land grant residents, operating in a land-based, subsistence economy, and dependent on free access to the common lands for their livelihoods, knowingly consenting to a land tenure pattern that allowed the possibility of 90-some percent of their land base being sold out from under them in a partition suit. It is probable that in most cases land grant residents only understood that their grant had been "confirmed" or "patented," and would have assumed that such confirmation had maintained the common lands in the same land tenure as had existed prior to U.S. sovereignty, which indeed was what the federal government was obligated to do.

If the land grant was converted to a tenancy-in-common, a person's rights as a land grant resident suddenly depended on which names were found in the original Spanish and Mexican granting documents and whether that person was descended from one of those "original grantee" names. Under Spain and Mexico, it was *residency on the grant* that gave people their rights of access to the common lands, and all residents were roughly equal to one another in terms of that access, whether they were new residents or long-time residents.[21] For this reason Spanish and Mexican officials did not always find it necessary to set down a precise or complete list of the "original grantees." U.S. decision-makers, however, once they decided to give the grant to identifiable people rather than to a community, took some or all of the named grantees found in

[20] The Mora Grant and the Anton Chico Grant were two exceptional instances in which land grant residents clearly were aware of and opposed a tenancy-in-common designation and focused the General Land Office's attention on that issue. Notwithstanding this, however, the patent to both grants were issued as tenancies-in-common by federal officials. *See* case study on Mora Grant below; Michael J. Rock, *Anton Chico and its Patent, in* Spanish & Mexican Land Grants in New Mexico and Colorado, 86 (John R. and Christine M. Van Ness eds., 1980). In the case of the Anton Chico Grant, there was a blatant conflict of interest in that the Surveyor General chose to deliver the patent to the New Mexico Land and Livestock Company, of which he was the president, rather than to the community. The community-ownership of the Anton Chico Grant was ultimately salvaged by a settlement that cost the grant 135,000 acres of land, and by a 1920 federal court ruling that the confirmation language, which ran to the community, prevailed over the language of the patent, which ran to the assigns of the original settlers. Id; *Reilly v. Shipman*, 266 F. 862 (8th Cir. 1920).

[21] Tyler, *Ejido Lands in New Mexico*, at 26.

the grant documents and conferred on them the status as the *only* legal owners of the grant. *See* Correia, Appendix B, at 15-16 (regarding the Surveyor General decision as to whether to award the Petaca Grant to three rather than to nine named grantees). Some granting documents listed only one or two names, and for that reason an entire community grant would sometimes be awarded only to those individuals, even if it was clear from the documents that they were being accompanied by other unnamed people. *Id.* Unnamed grantees and residents who had taken up residency after the grant was made were deemed to have no ownership interest, while named grantees were deemed to have a full ownership interest even if they no longer resided on the grant. *See id.* at 19.

This bizarre two-class division of people into grant owners and non-owners – artificially created by chance and the vagaries of the granting documents to satisfy an erroneous tenancy-in-common designation – was in marked contrast to those grants that were correctly confirmed as true community grants with common lands. As was noted in the San Joaquin de Nacimiento case, this division created unnecessary tensions among residents who were not descended from the original grantees and who correctly surmised that their status on the grant was threatened.

This division was magnified by the U.S. making the original grantees and their heirs actual *owners* of the common lands, thus elevating the named "cotenants" from co-equal *users* of the common lands to persons with the power to do what no resident of a true community grant could do, i.e., unilaterally sell or otherwise dispose of a share of the common lands. In contrast, the unnamed grantees and the later-established residents were rendered completely without input as to the fate of the common lands as legal control passed from the community to the designated

tenants-in-common. If the grant was sold or partitioned, it was done against their wishes and with no remuneration.[22]

Furthermore, tenancy-in-common and private-grant designation served as a legal prerequisite that attracted significant outside economic pressures directed at establishing ownership of the former common lands entirely in non-resident owners. To the outside world, particularly those in the land business, a tenancy-in-common was an infinitely more marketable commodity than a community grant, both because the common lands were private and freely marketable, and because it distilled the larger population of the grant to a more limited list of co-owners who possessed the marketable shares of the grant. Share purchasing from newly-created tenants-in-common in New Mexico became literally an international activity in which some of the world's wealthiest people participated. Correia, Appendix B; Maria E. Montoya, *Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840-1900* (Berkeley, 2002). A number of share-purchasing strategies could lead to ownership of the entire grant, including a strategy of forcing a partition sale.[23] Most of these strategies depended on a tenancy-in-common designation because they required the existence of a pool of land grant residents possessing marketable shares of the grant.[24] Since no resident of a community land

[22] It should be noted that, with partitioning in particular, most of the designated tenants-in-common usually also opposed partitioning in spite of being entitled to proceeds from the sale. *See* Ebright, *Land Grants and Lawsuits* at 155-56.

[23] Correia, Appendix B at 12-16, 21-24 shows two strategies that were used. The first, which was more labor intensive, involved attempting to acquire every interest from every designated tenant-in-common and then claiming the entire grant. The second involved acquiring at least one share from one tenant-in-common, partnering with a potential buyer, and suing for partition and having the buyer bid to acquire the entire grant at the partition sale. An example of a premeditated partition strategy was set forth in a provision of a business contract between two individuals, L. Bradley Prince and Alonzo McMillen, who were for many years actively involved in the acquisition and sale of New Mexico land grants. The provision read;" [they] have associated themselves and do hereby associate themselves together for the purpose of acquiring title to the Sebastian Martin Land Grant . . . and to take the steps necessary to bring to a public sale of said real estate." Dr. Margaret Coyne, *Estaca in History* 18-19, (Oñate Monument Visitor Center Publication, Office of Rio Arriba County, Alcalde 1996).

[24] E.g., Thomas B. Catron stated that initially his land grant acquisition strategy focused on confirmed grants where his attention could be focused on identifiable individuals in whom confirmation was vested. Victor Westphall, *Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region* 221 (UNM Press 1983).

grant had any share of common lands to sell, this type of speculation focused on grants confirmed as tenancies-in-common and as private grants.

Occasionally things would happen in reverse order, but for the same reason, i.e., a buyer would make a speculative quitclaim purchase from a grant resident who was a "named grantee" prior to confirmation (i.e., prior to the seller even having any legally recognized share of the grant) and then lobby strenuously for confirmation as a tenancy-in-common or as a private grant, as opposed to a community grant, so that the purchase would not be worthless. Correia, Appendix B at 28. In this way, the fact that a tenancy-in-common was even an acceptable *option* in the adjudication of community lands grants brought not only outside economic forces into play, but also outside pressure to bear on federal officials to validate it as a land tenure pattern.[25]

In some cases these transactions took years to develop and manifest into any kind of tangible denial of access to the common lands, and in the meantime, the residents continued to occupy and use the land collectively as before, under the assumption that the common lands remained in community ownership. For example, the Cañon de San Diego Grant was a community land grant erroneously confirmed in 1860 as a tenancy-in-common. It was partitioned and auctioned off in 1907 or 1908. After 1908, the residents were suddenly assessed fees by the new owner for grazing and firewood gathering on the former common lands, which had previously been free to all residents. G. Taylor, "Notes on Community-Owned Land Grants in New Mexico 9 (University of New Mexico Law Library, 1937).

By that point in time, it was too late to undo the tenancy-in-common designation. After 1876, the U.S. Supreme Court had made it clear through the *Tameling* decision that the courts

[25] People who bought what they believed to be a tenancy-in-common share would sometime not even wait for confirmation before extracting resources from the grant. See Correia, Appendix B at 16-18 (extensive extraction of timber and minerals and extensive grazing use on Petaca Grant by buyer of supposed shares of tenancy-in-common in years leading up to decisions by CPLC and Supreme Court that grant was *not* a tenancy-in-common).

would not revisit a Congressional confirmation of a grant, no matter how erroneous it may have been. *See* Section III. Partition suits were also notorious for passing under the community radar, and many partition suits were announced only by publication in English-language newspapers. Ebright, *Land Grants and Lawsuits* at 152. In any event, in a non-cash economy, land grant residents were in no position to buy out the interest of the person seeking partition, much less put in a high bid at the partition auction. The common lands that were sold usually comprised 95 percent or more of the land base of the grant. Without them, the subsistence farming and ranching economy of the land grant became unviable. The conversion of the common lands to a tenancy-in-common set events on a course that most communities were virtually powerless to reverse, even if they had been aware of the legal landscape.

iii. Case study: The Town of Mora Grant

In 1875 and 1876, the Secretary of the Department of Interior and the Commissioner of the General Land Office in Washington, D.C. had a decision to make in which, it seemed, many people in New Mexico were very interested: Should the patent to the Town of Mora land grant be issued to the "Town of Mora" or to the "76 original settlers of the grant, their heirs and assigns"?

The former designation would have tended to establish the grant as a community land grant in the historical land tenure pattern (i.e., areas of settlement surrounded by common lands), whereas the latter designation would have created a tenancy-in-common that had not heretofore existed on the grant. In their formal petition to the Surveyor General, the petitioners for the grant had not asked for the grant to be awarded to only the 76 original settlers but rather to "themselves and the other inhabitants, settlers of the Valley of Mora." By this time, the inhabitants of the Mora land grant included many families in addition to the 76 original families

and they were spread among a number of newer communities in addition to the original communities of Mora (Santa Gertrudis) and San Antonio (now Cleveland). In their exhaustive study of the Mora Land Grant, Robert D. Shadow and Maria Rodriguez-Shadow concluded that "[t]he fact that [the patent] was finally issued in the latter format is due largely to the work and influence of Congressman Stephen B. Elkins." Robert D Shadow and Maria Rodriguez-Shadow, *From Reparticion to Partition: The Life and History of the Mora Land Grant, 1835-1916* at 32 (April, 1993).

What possessed Elkins, New Mexico's first elected Delegate to Congress, to influence the Department of Interior to, in effect, mischaracterize the land ownership of the Mora Land Grant?[26] The short answer, according to Shadow and Shadow, is personal gain. Elkins, along with the notorious land speculator Thomas B. Catron, had previously sought out willing sellers from among the original 76 settlers (or their descendants), some of whom no longer lived on the grant. These individuals then purchased a number of fractional "interests" in the Mora Land Grant. These "interests", however, legally hinged on the form of issuance of the patent, a decision that had not yet been made. Elkins and Catron were banking on the patent creating a tenancy-in-common. A tenancy-in-common would mean that each of the 76 settlers owned a fractional share of the common lands and actually had something valuable to sell. The share of just one of the original 76 settlers would have been 1/76 of the 827,621-acre grant, or 10,890 acres per share. On the other hand, designation as a community grant would have meant community ownership of the common lands. In that case, no descendant would have had any ownership interest in the common lands to sell. The "interests" the descendants had quitclaimed to Elkins and Catron would have been virtually worthless. Elkins, therefore, had no small vested

[26] The Mora Grant qualified as an "original document" community grant under any of the criteria used by the GAO. See discussion of this at footnote 10.

interest in altering the historic land tenure pattern to that of a tenancy-in-common. By the time he permanently moved to Washington, D.C. in 1873 as New Mexico's Congressional Delegate, he was in a unique position to influence the upcoming decision. Clark S. Knowlton, *The Mora Land Grant: A New Mexican Tragedy* 59, Journal of the West (July 1988).

Land grant residents caught wind of Elkins' efforts and protested, realizing that privatization of the grant would mean the potential loss of free access to the common lands upon which all residents relied to some extent for their livelihood. *Id.* Since the grant's inception in 1835, the number of residents had swelled to about 10,000 by 1875, a great many of whom had migrated to the grant after 1835 and could not claim ancestry from the original 76 settlers. In 1875, 1,073 Hispano residents of the grant signed a petition which was forwarded to the General Land Office. *Id.* The petition pointed out, among other things, the absurdity of giving exclusive property rights to persons named on a granting document, some of whom abandoned the grant without ever residing on it, at the expense of those actually living on and using the grant. The petition also made clear the terms under which it was understood by everyone on the grant that new families could settle the grant after 1835, i.e., with full rights to use the common lands equal to the original grantees. *Id.* Many of these new families were in fact invited under these terms to settle the grant by the original families, who saw greater numbers as affording greater protection against raids by nomadic tribes. A group of Anglo-American residents of the grant sent a similar letter to the Department of the Interior, making the same points and objections as the Hispano residents' petition. *Id.*

In this case, unlike most others, the grant resident themselves were alert to what was going on and properly focused the attention of federal officials on the question of community grant versus tenancy-in-common. There was certainly sufficient on-the-ground information

upon which to base a sound decision. Those officials, however, chose to disregard the fact that even the claimants who petitioned the Surveyor General and were descended from the original 76 settlers sought confirmation of the grant as a true community grant and not as a tenancy-in-common. The patent was issued by the General Land Office on August 15, 1876, to "the 76 original settlers of the grant, their heirs and assigns," i.e., as a tenancy-in-common. Elkins and Catron had prevailed.[27]

This case shows that the conversion of community land grants to tenancies-in-common was sometimes the result of deliberate lobbying by people with vested interests. Federal officials, who were charged with adjudicating land grant claims "precisely as Mexico would have done had the sovereignty not changed," in some instances neglected that duty and were instead influenced to designate a land tenure that had not previously existed on the grant.

D. The GAO Counted as "Confirmed" Even Those Grants Whose Confirmation, Under *United States v. Sandoval*, Was Fundamentally Erroneous and Whose Acreage Was Vastly Reduced

In *United States v. Sandoval*, 167 U.S. 278 (1897), the U.S. Supreme Court held that common lands were owned by the sovereign, not the community, and passed to the United States at the change in sovereignty. In a landmark decision that eviscerated the character of all community land grants adjudicated from that point on, the Court limited the San Miguel del Bado grant to the land encompassed by individual allotments rather than any of the common

[27] Shadow and Shadow's research shows that the subsequent partition suit filed by Elkins and Vicente Romero took an unusual turn which diminished the financial returns that were gained by the various land speculators, although nothing could be done to re-establish the common lands as community-held property. The state district court handling the partition suit allowed grant residents and other long-time squatters on the grant to make exaggerated claims of private inholdings within the grant. Since private inholdings were not part of the tenancy-in-common they were shielded from the partition sale. The size of the common lands was dramatically decreased by permitting these large private inholdings, meaning there was much less acreage to sell in the partition sale, and presumably a lower sale price and less profit for those having shares of the common lands. Although this strategy gained extra private land for grant residents, the entire grant was privatized in one way or another by this process, as with any tenancy-in-common, and the common lands effectively destroyed as such. Shadow, *From Reparticion to Partition: The Life and History of the Mora Land Grant, 1835-1916* at 33-40.

lands, holding that it was up to Congress whether to convey the otherwise "equitable" title to the common lands. *Id.* at 298. This ruling reduced the San Miguel del Bado grant award by 98.4 percent: from 315,300 acres, as decided by the CPLC (combined total of individual allotments and common lands), to 5,024 acres (individual allotments only).

While the GAO acknowledges the significant loss of common lands in the six land grant decisions following *Sandoval*, and the fact that the decision has been criticized for its legal and historical accuracy, the GAO fails to analyze or even discuss such criticism. GAO at 115-117, notes 96-97. Rather, the GAO describes the lands lost under *Sandoval* as simply an "equitable" issue and the nature of the common lands as outside the jurisdiction of the courts under the Act of 1891:

> As our analysis explains, however, the [Supreme] Court *had no authority under the 1891 Act* to confirm grants based on the type of *equitable rights* involved in the *Sandoval* land grant claim and related cases; it could confirm only those grants "lawfully and regularly derived" under Spanish and Mexican law.

GAO at 163 (emphasis added).

The GAO's analysis appears to miss the mark in two ways, the first having to do with the GAO's characterization that only equitable rights were involved in the case. Certainly there is a widespread sense of inequity in so dramatically altering the nature and size of community grants that came up for confirmation on the heels of *Sandoval*, compared to those that came before and kept their common lands intact. Additionally, severing the common lands from the community – thereby undermining so fundamentally the local economy and the livelihoods of community members – seems so obviously contrary to the Treaty's basic property guarantees.

However, from a more strictly legal perspective, a significant body of post-*Sandoval* scholarship has concluded that those communities possessed *legal* rights to ownership of the common lands – as opposed to merely equitable rights – under the very Spanish and Mexican

law upon which the Court professed to rely. Ebright, *Land Grants and Lawsuits* at 105-123; Mark Schiller, *Adjudicating Empire* (unpublished manuscript on file with the authors); Tyler, *Ejido Lands in New Mexico*, at 26. These studies suggest that the Court gave a strained interpretation of a very limited supply of English-language texts on Spanish and Mexican land law and that, had the Court been able to form a more accurate understanding of how Spain and Mexico would have regarded the legal rights to the common lands, it would not have characterized the community rights to the common lands as equitable. *Id.* Nowhere does the GAO describe the role of the U.S. Attorney as a formidable force in advancing this legal theory to both the CPLC and the Supreme Court, nor whether this role was legitimate insofar as protecting the U.S. from fraudulent land claims. Ebright, *Land Grants and Lawsuits* at 105-123; Schiller, *Adjudicating Empire.* Rather than suggest in any way that the *Sandoval* decision may have misinterpreted Spanish and Mexican law or provide an historical analysis of what might have caused the Court to do so, the GAO simply restates and accepts for purposes of its analysis the notion that this was a case about equitable rather than legal rights.

The other major flaw in the GAO's analysis is its premise that the Supreme Court had "no authority under the 1891 Act" to rule in favor of community ownership of the common lands. Even if the Court were to have correctly applied Spanish and Mexican law, the GAO failed to analyze whether the Court nonetheless misinterpreted the Act of 1891 by construing the Act to omit any consideration of equity, as discussed in Section I above. Thus the Court could have awarded the common lands on equitable grounds – that the Court itself recognized as having existed – even given its flawed interpretation of the lack of entitlement to the common lands under black-letter Spanish and Mexican law. Again, the GAO simply repeats the *Sandoval* Court's own constricted perception of its authority, without any analysis whatsoever.

Certainly both issues are relevant to Congress's consideration of any redress for these seven grants and the 1.1 million acres of common lands lost as a direct result of the *Sandoval* decision. While the GAO cites *Sandoval* as an example of a court ruling that Congress may want to "legislatively overrule," GAO at 163-164, the fact that the GAO offers no substantive critique of the case and its much-contested interpretation of Spanish and Mexican law and the 1891 legislation is itself a significant omission in its Report.

E. Arguably the Vast Majority of Community Land Grants Were Not Confirmed as They Would Have Been Under Mexico.

Although there were significant numbers of cases in which improper confirmation led directly to the loss of land grants, the GAO failed to incorporate the issues surrounding these erroneous confirmations into its principal conclusions or statistical analysis. When discussing confirmed community grants, the GAO simply gave a figure for the number of community grants that were "confirmed" without further analyzing those grants to determine which of them were confirmed correctly or incorrectly. This was a surprising and significant omission in a study that was supposed to address just these types of concerns. Contrary to the GAO's assessment, the vast majority of community land grants were *not* confirmed as Mexico would have done and, in light of the disastrous implications of these mis-confirmations, by no measure should be considered successfully confirmed by the federal government.

These oversights skewed the numbers the GAO used to support its ultimate conclusions. The community land grants that were erroneously confirmed as tenancies-in-common and private grants were all counted by the GAO as land grants that were "awarded," and the acreage contained in those land grants was similarly regarded as "approved acreage". In other words, the GAO appeared to credit the United States for community land grants improperly designated as tenancies-in-common or as private grants in the exact same manner as if the grant had been

properly approved as a community grant. The entire category of 84 confirmed non-Pueblos community grants was seemingly regarded by the GAO as lands for which the obligations under the Treaty of Guadalupe Hidalgo were fulfilled. *See* GAO at 146-60. However, clearly the question of the correctness of the confirmation is highly relevant to the question of whether Treaty obligations were met. Yet the GAO did not provide a breakdown of the 84 "confirmed" grants to distinguish those grants that were subject to significant types of land loss as a direct result of erroneous confirmations. The numbers and chart below are an attempt to address this shortcoming by the GAO by providing figures as to the land tenure in which the 84 confirmed community grants were actually confirmed.

The GAO concluded that over 68 percent of the 154 community land grants were confirmed, and that 63.5 percent of the community land grant acreage was awarded. GAO at 8, 95-96, 162. When looking only at the 131 non-Pueblo community land grants, the GAO found that 84 of those (64 percent) were confirmed. However, these 84 community grants included (1) grants that were confirmed as private grants, (2) grants that were confirmed as tenancies-in-common, and (3) grants that were stripped of their common lands before approval.

Looking strictly at the 131 non-Pueblo community land grants, only 20 of those were actually confirmed to the community itself with their common lands intact. That is, only 20 of those land grants were confirmed by the U.S. in the land tenure pattern that Spain or Mexico recognized for a community land grant. For the vast majority of community land grants, the common lands did not survive the U.S. confirmation process as true common lands. Instead those common lands were confirmed in some other land ownership pattern that afforded less protection for maintaining the common lands intact.

For 7 of the 131 non-Pueblo community grants, common lands were stripped from the grant and passed into federal government ownership. In 30 cases, the grant was confirmed as a private grant, and the entirety of the unallotted lands passed to the heirs and assigns of a single individual. In 27 cases, the grant was confirmed as a tenancy-in-common and the common lands became an assortment of privately-owned fractional shares. In other words, more community lands grants were confirmed in a form that was not even a valid land tenure pattern for a community lands grants under Spain or Mexico (27) than were awarded in the form of a true community grant with true common lands (20). 47 of the 131 non-Pueblo community grants were not confirmed at all.

Results for the 131 non – Pueblo Community Grants Identified by the GAO	
20 Land Grants	Correctly confirmed in a community grant ownership pattern • 15% of total • 24% of those confirmed
64 Land Grants	Confirmed in a non-community grant ownership pattern • 30 confirmed as individual grants • 27 confirmed as tenancies in common • 7 stripped of common lands (*Sandoval)*
47 Land Grants	Not Confirmed: rejected or no proceedings on the merits of the claim

The relatively low number of proper community grant confirmations[28] provides both a sobering appraisal of the outcome of the U.S. confirmation process and some insight into why so

[28] Although it is clear that the number of community lands grants confirmed as they would have been recognized under Mexico should have been much higher than 20, it is a more difficult task to determine exactly how many. The GAO in its 2001 Report made the first published attempt to characterize each of the 295 New Mexico land grants as either a community grant or an individual grant. Although here we use the GAO's determination of 154 community grants (and 131 non-Pueblo community grants) as the baseline number of community land grants in New Mexico, but we do so with some reluctance. As indicated elsewhere in this report, Spanish and Mexican granting documents did not use the distinguishing terms "community" or "private" grants as labels, so it is a judgment call in some cases whether a grant was in fact a community or private grant, and people may not agree with the GAO's characterization in every case. Almost certainly, some of the 131 non-Pueblo community lands grants that were designated in the 2001 GAO Report would have been regarded under Mexican law as private or individual grants, and the reverse is also true with respect to the GAO's designation of individual grants. This leaves the actual number of non-Pueblo community grants existing in New Mexico at the time of U.S. sovereignty – of which only 20 were truly confirmed as community grants – open to question.

few land grants survived into modern times as self-governing entities administering intact common lands. In order to survive in this way, a land grant had to not only be recognized as a valid grant – 47 did not – but to have its common lands recognized as belonging to the community itself, rather than to the federal government, a private individual, or a group of individuals as their own private property. The fact that this was not done in the vast majority of cases resulted in the loss of vast amounts of common lands beyond the amount stated by the GAO as being attributable to the federal confirmation process, and, over time, the undermining of the economies of many communities that depended on those common lands. In its evaluation of the federal confirmation process, the GAO simply failed to account for these erroneous confirmations or the significant land losses that resulted.

III. *Tameling v. United States Freehold Co.* and The Mythical *Montoya* Remedy

One of the GAO's most egregious errors is its repeated reliance on a since-overturned state district court case, *Montoya v. Tecolote*, for the notion that federal confirmations were not "final" as to parties with adverse claims, and that people who believed they were the rightful owners, but were not awarded the grant ("third parties"), remain free to challenge confirmations in state court.[29] Throughout the Report, the GAO states that errors in the confirmation process could be remedied by such collateral attacks in the state courts, despite the fact that courts have routinely rejected such claims by land grant heirs. *See, e.g.*, GAO at 64, 66, 71 n.59, 80 n.67, 98, 107, 134, 135-36 n. 126. Insisting such state court claims are viable, the GAO also concludes that confirmations should not be considered "final" as to all parties, so less rigorous due process was required under *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.* at 132. The GAO reasons that "post-deprivation hearings" of third-party claims in state court would, in addition, remedy

[29] The district court's decision in *Montoya v. Tecolote Land Grant*, No. D-412-CV-9900322 (4th Judicial District) was overturned by *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, ¶ 27, 176 P.3d 1145, *cert. granted,* 176 P.3d 1130 (2008).

any lack of due process in the confirmation process. *Id.* at 137-38. Each of these claims is simply inaccurate, beginning with the GAO's premise that third parties may challenge a Congressional confirmation in state court – a notion that could not be further from the legal experience of New Mexico land grant claimants over the past 150 years.

A. Contrary to the GAO's Claims, *Tameling* Precluded State Court Challenges to Federal Land Grant Confirmations.

In 1876, the U.S. Supreme Court held that, regardless of the validity of a particular land grant under Spanish or Mexican law, Congress's confirmation of a grant under the 1854 Act – whether as a particular type or size, or to a particular entity or individual – constituted a *final decision* on the matter which had to be appealed through the political rather than judicial channels. *Tameling v. U.S. Freehold Co.*, 93 U.S. 644, 662 (1876). The Court reasoned that, unlike the "essentially judicial" process established to adjudicate California land grants, the Act of 1854 establishing the New Mexico Surveyor General/ Congressional confirmation process differed markedly in that "[n]o jurisdiction over such claims in New Mexico was conferred upon the courts." *Id*. at 662. Instead, the Office of the Surveyor General of New Mexico was established to determine the original nature, origin, character, extent and validity of each land grant under Mexican law. *Id*.; Act of Congress of July 22, 1854, Ch. 103, 10 Stat. 309; *see also Jones v. St. Louis Cattle Co.,* 232 U.S. 355, 360 (1914). Once Congress acted on the Surveyor General's recommendation and confirmed a particular grant, any claim of error in the Congress's determination was not subject to judicial review. Rather, according to the Court, "[t]his was [sic] matter for the consideration of Congress; and we deem ourselves concluded by the action of that body . . . [S]uch an act [of Congress] passes the title of the United States as effectually as if it contained in terms a grant *de novo*." *Tameling*, 93 U.S. at 663.

Contrary to the GAO's claims that third party claimants could challenge a Congressional confirmation in state court, *Tameling* and its progeny foreclosed any judicial review of such confirmations, notwithstanding that those persons aggrieved by that confirmation might possess evidence as to the error of the Congressional determination. In such cases, a claimant's only remedy is to seek relief from the political branch. *Sanchez v. Taylor*, 377 F.2d 733, 737 (10th Cir. 1967) ("If the confirmation of the title was [in error], the question was political, not judicial."). A court is without jurisdiction to even hear such evidence and must dismiss such a claim.

In the past 130 years, *Tameling* has been repeatedly affirmed for the proposition that third-party claimants may *not* collaterally attack a Congressional land grant confirmation in the courts. *Id.; United States v. Maxwell Land Grant Co.,* 121 U.S. 325, 365-66 (1887); *Sanchez*, 377 F.2d at 737; *Catron v. Laughlin*, 11 N.M. 604, 72 P. 26, 30-31 (1903); *Reilly v. Shipman*, 266 F. 852, 859 (8th Cir. 1920); *Lobato v. Taylor*, 13 P.3d 821, 829 (Colo. App. 2000); *Yeast v. Pru,* 292 F. 598, 607 (D.N.M. 1923); *H.N.D. v. Suazo*, 44 N.M. 547, 105 P.2d 744, 749 (1940); *Martinez v. Rivera*, 196 F.2d 192, 194 (10th Cir. 1952); *Flores v. Brusselbach*, 149 F.2d 616, 617 (10th Cir. 1945); *Payne Land & Livestock Co. v. Archuleta* 180 F. Supp. 651, 653-55 (1960); *see also Astiazaran v. Santa Rita Land & Min. Co.*, 148 U.S. 80, 82-83 (1893); *Mondragon v. Tenorio*, 554 F.2d 423 (10th Cir. 1977); *Martinez v. Mundy*, 61 N.M. 87, 295 P.2d 209 (1956); *Chavez v. Chavez de Sanchez*, 7 N.M. 58, 76-77, 32 P. 137, 142-43 (1893).

Consequently, when community grants were wrongly patented to an individual, as in the case of the Tierra Amarilla grant, or wrongly patented to a group of families rather than the community, as in the Mora grant, these decisions were set in stone. In the decisions involving the Sangre de Cristo land grant, for instance, both the Colorado state courts and the federal

appeals court held *Tameling* foreclosed the third party claimants' arguments that their predecessors had valid adverse claims to the grant based on Mexican law and custom. *See Sanchez*, 377 F.2d at 737; *Lobato v. Taylor*, 13 P.3d 821, 829 (Colo. App. 2000), reversed on other grounds in *Lobato v. Taylor*, 71 P.3d 938, 946 (Colo. 2002).[30] Likewise, in the case of the Tierra Amarilla grant, based on *Tameling* state and federal courts repeatedly rejected the attempts of settlers of the grant to make similar claims to rights under Mexican law – barring them from even putting on a case that the grant had been wrongly confirmed as an individual rather than community grant. *Martinez v. Rivera*, 196 F.2d 192; *Flores v. Bruesselbach*, 149 F.2d 616; *Payne Land & Livestock Co. v. Archuleta*, 180 F. Supp. 651; *Martinez v. Mundy*, 61 N.M. 87, 295 P.2d 209; *H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 105 P.2d 744. Contrary to the GAO's theory, there was simply no remedy for correcting the original mis-confirmation in such cases, regardless of the weight of evidence against the original confirmation.

B. The Quitclaim Language Did Not Alter the Effect of *Tameling*.

Again, contrary to the claims of the GAO, aside from limited instances described below, courts have consistently applied *Tameling* to bar third party claims in spite of the language found in the confirmatory acts and land grant patents that provided the confirmation or patent should be "construed as a quitclaim or relinquishment upon the part of the United States and shall not affect the adverse rights of any person or persons whosoever." See GAO at 64, 66, 132, 134-37; Act of Congress of Dec. 22, 1858, Ch. 5, 11 Stat. 374; *see H.N.D.*, 44 N.M. 547, 549, 105 P.2d at

[30] In a stunning victory for land grant claimants, the state supreme court reversed the lower court on other grounds, upholding the communal use rights of the settlers' heirs to the private grant lands under American law. *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002), *cert. denied, Taylor v. Lobato*, 540 U.S. 1073 (2003). The supreme court did not directly take issue with the court of appeals' *Tameling* analysis – it agreed generally with the lower court that Mexican law could not be a source for the claimants' rights. *Id.* at 946. The high court was able to avoid the *Tameling* bar after finding the grant was not settled until after the Treaty of Guadalupe Hidalgo and therefore it was unnecessary to consider what rights had been established under Mexico prior to the Congressional confirmation. *Id.*

745. In all of the decisions cited above in which the courts applied *Tameling*, they did so despite similar language found in the Congressional act or patent.

The GAO itself acknowledges that courts have upheld *Tameling* in spite of the quitclaim language in the confirmatory act. *See* GAO at 64, n. 51; 136, n. 126. In the decisions involving the Sangre de Cristo land grant, for instance, both the Colorado state courts and the federal appeals court held *Tameling* foreclosed the third party claimants' arguments that their predecessors had valid adverse claims to the grant based on Mexican law and custom, despite quitclaim language in both the congressional Act and patent.[31] *See Sanchez*, 377 F.2d at 737 ("[E]ven if under Mexican law or the terms of the grant certain settlement rights which conflicted with the congressional confirmation had been given to third persons prior to the treaty, the quit-claim clause would nevertheless be of no avail to appellants, because title had passed to the United States."); *Lobato v. Taylor*, 13 P.3d 821, 829 (Colo. App. 2000) (contrary to plaintiffs' arguments that the quitclaim language preserved their claims, "*Tameling* established the finality of the 1860 Act confirming title in [the private grantee] and foreclosed judicial review of claims based on rights that assertedly arose before the date of the Act."), *reversed on other grounds* in *Lobato v. Taylor*, 71 P.3d 938, 946 (Colo. 2002). [32]

Likewise, contrary to the GAO's claims, GAO at 71 n. 59, 107, courts also lack jurisdiction to consider adverse claims that may have derived from a *separate* land grant, except

[31] Another example is *H.N.D. v. Suazo*, which the GAO attempts to distinguish as a type of case to which *Tameling did* apply. GAO at 106 n. 89. There the New Mexico Supreme Court held it lacked jurisdiction under *Tameling* to question the confirmation of the land grant to an individual rather than a community, despite similar quitclaim language in the confirmatory act and patent. *See H.N.D.*, 44 N.M. at 549, 550-52, 105 P.2d at 745, 746-47 (referring to the quitclaim proviso as the "ordinary and familiar clause found in all other like patents of the time").

[32] The state supreme court reversed the lower court on other grounds in its landmark decision upholding the communal use rights of the settlers' heirs to the private grant lands. *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002), *cert. denied, Taylor v. Lobato*, 540 U.S. 1073 (2003). While the supreme court did not directly take issue with the Court of Appeals' *Tameling* analysis – it agreed generally with the lower court that Mexican law could not be a source for the claimants' rights – the high court avoided a discussion of *Tameling* after finding the grant was not settled until after the Treaty of Guadalupe Hidalgo and therefore it was unnecessary to consider what rights had been established under Mexico. *Id.* at 946.

in those rare instances where conflicting claim was also recognized by Congress as valid. Thus, in cases in which Congress confirmed two independent but conflicting grants, courts have held that this quitclaim language reserved the rights of each *as against the other*. *Board of Trustees of Anton Chico v. Brown*, 33 N.M. 398, 401-03, 269 P. 51, 52-53 (1928) (holding that, where the overlapping Anton Chico and Preston Beck grants were each confirmed by Congress, Congress reserved the rights of each of the two confirmees as against each other); *Jones v. St. Louis Cattle Co.*, 232 U.S. at 361 ("[I]f there be claims *under two patents*[,] each of which reserves the right of the other parties, the inquiry must extend to the character of the original cession.") (Emphasis added.). Therefore, again contrary to the GAO's representations, for a court to have jurisdiction to adjudicate such "adverse rights" under a quitclaim proviso, these adverse claims must first be addressed to Congress, not to the courts.

This analysis is supported by the facts and language of *Brown* and *Beard v. Federy*, 70 U.S. 478 (1865), cases cited by the GAO in support of its claim that a Congressional confirmation affected only the claimant rather than any third parties. *See* GAO at 136 n. 126. In *Brown*, the New Mexico Supreme Court explained that in order for a Congressional confirmation to be deemed not conclusive, so as to confer jurisdiction on the courts to adjudicate an adverse claim to the same lands, the adverse party must have "title under the former sovereign which is, *equally with that of the confirmee*, entitled to protection by the United States." 33 N.M. at 404, 269 P. at 53 (emphasis added). According to the court, Congress recognized that adverse land grant claims often progressed simultaneously through the confirmation processes, in rare instances resulting in Congressional confirmations to overlapping land grant lands. *See id*. at 403, 269 P. at 52. The quitclaim proviso became necessary to confer judicial jurisdiction over these overlapping but separately confirmed land grant claims. *See id*. As illustrated by *Brown*,

for an adverse claimant to be equally "entitled to protection," so as to confer jurisdiction upon the courts, required a Congressional confirmation.

Similarly, in *Beard v. Federy*, 70 U.S. 478 (1866), the defendants claimed lands that had already been patented through the federal process established for California land grants. The Supreme Court held that quitclaim language in the federal statute allowed judicial review of adverse claims only where such claimants held "superior titles, such as will enable them to resist successfully any action of the government in disposing of the property." *Id.* at 493. Although the defendants claimed title deriving from Spain or Mexico, they had failed to seek and obtain a separate federal confirmation. *Id.* at 489. The court held that such a claim, *unsupported by a federal patent*, lacked standing under the quitclaim proviso to raise such a claim. *See id.* at 492-93; *cf. State v. Red River Valley Co.*, 51 N.M. 207, 268, 182 P.2d 421, 459 (1945) (recognizing "a confirmation by Congress under the congressional act involved, determined that a Mexican grant was valid" and suggesting that under the quitclaim language, courts only have jurisdiction to go behind such a confirmation where Congress has first *confirmed* an adverse land grant claim). Courts have been consistent in this respect; apart from the limited *Brown*-type exception to *Tameling*, courts have not applied the quitclaim clause to permit judicial review of a Congressional land grant determination. Rather, the only feasible remedy for land grant claimants who dispute a federal confirmation is to appeal to Congress.

C. The Mythical *Montoya* Remedy

The GAO's reliance on a single state district court decision, *Montoya v. Tecolote*, for the notion that claimants still have a remedy in cases of wrongful confirmations – a claim otherwise at odds with over a century of federal and state case law – suggests a remarkable lack of candor. At the very least the GAO's claim was misplaced, particularly in light of the court of appeals'

recent reversal of the district court's decision. *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, ¶ 27, 176 P.3d 1145 (holding district court decision was contrary to *Tameling* principle), *cert. granted*, 176 P.3d 1130 (2008).

There appears to be no question that, after Congress confirmed a land grant, courts simply lacked jurisdiction to second-guess what third-party rights may have existed to the same land under the original Spanish or Mexican grant. Once Congress confirmed a grant improperly, or due process was circumvented in the Congressional confirmation process, the damage was permanently done. The GAO's claims to the contrary – in support of its assertion that improper confirmations were not final and could be remedied, and due process protections relaxed (and ultimately remedied if violated in the confirmation process) – are unfounded and unsupported by case law.

The GAO's discussion of *Tameling* seriously understates the lasting harmful effect of that decision in terms of foreclosing opportunities for corrective court action. By wrongly concluding that those opportunities existed and continue to exist, and thereby suggesting that land grant heirs have neglected those opportunities, the GAO appears to place responsibility that is unwarranted on heirs for not "recovering" more lands through court action. Clearly heirs have made considerable efforts to overcome or limit *Tameling* and have found the barrier posed by that case to be all too real.

IV. Post-Confirmation Land Losses

Alongside its mistaken reliance on the notion that mistaken confirmations could be remedied in the courts, the GAO Report neglected to acknowledge the significant legal implications of mis-confirmations on the ultimate fate of land grants and common lands, instead

ascribing many of the losses of improperly confirmed common lands to the actions of land grantees and heirs themselves.

A. Boundary Conflicts

The confirmation process acted to deprive particular land grants of their lands in ways other than through miscalculating the nature of the grant itself. In some cases, particularly in the Court of Public Claims ("CPLC") era, the U.S. argued for more constricted grant boundaries than the grantees understood had been designated by Spain or Mexico. In other cases, the confirmation of one grant resulted in other valid land grant lands embracing some of the same lands being rejected or otherwise unable to be heard due to reasons unrelated to the merits of the grant. The GAO notes the factual and legal problems encountered by these grantees, but neglects to relate the manner in which these situations were handled in the confirmation process to the federal obligation under the Treaty.

The establishment of land grant boundaries, which in turn determined the size of the grant, was a process of matching landmarks described in the Spanish and Mexican granting documents to the actual landmarks on the ground. Since the grants were almost never formally surveyed in the Spanish and Mexican periods, the total area granted was not known and therefore there was no way to corroborate a particular landmark in the field if there was uncertainty as to whether it was the correct landmark. The GAO gives a fairly detailed account of how such factual uncertainty was potentially open to abuse in favor of claimants during the Surveyor General era, citing such things as contract surveyors who were paid by the mile and Surveyors General who relied heavily on claimants to point out the correct landmarks. The GAO also relates how controversial boundary designations, such as the one that resulted in the Maxwell Grant being awarded to a private individual in the amount of 1.7 million acres, caused Congress

to cease further confirmations until the enactment of the Act of 1891, which, among other things, limited private grant awards to a ceiling of 11 square leagues (48,800 acres) per person.

The GAO does not recount, however, the manner in which federal officials in the later Surveyor General era and under the CPLC consistently argued for grant boundaries that seemed unreasonably constricted in relation to the boundary calls in the grant documents. Historical research suggests that certain federal actors may have consciously done this out of a sense that they were engaged in "reform" or that it was what they were hired to do.[33]

For instance, the Juan Bautista Valdez grant was recommended to be reduced from 250,000 acres to less than 1,500 acres by Surveyor General Julian based on the unlikely argument that where the boundaries asked for in the *petition* to the Spanish government are less extensive than the boundaries designated in the actual *act of possession*, the petition should prevail over the act of possession. In this case, the Spanish act of possession augmented the valley lands asked for in the petition with higher-elevation common lands, a typical thing for the Spanish government to do when establishing a community grant.

In addition, the CPLC process was structured so that the U.S. Attorney could assume an adversarial posture with respect to land grant claimants, and he was under no directive to be

---

[33] U.S. Attorney Matthew Reynolds reported to the U.S. Attorney General in 1894:

> In New Mexico and Arizona the total area claimed in the suits disposed of . . . was 4,784,651 acres; amount confirmed, 779,611 acres; amount rejected and not confirmed 4,005,040 acres. The result is very gratifying to me . . . you will notice that in most of the grants where judgments were obtained, the areas have been much reduced. This result was secured by result of your sustaining me in my request for sufficient means to employ assistance to investigate these claims and obtain the evidence for the defense . . . the amount of land saved in this way alone during the term of court just past will more than compensate the Government for the cost of this court and the salaries of its officials during the entire time for which it was created.

Report of the United States Attorney for the Court of Private Land Claims, Attorney General's Annual Report (1894), Ex. 4 at 4. The above extracts were originally cited in an unpublished manuscript by Mark Schiller entitled "Adjudicating Empire" (on file with authors). Further, Surveyor General Julian, in commenting on the evidence for various boundary calls for the Canon de Chama grant, stated:

> If any descriptive words [in the boundary calls] were susceptible of two meanings, the one implying extension and the other restriction, he [the Surveyor General] was bound to govern himself by the latter. This was his clear duty under the law.

Opinion of George W. Julian regarding the Cañon de Chama grant, 11 December 1885, SG 71, Roll 20, fr. 676.

balanced or reasonable in his positions. U.S. Attorney Matthew Reynolds took a similar approach to the Juan Bautista Valdez claim as Surveyor General Julian, arguing for boundary designations that virtually eliminated all of the common lands. For instance, the Santo Domingo de Cundiyo grant was reduced from 20,000 acres[34] to 2,137 acres after the U.S. Attorney challenged three of the four boundaries claimed. Jennifer Davis, *Perceptions of Power: The Court of Private Land Claims and the shrinking of the Santo Domingo de Cundiyo Grant* (1983-84) (unpublished paper written for the University of New Mexico School of Law, on file with the authors). *See also* GAO at 104, table 19 (13 additional grants significant reduced in acreage in CPLC era after boundary disputes with U.S.).

Land grant claimants who had received an initial favorable recommendation from the Surveyor General but ended up receiving their final disposition from the CPLC were very likely to see a reduction in acreage as part of that final disposition. *See* Section V.B. below and accompanying chart. Claimants did not tend to have the same level of resources as the U.S. to litigate boundary issues, and when they found themselves in a such dispute, the courts placed the burden of proof in boundary dispute on the claimants and not on the government. *Whitney v. United States*, 167 U.S. 529 (1897).

While the GAO noted the occurrence of these boundary disputes, it left unexplored a number of fundamental issues raised by this apparent shift in the role of federal actors in establishing land grant boundaries. Most important was the question of whether Congress established the role for the U.S. Attorney in the CPLC process, and funded that office, with the intention that the U.S. Attorney would do something other than seek the most reasonable and likely interpretation of the grant boundary calls. Certainly there is no suggestion in the CPLC Act that the U.S. Attorney's duty was to secure as much land for the federal public domain as

[34] Westphall, *Mercedes Reales* at 257.

possible, regardless of the language of the grant document. Thus the positions taken by the U.S. Attorney and Surveyor General Julian raise the possibility that the intentions of Congress to honor the Treaty and the actions of federal employees may have been inconsistent with one another. *See* discussion at Section V.B. below.

A different issue was raised for land grant claimants when one grant was wholly located within another grant, or where two or more grants had overlapping boundaries and one land grant was awarded the entire overlap before the second grant was able to assert its own claim to those lands.[35] As the GAO acknowledges, there was a jurisdictional bar enacted into the Act of 1891 that prevented the CPLC from even considering a claim for lands that had already been part of a Congressional confirmation. GAO at 108-09. Act of March 3, 1891, 26 Stat. 854, Section 13, Clause 4.[36]

While this "first-come-first-serve" policy avoided a scenario where the CPLC might create conflicting awards to the same land, the implication for the grant that came later was that it was effectively "rejected by rule" as opposed to being considered on its merits and the conflict resolved in some other way. In the case of a valid community land grant that was wholly subsumed within an earlier-confirmed grant that was <u>not</u> confirmed as a community grant, the blow was twofold. The later grant's common lands that were incorporated into the earlier grant's award lost their character as common lands and were privatized, with the result that the residents ultimately lost the ability to use them as common lands. Moreover, the later grant also lost any

[35] For example, the Guadalupita grant was made in 1837 only after Alcalde Juan Nepomoceno Trujillo sought and received the permission of the principal citizens of the Town of Mora grant to allow the formation of a new settlement within the exterior boundaries of the Mora grant. However, because the Mora grant was confirmed in its entirety by Congress in 1860, it precluded confirmation of the Guadalupita grant and it is probably for that reason that the claimants withdrew their claim, which was pending before the CPLC. SG 152, CPLC 131.

[36] The CPLC apparently applied this same bar to lands that the CPLC had already awarded as well. In this way, for example, the CPLC's confirmation of the Juan Jose Lovato grant barred consideration of a number of grants that were contained within that grant that later came before the court. *See* GAO at 109-10, table 21.

local control or governing authority as a community over those lands as they passed into ownership of an entity outside the community.

Most of the 27 community grants that the GAO characterizes as "failed to pursue" faced this problem of being contained within or substantially overlapped by an earlier-confirmed grant. See GAO at 109-10, table 21. The phrase "failed to pursue" conveys an unfair impression as it applies to these grants. Their lands were essentially rejected by application of the jurisdictional bar and not from any lack of effort or interest in gaining confirmation. The GAO does otherwise accurately categorize these grants under the broader category of "rejected" grants. *See* GAO at 108, 212. From the perspective of the later grant claimants, the rule created a *fait accompli* that they had no way of anticipating and that left them with no recourse within the CPLC process.

The GAO's analysis omitted any discussion of the harshness with which the jurisdictional bar applied to later claimants and whether a mechanism might have been adopted by the U.S. to address the claims of the later grants that would have been less harsh than the jurisdictional bar, or that would have more closely resembled how Spain or Mexico might have resolved the conflicting claims.[37] That question is still relevant for Congress today.[38]

---

[37] In cases where overlapping claims had both been approved by the Surveyor General, the CPLC "jurisdictional bar" did not apply. These types of conflicts tended not to be decided by federal officials and at times ended up in state court, as an exception to the *Tameling* rule, where inconsistent versions of a first-come-first-serve analysis were applied. For example, in 1860 Congress confirmed the Town of Anton Chico and the Preston Beck Grants, which included an approximately 120,000-acre overlap between the two grants. When the Preston Beck owners sought to quiet title in order to partition the grant, the Board of Trustees of the Town of Anton Chico grant was forced to intervene in order to protect its interest in the overlap. Although the Anton Chico grant preceded the Preston Beck historically, the New Mexico Supreme Court asserted, based on the *Sandoval* precedent, that because the disputed area was an unalloted part of the Anton Chico common lands it was part of grant *de novo* made by Congress and the Preston Beck grant had superior title. *Board of Trustees of Anton Chico Land Grant v. Brown*, 33 N.M. 398, 269 P. 51 (1928).

[38] For instance, two conflicting claims that were recommended to Congress by the Surveyor General era were resolved by Congress contemporaneously to the satisfaction of the two groups. There, the Baca family and the Town of Las Vegas were both determined by the Surveyor General to have valid grants to the exact same lands. The Baca family agreed to waive its claim to the lands and Congress approved an equivalent quantity of land chosen by the Baca family from among unclaimed lands in the federal public domain. *See* Ebright, *Land Grants and Lawsuits* 203-04.

B. Myth of "Voluntary" Post-Confirmation Action by Heirs

In its discussion of post-confirmation losses, the GAO focuses only on whether the federal government had a post-confirmation fiduciary duty to land grantees, comparable to that owed to Indian tribes and pueblos, rather than recognizing the legal effects of the mis-confirmations themselves on the fate of land grants and common lands. Concluding there was no such duty, the GAO ascribes the loss of improperly confirmed common lands to the actions of land grantees and heirs themselves and to state law. This analysis overlooks how the federal government's breach of its *original* duty to land grantees, by confirming land grants improperly, set in motion the ultimate loss of common lands. Rather than breaching a post-confirmation duty, the breach had already occurred – resulting inevitably in significant losses to community grants.

As indicated above, the GAO's treatment of the problem of wrongful confirmations is wholly inadequate. For example, the problem of tenancies-in-common is discussed without any real analysis by the GAO of how tenancies-in-common came about, who was responsible for their creation, whether they were consistent with Spanish and Mexican law, or their direct consequences in terms of land loss. The GAO's version of this history is that the problem of tenancies-in-common is a "post-confirmation" problem; discussion of this problem occurs in Chapter 4, which focuses on land losses that occurred after the confirmation process. The GAO implies that the federal government did everything it was obligated to in "confirming" these grants (regardless of how they were confirmed), and that the loss of common lands was the result of later causes unrelated to the confirmation process:

> Some land grant heirs and advocates of land grant reform have expressed concern that the United States failed to ensure continued community ownership of common lands after the lands were awarded during the confirmation process. . . . Land grant acreage has been lost, for example, . . . by partitioning suits that have

> divided up community land grants into individual parcels . . . [C]laimants have lost substantially more acreage *after* the confirmation process . . than they believe they lost *during* the confirmation process . . .”

GAO at 146 (emphasis in original).

This passage is puzzling for a number of reasons. First, it fails to acknowledge that the critical point at which the loss of community ownership occurred was *during* the confirmation process when the common lands were converted to private tenancies-in-common or other private landholdings. It is not that the United States “failed to ensure continued community ownership of common lands” after confirmation in these cases, but that the confirmation itself failed to give legal recognition to the community ownership of the common lands. The GAO seems to regard partitioning as the event in which community ownership was compromised, without acknowledging any link between partitioning and the conversion of land tenure that occurred earlier during the confirmation process. In the same way, the entire history of land speculation and share-purchasing that was made possible only because of the creation of tenancies-in-common is absent from the GAO’s Report, so no context is given for understanding an entire major category of land loss that would not have been possible under Spanish and Mexican law. Also, curiously, partitioning is incorrectly described in the passage quotes above as “divid[ing] up community land grants into individual parcels”, when in fact partitioning typically was the sale of the entirety of the former common lands in one block after they had been wrongly designated as a tenancy-in-common.

According to the GAO, the problem was rooted in the existence and application of the state partition law. This is a completely erroneous way to frame the issue, both legally and historically. The state partition law, enacted in 1876, applied only to tenancies-in-common, such as land owned jointly by family members, and was a useful tool in that context and still is today.

In itself, the partition law was not necessarily a law or policy that was inimical to community ownership of land grants. The partition law never should have applied to community lands grants, and would not have, but for federal officials improperly converting those grants to tenancies-in-common. It was not the partition suit that privatized the common lands; the prior federal confirmation process had already done so. Once these lands were privatized, any number of laws, such as trespass laws, could have been used or invoked to enforce these newly created private rights and deny formerly lawful access to the former common lands. The root of the problem was not the state laws relating to private property, but the privatization of the common lands that made those laws suddenly applicable.

The effect of the GAO framing the issue in this way is that it never reached a discussion of how critically important it was for the federal confirmation process to designate land grants in the proper land tenure pattern, and the considerable consequences in terms of land loss where it failed to do so. On page 152, the authors relate, without comment, the contentions of land grant heirs and legal scholars to this effect. But there is no analysis or evaluation of these points, nor do the GAO's conclusions incorporate such considerations:

> ...[N]either Article VIII nor Article IX [of the Treaty of Guadalupe Hidalgo] created any fiduciary duty of the United States to protect owners of confirmed community land grant acreage in a special manner superior to the protections afforded to other U.S. citizens. Rather community land grant owners were to have the same property protections, guarantees and responsibilities that all U.S. citizens had, which would include . . . [being] subject to . . . partition suits . . . and any other legal mechanism potentially resulting in loss of real property ownership.

GAO at 154. This conclusion simply repeats the earlier analytical errors by stating that "community land grant owners" were "subject to . . . partition suits," despite the fact that, the partition law clearly only applied to tenancies-in-common. Community land grants were not

subject to partition suits when they were correctly confirmed as such. *See* note 12 and accompanying text above.

In these ways, the key analytical concepts for understanding this type of land loss were either absent or badly misstated in the GAO Report. The determinative role played by the creation of theretofore non-existent tenancies-in-common was overlooked, as was the federal role in creating such tenancies-in-common. These oversights also skewed the numbers the GAO used to support its conclusions. The community land grants that were erroneously confirmed as tenancies-in-common and private grants were all counted by the GAO as land grants that were "awarded," and the acreage contained in those land grants was similarly regarded as "approved acreage".

In other words, the GAO appeared to credit the United States for community land grants improperly designated as tenancies-in-common or as private grants in the exact same manner as if the grant had been properly approved as a community grant. The entire category of 84 confirmed non-Pueblos community grants was seemingly regarded by the GAO as lands for which the obligations under the Treaty of Guadalupe Hidalgo were fulfilled. *See* GAO at 146-60. However, clearly the question of the correctness of the confirmation is highly relevant to the question of whether Treaty obligations were met. Yet the GAO did not provide a breakdown of the 84 "confirmed" grants to distinguish those grants that were subject to significant types of land loss as a direct result of erroneous confirmations. The chart in Section II.E. is an attempt to address this shortcoming by the GAO by providing figures as to the land tenure in which the 84 confirmed community grants were actually confirmed.

Determining the number of acres lost during the "post-confirmation" era as a result of misconfirmations is a greater challenge. For example, partitioned grants include 10 "original

documentation" community grants (Town of Mora, Santa Bárbara, Cañon de San Diego, Las Trampas, Domingo Fernández, Nicolas Durán de Chávez, Caja del Rio, Bernabe Manuel Montano, Rancho del Rio Grande and Ojo de San Jose Grants); and 5 "self-identified" community grants (Town of Alameda, La Majada, Sebastián Martín, Polvadera, Black Mesa and Francisco Montes Vigil Grants). None of these grants was confirmed by the U.S. as a community grant, yet all of these are grants and acreage for which the GAO seems to have considered the Treaty to have been satisfied by virtue of confirmation. *See* GAO at 146-60. The total acreage sold or otherwise privatized through partition suits brought under these grants was probably about 1.6 million acres, though this number could be much higher, as systematic research on partitioned land grants has never been done.

Similarly, community grants lost by buyouts of designated tenants- in-common and of private grantees (such as in the case of the 594,000-acre Tierra Amarilla Grant) have not been systematically compiled and would require further research. Since the GAO did not account for these in the 3.4 million-acre figure it characterizes as lost during the confirmation process, that figure would be modified upwards significantly to reflect additional acreage lost due to misconfirmations of community grants.

One of the most troubling of the GAO's conclusions – and one that is frequently quoted – stems from these flawed figures and the flawed assumptions underlying them. Table 27 of the GAO Report purports to enumerate post-confirmation land losses not attributable to flaws in the federal confirmation process. The table lists the 84 "confirmed" land grants, and compares the vast "original acreage confirmed" with the virtually non-existent "current community acreage owned". In the accompanying text, the GAO concludes:

> . . . [I]t appears that virtually all of the 5.3 million acres in New Mexico that were confirmed to the 84 non-Pueblo Indian community grants have since been lost by

> transfer from the original community grantees to other entities. This means claimants have lost substantially more acreage *after* completion of the confirmation process -- almost all of the 5.3 million acres that they were awarded -- than they believe they lost *during* the confirmation process -- the 3.4 million acres that they believe they should have been awarded but were not.

GAO at 146 (emphasis in original).

Upon examination, however, the grants listed in Table 27 include grants confirmed as tenancies-in-common and then partitioned (e.g., Town of Mora, Santa Barbara, Town of Las Trampas); it includes the grants affected by the *Sandoval* precedent, which the confirmation process left with virtually no community-owned acreage; it also includes the privatized Tierra Amarilla Grant and the Anton Chico Grant, whose significant reduction in acreage, due to the botched confirmation, is described below. In this manner the GAO characterizes what happened to the common lands of these grants as a "transfer from the original community grantees to other entities" in a time and manner unrelated to the confirmation process.

For many of these grants, this is a serious misstatement, historically and legally. In 1875 more than 1,000 Mora Grant residents petitioned the federal government and pleaded with federal officials to properly confirm their grant as community-owned, to no avail. This misconfirmation of the Mora Grant by federal officials is the most important factor in why there is so little "current community owned acreage" within the grant today, rather than because of some post-confirmation "transfer" to "other entities" by the Mora residents. Likewise, the Tierra Amarilla Grant residents have been to state and federal court five times to try to undo the erroneous confirmation of their community grant as a private grant. That is what happened *after* the confirmation process, though it was *during* the confirmation process that the community land loss occurred, when Francisco Martinez was improperly awarded the entire grant.

Even in some cases where the land grant knew it was parting with its common lands, the federal government bears a significant amount of responsibility for the circumstances under which it did so. For example, the Anton Chico Grant would not have had to "spend" 135,000 acres of common lands on attorneys and as a legal settlement, were it not faced with having to undo the legal confusion that resulted from one branch of the federal government (Congress) *confirming* the grant as a community grant while another branch of the federal government (Secretary of Interior) *patented* the grant as a tenancy-in-common, while still a third branch of the federal government (Surveyor General) delivered *possession* of the patent as a private grant to the successors of the *poblador principal*. Rock, *The Anton Chico Grant and Its Patent* 88-91. The GAO cited the Anton Chico Grant as an example of land loss through payment in land for legal services and described the nature of the legal services as "outside the confirmation process." GAO at 151. This is yet another example of the GAO failing to acknowledge federal actions in the confirmation process that were the proximate cause of later land loss.

The entire treatment by the GAO of "confirmed" community grants, and Table 27 in particular, (1) completely obscures the link between land tenure as confirmed and losses by combining all "confirmed" grants in one statistic without regard to correctness; (2) suggests that as long as the U.S. confirmed a grant to *someone*, it adequately performed its obligation under the Treaty; (3) conveys an element of self-determination on the part of the community which did not exist for many grants, and in fact had been taken away by the erroneous confirmation; and (4) conveys the impression that, because of the passage of time between the erroneous confirmation and the assertion of private property rights (e.g., fencing, partition), the federal government bears no responsibility for the consequences of creating the private rights in the first place. Table 27, and the GAO's figures and conclusions discussed in this section, give a

seriously misleading impression of what actually occurred in the history of New Mexico land grants.[39]

V. Rejected Claims and Acreage

As discussed above, land grant lands were frequently rejected during the CPLC era because a grant was wholly subsumed within another grant or because the overlapping claim had already been confirmed to another grant. In addition, land grants were entirely rejected based on technicalities that would not have applied under Spain or Mexico. While it acknowledges the narrow decisions that resulted in the rejection of these claims, the GAO Report omits any critical analysis of the decisions themselves. The GAO Report also underemphasizes the inequity of such decision-making and the consequences thereof, particularly when a number of these grants were recommended for confirmation by prior federal actors, but then were ultimately rejected after Congress failed to act on these confirmations and the grants became subject to the stricter, less equitable standards of subsequent decision-makers. *See* GAO at 210-11.

A. Grants Rejected, Withdrawn or Dismissed Due to Erroneous Holdings

In addition to land grant lands being rejected during the CPLC era because of jurisdictional bars, numerous land grants were rejected based on technicalities that would not have applied under Spain or Mexico. While it acknowledges the narrow decisions that resulted in the rejection of these grants, the GAO Report omits any critical analysis of the decisions themselves. The GAO Report also underemphasizes the inequity of such decision-making and the consequences thereof, particularly when a number of these grants were recommended for

[39] Without question there were post-confirmation losses of common lands for properly confirmed community grants as well, as described by the GAO in Chapter 4 (e.g., sales of common lands by land grant boards of trustees). However, there were only 20 non-Pueblo grants confirmed as community grants, out of 84 confirmed – with the other 64 confirmed as private grants or tenancies-in-common. See Section II.E. So the land losses associated with these latter types of mis-confirmations were a much more significant problem, numerically speaking, than land losses associated with properly confirmed community grants.

confirmation by prior federal actors, but then were ultimately rejected after Congress failed to act on these confirmations and the grants became subject to the stricter, less equitable standards of subsequent decision-makers.

Section I above discusses how the CPLC and U.S. Supreme Court in given cases applied an overly narrow view of their authority under the Act of 1891, and how the GAO failed to consider the evidence that Congress intended in that Act for the CPLC to not be confined to such a strict application of Spanish and Mexican law in considering the validity of land grants. In a number of cases, land grants were rejected as invalid on technical grounds that Spain or Mexico would not have applied to such grants. Moreover, the Supreme Court was not consistent in applying these standards, sometimes approving grants and sometimes rejecting grants with similar types of documentation or lack of documentation.[40] *See* Section I above.

---

[40] This inconsistency caused contention within the CPLC itself as it tried to determine whether it in fact had a clear statement of policy from the Supreme Court. Prior to the Supreme Court's *Hayes* decision, the CPLC made a persuasive statement in approving the Town of Bernalillo grant as to why it made no practical sense – and why it made no sense under the U.S. Treaty obligations – to deny grants based on the technicalities of who made copies of granting documents:

> We know from our examination of many claims under Spanish grants . . . that the practice of perpetuating in this manner the evidence of title . . . was common. Indeed, that was the only way that evidence of title in the hands of the people could be perpetuated . . . . The papers were passed from hand to hand as the ownership of the property changed and necessarily in the lapse of time, they became mutilated. It is true that public records of the proceedings relating to the grants of land were required to be made. But the sovereignty over the country has been twice changed, once by revolution and once by military conquest and in addition to that it is a matter of history that there have been times of turmoil in which all civil government in the country has been endangered. In view of these facts, it is not remarkable that the ancient records should now be in an unsatisfactory and imperfect condition. It has also many times been proven before us that spoilations of the records have occurred since our own government acquired jurisdiction over the country. It is manifest that if claimants should now be held to the strictness of proof which would be required in the establishment of a title of American origin, great injustice would be done, and the measures established by the government for the purpose of carrying out its treaty stipulations, would be made the instrument of defeating that purpose.

Decision by the Court of Private Land Claims in the case of the Town of Bernalillo grant, PLC 258, Roll 53, fr.20. Subsequent to the *Hayes* decision, a nearly identical fact situation was presented by the Embudo grant in 1898. A divided Court of Private Land Claims rejected the grant, with the majority apologetically doing an about-face and asserting the restrictions of its mandate set forth in *Hayes*. Chief CPLC Justice Joseph R. Reed and Justice Wilbur F. Stone spoke to the plain injustice of the decision in a dissenting opinion reminding the other justices that the court had confirmed the Town of Bernalillo grant on "substantially the same character of evidence which the court now rejects." J.J. Bowden, "Private Land Claims in the Southwest," 6 vols. Master's thesis, Southern Methodist University (1969), 1201.

In addition to Section I above, New Mexico land grant literature describes at length the various problems of land grants being rejected on technicalities. *See* Ebright, *Land Grants and Lawsuits* at 127-142; Mark Schiller, *Adjudicating Empire* (2008) (unpublished manuscript on file with the authors). The GAO does not in any way dispute the increasingly technical trend of these types of decisions over the course of the CPLC era.

The GAO does make brief mention of the effect that these adverse court decisions undoubtedly had on claims that were pending before the CPLC under similar fact situations or similar evidentiary situations. GAO at 109 ("In some instances, it appears that claimants withdrew their claims after learning that . . . the CPLC had previously rejected similar claims.") Between the grants that were "rejected" in this manner by adverse precedent when their claim was still pending, those that were directly rejected by the court on technicalities that would not have applied under Spanish and Mexican law, and those barred for jurisdictional reasons involving prior confirmation of another grant, the CPLC era generated a sobering legacy of unnecessarily rejected grants. The GAO fails to show how these rejections did not necessarily flow from any intent of Congress to deviate from the Treaty obligations as they were understood prior to 1891 and therefore why overruling such rejection might be an appropriate remedy for Congress to consider.

B. Federal Delay Resulted in Grants Faring Worse

A significant percentage of community lands grants came one step shy of final approval after receiving a recommendation for approval by the Surveyor General. Grants submitted to Congress for action on the Surveyor General's favorable recommendation were virtually assured final confirmation, since Congress, when it did act on a favorable Surveyor General recommendation, always affirmed that recommendation. However, after a number of circumstances brought Congressional confirmations of land grants to a stand-still, GAO at 52,

many of these recommendations simply languished before Congress: in the case of 56 of the 88 (64%) non-Pueblo, community land grants that received favorable recommendations, Congress simply failed to act on the recommendation.[41] Thus, nearly two-thirds of these grants never benefitted from the favorable recommendation and were forced to wait and begin the process again after 1891, when the CPLC process was enacted – a process in which the U.S. played the role of adversary and one that turned out to be significantly more problematic for land grant claimants. *See* Richard Wells Bradfute, *The Court of Private Land Claims, the Adjudication of Spanish and Mexican Land Grant Titles 1891-1904,* 220-221 (UNM Press 1975), Westphall, *Mercedes Reales* 261.

The vast majority of these 56 grants fared significantly worse under the Court of Private Land Claims process, after coming so close to full recognition under the Surveyor General process. 26 of the 56 grants were reduced in acreage under the CPLC process, compared to the Surveyor General's preliminary survey or the amount of acreage stated in the petition. 16 others grants were totally or almost totally rejected under the CPLC process, including 11 that were rejected as invalid, and 5 that had their common lands entirely rejected – a result that would not have occurred in the Surveyor General era. Three other grants never reached a decision on the merits under the CPLC process, most likely because prior approval of another grant that conflicted with the grant deprived the CPLC of jurisdiction to consider the claim. Only 11 of the 58 grants fared the same or better (in terms of acreage) under the CPLC process. The chart below details the final disposition of the 56 Surveyor General-approved grants on which Congress failed to act. This chart also shows which grants that were slated for approval under

[41] All of the grants brought before Congress in the first six years of the 1854 Surveyor General Act were acted on by Congress in its confirmatory Act of June 21, 1860. GAO at 64. There were approximately 60 such grants, including Pueblo and non-Pueblo community grants and private grants.

one Surveyor General received a new recommendation for a reduction in acreage or for rejection under a subsequent Surveyor General.[42]

The GAO acknowledges this problem, but not the magnitude of it. The GAO discusses the causes of the Congressional delay and acknowledges that grants which would have been confirmed in the Surveyor General era were often rejected in the CPLC era. The GAO also concludes that "pursuing a land grant claim was inefficient and burdensome for many claimants . . . some claims had to be presented multiple times to different entities under different legal standards." GAO at 164. But a number of difficult questions that arise in light of this problem remained undiscussed by the GAO.

For instance, when Congress passed the Act of 1891, did it really intend this type of result, i.e., that so many land grants similarly situated to ones that it had approved in the Surveyor General era would fare so much worse? Unquestionably Congress was trying to prevent unwarranted and expansive private claims on federal public lands, but did Congress intend to create obstacles to full confirmation for smaller grants containing viable communities as well? It seems unlikely that Congress believed it was setting such a significantly harsher standard or that it intended grants to fare worse on this scale. Further, did Congress intend that the role of the U.S. Attorney in the CPLC process would be to advance novel legal theories for the rejection of community grants that were not applied in the Surveyor General era, such as the theory that common lands did not belong to the community grant? This also seems unlikely, at least to the degree that it occurred under the CPLC.

---

[42] As the chart indicates, subsequent review of a favorably-recommended grant by Surveyor General Julian usually presaged less favorable treatment under the CPLC process – either a reduction in acreage or a recommendation of rejection. Of the 21 grants that Surveyor General G.W. Julian reviewed after they were recommended for confirmation by his predecessors, Surveyor General Julian recommended that ten grants be ultimately rejected, nine of them be confirmed by Congress, but with a reduction in the acreage to be confirmed, and two of them he recommended be confirmed as previously suggested. *See also* Ebright, *Land Grants and Lawsuits* at 43-45.

It does not appear, as the GAO seems to suggest, that Congress sought the type of harsh result that occurred after it enacted the CPLC. What the above figures at least suggest is an overly severe systemic response by key federal actors (e.g., U.S. attorney, Supreme Court, Surveyor General Julian) to the Act of 1891 or the circumstances prior to its passage. Many otherwise perfectly valid community land grants were negatively affected by this response and by those circumstances. This included not only those grants that had been regarded favorably in the Surveyor General era, but also those valid community grants that came up for consideration for the first time in the CPLC era.[43] This is an important history for the present-day Congress to be aware of as it assesses possible remedies for land grants.

[43] *See Appendix A:* Specifically the Santa Cruz, Juan Bautista Valdez and Santo Domingo de Cundiyo grants.

Final Disposition of Grants Recommended for Approval by Surveyor General and Not Acted Upon by Congress

Name of Grant	Year initially recommended for confirmation	Final disposition: rejection of grant as invalid by CPLC or on appeal to the U.S. Supreme Court	Final disposition: found to be valid but common lands totally denied by CPLC or U.S. Sup. Ct	Final disposition: acreage reduced by CPLC or Sup. Ct.	Subject to review by subsequent Surveyor General & recommended for rejection (rej.) or reduction in acreage (red. acr.)
1. *Town of Alameda	1874			x (1892	x (rej.)
2. Alamitos	1872			x (1896)	
3. *Antonio Baca	1877			x (1895)	x (rej.)
4. Arroyo Hondo	1888			x (1892)	
5. *Bernabe Manuel Montaño	1870			x (1892)	x (red. acr.)
6. Town of Bernalillo	1874			x (1897)	
7. *Bosque Grande	1874			x (1896)	x (rej.)
8. Cañada de los Alamos	1874			x (1893)	
9. Cañada de San Francisco	1871	x			
10. Cañon de Carnue	1886		x (1894)		
11. *Cañon de Chama	1872		x (1894)		x (red. acr.)
12. Cebolla	1872	x (S.C.1900)			
13. *Chaca Mesa	1874			x (1895)	x (red. acr. and rej.)
14. *Town of Cieneguilla	1872	x (1896?)			
15. Cuyamungue	1871			x (1895)	
16. Don Fernando de Taos	1878		x (1897)		

Name of Grant	Year initially recommended for confirmation	Final disposition: rejection of grant as invalid by CPLC or on appeal to the U.S. Supreme Court	Final disposition: found to be valid but common lands totally denied by CPLC or U.S. Sup. Ct	Final disposition: acreage reduced by CPLC or Sup. Ct.	Subject to review by subsequent Surveyor General & recommended for rejection (rej.) or reduction in acreage (red. acr.)
17. *Francisco de Anaya Almazán	1878			x (1897)	x (red. acr.)
18. *Francisco Montes Vigil	1881			x	
19. Gervacio Nolan	1858	x (1894)			
20. Gijosa	1876			x (1893)	
21. Gotera	1877	x (1895)			
22. *Juan Bautista Valdez	1871			x (1898)	x (rej. and red. acr.)
23. Juan de Gabaldon	1872			x (1893)	
24. Los Serrillos	1872			x (1894)	
25. Maragua	1880	x (1898)			
26. Mesilla Civil Colony	1874			x (1899)	
27. Ojo Caliente	1874			x (1894)	
28. Parajito	1887			x (1894)	
29. *Petaca	1875		x (1896)		x (red. acr.)
30. Plaza Colorado	1886			x (1893)	
31. *Polvadera	1882			x (1893)	x (rej.)
32. Rancho del Rio Grande	1860/1879			x (1892)	
33. Refugio Civil Colony	1874			x (1901)	
34. San Antonio de las Huertas	1862			x (1897)	x (rej.)

Name of Grant	Year initially recommended for confirmation	Final disposition: rejection of grant as invalid by CPLC or on appeal to the U.S. Supreme Court	Final disposition: found to be valid but common lands totally denied by CPLC or U.S. Sup. Ct	Final disposition: acreage reduced by CPLC or Sup. Ct.	Subject to review by subsequent Surveyor General & recommended for rejection (rej.) or reduction in acreage (red. acr.)
35. *San Antonio del Rio Colorado	1874	x			
36. *San Clemente	1855			x (1896)	x (rej.)
37. *San Joaquin del Nacimiento	1872	x			x (rej. and red. acr.)
38. *San Miguel del Vado	1879		x (S.C 1897)		x (red. acr.)
39. Santa Fe	1874	x			
40. Albuquerque	1881	x			
41. *Socorro	1875			x	x (red. acr.)
42. *Vallecito de Lovato	1875	x			x (rej.)
Totals		**11**	**5**	**26**	**16**

* Indicates re-examined by Surveyor General G.W. Julian and either recommended for rejection or recommended for confirmation with a reduction of acreage

Final Disposition: Grants confirmed for total acreage petitioned for

Name of Grant	Year recommended for confirmation	Year acted upon by the CPLC
43. Nicolas Duran de Chavez	1887	1896
44. Cristobal de la Serna	1888	1892
45. Cañon de San Diego	1880	1893
46. *Santos Tomas de Yturbide	1885	1900

Final Disposition: Grants confirmed for more than their petitioned acreage

Name of Grant	Year recommended for confirmation	Year acted upon by the CPLC
47. Abiquiu	1885	1894
48. Santa Barbara	1879	1894
49. Atrisco	1885	1894
50. Sevilleta	1874	1893
51. * San Marco Pueblo	1873	1892
52. Dona Ana Bend Colony	1874	1896
53. Caja del Rio	1872	1893

Final Disposition: No Proceeding in CPLC on Merits of Claim

Name of Grant	Year Recommended for Confirmation	Likely Reason for lack of Proceeding on Merits
54. Jose Trujillo	1878	All land within this claim had already been confirmed as parts of Pueblo grants by Congress so CPLC lacked jurisdiction.
55. El Rito	1870	Most land within this claim had already been confirmed by the CPLC as part of the Juan José Lovato Grant so CPLC probably lacked jurisdiction.
56. *Antonio de Salazar	1882	Most land within this claim had already been confirmed by the CPLC as a part of the Bartolome Sanchez and so the CPLC probably lacked jurisdiction.

VI. Due Process Concerns

For years, lawyers, scholars and activists have argued there were violations of constitutional due process guarantees in the land grant confirmation process in New Mexico. Such concerns stem from the guarantees of the federal constitution, made applicable to the states, that no property rights shall be denied "without due process of law." U.S. Const. amend. V, XIV. The principal concerns regarding the federal confirmation process are (1) the inadequacy of publication notice under the Surveyor General to potential grantees and possible third party claimants; (2) the lack of any procedure to address such third party claims before the Surveyor General; (3) third-party claimants not being systematically brought into CPLC adjudications, resulting in arguably incorrect confirmations and third-party claims being forever barred; and (4) the adversarial process under the CPLC in which claimants were forced to defend their claims against government attorneys but with vastly fewer resources. *See* GAO at 125 n. 107 (citing several examples of such criticisms).

The GAO concludes that the process was constitutional, focusing in large part on the erroneous premise, discussed at length in Section III above, that the confirmations were not

"final" determinations because third parties could still assert their claims collaterally in the state courts. *See* Section III. The GAO's analysis ignores relevant case law, the realities of the time, and the fact that such confirmations were in fact final as to all potential claimants.

A. Surveyor General Era

As discussed by the GAO, during the Surveyor General era the Surveyor General published notices in the Santa Fe newspaper requiring claimants to present land grant claims to the Surveyor General in Santa Fe for confirmation. *See* GAO at 57, 59. Although the Surveyor General was specifically directed to attempt to ascertain names of grantees of the various land grants through an examination of the Spanish and Mexican records in Santa Fe, *see* GAO at 193-97 (Instructions of Interior Issued to the Surveyor General of New Mexico), there is no evidence that he did so, or if he did, that he ever attempted to give notice to such grantees. Thus, claimants were not generally notified of pending claims whose validity, boundaries, or ownership they might contest. Once a claimant came before the Surveyor General, occasionally witnesses were cross-examined or additional witnesses called, but notice was rarely if ever given to potential adverse claimants of such claims, resulting in largely *ex parte* decisions. *See, e.g.,* GAO at 60, 69 (quoting Surveyor General Clark's statements questioning the legality of this process).[44]

Contrary to the GAO's conclusion, this lack of notice appears to have been constitutionally unsound under both the "traditional" and "modern" notice standards. In the "modern" case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the U.S. Supreme Court held that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present

[44] Although theoretically such notice was permitted under the Act of 1854, GAO at 56 (quoting Section 8 of Act), the lack of resources provided to the Surveyor General in New Mexico meant that potential adverse claimants were rarely made aware of pending claims. *See* GAO at 69.

their objections." *Id.* at 314. In so holding, *Mullane* restated the traditional principle that the requisite degree of due process – in particular, the type of notice and the opportunity to be heard – always depends on all of the circumstances of the particular deprivation, rather than there being any precise formula for what process is due. *See id.* at 314 (citing over 50 years of case law for its proposition).

Mullane itself was not a meaningful departure from the due process standard that had existed up to that point, at least insofar as it affected New Mexico land grant claimants, contrary to the claims of the GAO. *See* GAO at 128-29. Rather, the "modern" test of constitutional notice, i.e., "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," appears to been the modern equivalent of the notice standards for adjudications involving land grants even in 19th century New Mexico. *See, e.g., Rodriguez v. La Cueva Ranch Co*., 17 N.M. 246, 257-58, 134 P. 228, 231-32 (1912); *Priest v. Town of Las Vegas*, 16 N.M. 692, 120 P. 894 (1911), *aff'd by* 232 U.S. 604 (1914). The GAO contends that, up until *Mullane*, notice by publication was sufficient for proceedings involving land adjudications. GAO at 127-21 (distinguishing constitutional notice in "*in rem*" or "*quasi in rem*" from that required in "*in personam*" proceedings). In the case of New Mexico land grants, however, the legal foundation for the *in rem* vs. *in personam* distinction (i.e., the fact that property holders may be beyond the jurisdictional reach of the state), was simply not present, so *Mullane* did not change the inapplicable standard. As *Mullane* emphasized, the precise circumstances of any situation have always determined the amount of process that is due. The cases upon which the GAO relies are inapplicable to New Mexico land grants and fail to support its blanket proposition that, pre-*Mullane*, newspaper notice was constitutionally sufficient.

For instance, *Arndt v. Griggs*, 134 U.S. 316, 320-21 (1890), cited by the GAO for the proposition that publication notice was acceptable for *in rem* proceedings, held that due process was satisfied by publishing notice to *non-resident owners* of property located within the state; its reasoning is simply inapplicable where property owners are located in-state. Likewise, in *Walker v. City of Hutchinson,* 352 U.S. 112 (1956), the Court rejected the state's argument that notice by newspaper publication in a condemnation action was permissible under *Huling v. Kaw Valley Railway & Improvement Co*., 130 U.S. 559 (1889) – a case also relied on by the GAO. GAO at 128, n. 114. *Walker* held that the state's reliance on *Huling* was "misplaced" since the appellant in *Walker*, unlike the railroad in *Huling*, was a *resident* of the state in which the property was located. *Walker*, 352 U.S. at 116 (distinguishing *Huling*, which sanctioned publication notice where the railroad was *out-of-state*). The Court held *Huling* was simply inapplicable where the person in question *was a resident of* the state where the property was located. *Id.* Clearly, even in the late 1800s, notice by publication was disfavored and only acceptable where the state's powers to hail a person into court by other means were constrained. *See* Emily Riley, Practicalities & Peculiarities: The Heightened Due Process Standard for Notice Under, 27 J. Nat'l Ass'n L. Jud. 209 (2006).[45]

Even if the cases cited by the GAO are applicable to the publication notice given by the Surveyor General – despite the fact that newspapers in those states were commonly used and property holders were out of state, unlike in New Mexico – they suggest that notice of the action should be given by posting such notice on the property in question, in addition to newspaper

[45] Further, cases allowing notice by publication in *quasi in rem* proceedings did so based on a presumption that publication of proceedings affecting property rights was a commonly used technique, and that therefore a prudent property holder would be expected to take notice by reading the newspaper. *See* GAO at 132. In addition to the low literacy rate in New Mexico, as discussed below, notice by publication was not authorized in New Mexico until 1874, and therefore property holders in the territory would have no such expectation. Applying such a presumption arguably violates the principles of fairness on which due process is premised.

publication. For instance, in *The Mary*, 13 U.S. 126, 144 (1815), used by the GAO for its argument that constructive notice suffices for property proceedings, personal notice was not required were the property in question, a vessel, was physically seized. The equivalent notice in the case of land grants would be at least a posting on the property, not publication in a regional newspaper.

Similarly, *Huling*, relied upon by the GAO to support its argument that publication provided sufficient notice to all potential claimants, was a situation involving property holders who were not residents in the state/territory, and therefore could not expect to be personally served. *Huling,* 130 U.S. at 563-64. Such *absentee* property-holders were expected to take notice of information in publications where their property was located. The rationale for allowing for notice by publication in cases involving property was based in part on the Court's judgment that property owners should monitor and guard activities that could affect their property. *See The Mary*, 13 U.S. at 144. In the case of absentee property owners, because they are outside the state courts' jurisdiction and should not expect personal service of actions involving their property, the Court in *Huling* explained it is their responsibility to monitor the newspapers, or have a representative do so, since this is the most reasonable way for them to learn of any such action.[46] *See Huling*, 130 U.S. at 563-64. This principle is inapplicable residents of a land grant, since clearly they were not absentee landowners, so even under these cases something more than published notice would be required.

Even under the standard as articulated by *Mullane*, the GAO claims that notice to claimants by newspaper alone was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

[46] Clearly, however, the appointment of such a representative would be ineffective if neither the property is described nor the land owner identified in the published notice. In such a case, there is no way for either the representative or the owner to know when the owner's property is being affected.

objections." GAO at 131.[47] However, *Mullane* itself considered notice by publication *alone* to be constitutionally suspect, particularly when any other type of feasible notice was more reasonably calculated to alert individuals of the potential deprivation. 339 U.S. at 316 ("[P]ublication has traditionally been acceptable as notification *supplemental* to other action which in itself may reasonably be expected to convey a warning.") (Emphasis added.). This holding was consistent with earlier Supreme Court cases from the mid-late 1800s, during the same time period as the land grant adjudication process in New Mexico. *See, e.g., Davidson v. New Orleans*, 96 U.S. 97, 105-06 (1878) (in tax assessment action, in accordance with constitutional due process, statute properly required the government to give personal service to those who were known, to search for those who were unknown, and to publish notice in the newspaper in which the property was located to all those who could not be found or were unknown).

Further, the GAO overlooks the realities of 19th century New Mexico, and the fact that such notice was unlikely in fact to inform potential claimants of their rights, much less any adverse claims. At the time, New Mexico had an extremely low literacy rate and few individuals could have even read the notices. In 1851, the first census of New Mexico taken by the United States Department of State reported a total population of 56,984; of those, seven-eighths were illiterate. Territorial Papers: New Mexico, I, Records Group 59, National Archives, Washington D.C.; Robert Larson, *New Mexico's Quest for Statehood 1846-1912* 65 (UNM Press 1968). It is questionable whether notice by publication could ever be reasonably calculated to inform individuals in such circumstances. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791,

[47] Further, the GAO claims notice *must* have been reasonable, since claimants filed claims in 130 of 154 community grants, and 208 of 295 the total grants. GAO at 131. The GAO disregards the fact that some of the individuals who advanced claims were not the true owners, e.g., Tierra Amarilla, or that individuals advancing the claim may not have been representative of the entire community in the case of community grants, resulting in numbers of improper confirmations.

800 (1983) ("[P]articularly extensive efforts to provide notice may often be required when the State is aware of a party's inexperience or incompetence."). Further, newspaper notification was not authorized under New Mexico law until 1874, so there would have been no expectation that any information concerning the legal taking of property would be found in the newspaper. At that point a landowner would arguably have looked to local newspapers for information concerning his property, rather than to the regional newspaper in Santa Fe.

In addition, there were several methods of notice which were certainly "feasible" and would have been "substantially more likely to give notice of the action" than simple publication by newspaper. *See Mullane*, 339 U.S. at 318; *Dusenbery v. United States*, 534 U.S. 161 (2002). As discussed above, the Surveyor General was required to ascertain names of grantees, as well as probable locations of both the land and grantees; certainly the notices could have been sent to the named grantees at the post office servicing the location of the land. The notice could have been posted on the land under consideration and at the post office in the district in which the land was situated. Additionally, the notice could have been published in local newspapers or in the churches, stores and meeting places in the areas under consideration. In any of these cases, the method of notification arguably would have made an illiterate land grant claimant aware of proceedings potentially affecting the claimant's property interests.

In claiming publication notice satisfied the reasonableness standard of *Mullane*, the GAO does not even mention the two New Mexico cases that addressed the "reasonableness" of publication notice in the context of land grant cases and reached the opposite result. In *Rodriguez v. La Cueva Ranch Co*., 17 N.M. 246, 257-58, 134 P. 228, 231-32 (1912), the state supreme court held the inclusion of "unknown claimants" in a partition decree was insufficient under the state's notice statute to satisfy due process because the claimants were reasonably

ascertainable. Although *La Cueva* was a state law rather than federal constitutional decision, it was based on what was considered reasonable notice at the time, and in considering reasonableness, the presence of people on the land was a factor that should be taken into account in determining whether potential claimants were "reasonably ascertainable."

Likewise, in *Priest v. Town of Las Vegas*, 16 N.M. 692, 120 P. 894 (1911), *aff'd*, 232 U.S. 604, 614 (1914), the New Mexico Supreme Court held that parties seeking to enforce a quiet title decree within the Las Vegas land grant did not satisfy statutory or constitutional due process by publishing notice to "unknown heirs" when such claimants, including the Town itself, were reasonably ascertainable and could be named and served personally. *Id.* at 697-98, 120 P. at 896. The parties argued that although the grant had been confirmed to the town by Congress in 1860, the town was not incorporated until much later and therefore the parties did not known who to serve (as the town "was a mere aggregation of people without corporate organization"). The court rejected this argument, as there was no obstacle to naming the town in the notice, and the Supreme Court had previously held, in *Maese v. Herman*, 183 U.S. 572, that the town was a sufficiently "substantial entity" to receive a patent to the grant. *Id.* at 699, 120 P. at 896. *Priest* underscores that notice by publication in land matters was not automatically constitutionally sound pre-*Mullane*, and that the determination rested on the precise circumstances, the feasibility of alternative methods, and the difficulty of ascertaining the interested parties.

In addition to concerns about the insufficiency of notice given to potential claimants, and on a related note, scholars have pointed to the largely *ex parte* nature of Surveyor General proceedings and the lack of opportunity for adverse parties to be heard in proceedings that affected them – another touchstone of constitutional due process. Not surprisingly, the GAO concludes that provisions such as the opportunity for adverse parties to appear and for cross-

examination were not constitutionally required in the Surveyor General process. GAO at 134-39. Here the GAO reiterated the flexible nature of the type of procedures constitutionality required, both traditionally and under the U.S. Supreme Court's present-day analysis in *Mathews v. Eldridge*, depending on (1) the private interests affected, (2) the risk of erroneous deprivation and (3) the government's interest in not providing the particular safeguard, the GAO concluded that the relatively uncomplicated, "investigative" process by the Surveyor General did not required the right to a formal hearing, with the full participation of adverse parties and the constitutional right to cross-examine witnesses. GAO at 136-37.

As discussed below, the GAO relied heavily on the notion that confirmations under the 1854 Act were not final as to potential third-party rights, nor did the proceedings even seem to *involve* the rights of third parties, so that fewer due process safeguards were required under the *Mathews* balancing test. GAO at 135-40. This error had a significant impact on the GAO's determination of what protections were constitutionally required, in particular causing it to vastly underestimate the third-party interests involved in each confirmation, in addition to the significant risk of erroneous deprivation to third-party claimants. While the GAO insisted that, under cases such as *United States v. O'Donnell*, 303 U.S. 501 (1938) (addressing concerns regarding the California confirmation process) there was simply no obligation to require an adversarial process in Surveyor General proceedings, such arguments ignore the fact that, in many ways unlike the California Commission process, Surveyor General's recommendations – being unappealable to the courts and consistently adhered to by Congress – were in fact final and binding.

Perhaps most surprising of all, the GAO contends land grant claimants under the Surveyor General process may not have even been *entitled* to *any* due process protections, since

the Surveyor General was "not empowered to determine legal rights or actually deprive any person of life, liberty, or property," again relying on distinguishable cases. GAO at 129-30. The GAO likened the Surveyor General process to *Hannah v. Larche*, 363 U.S. 420 (1960), in which a commission merely investigated – rather than acted on – civil rights claims and therefore truncated due process was permissible, in contrast to *Jenkins v. McKeithen*, 395 U.S. 411 (1969), which involved a commission that conducted adjudicative proceedings where full due process was required. The GAO concluded the Surveyor General process was arguably more of an investigative fact-finder, as in *Hannah*, and hence did not have to provide the due process required for actual determinations or deprivations of legal rights. Here the GAO's claims are tenuous at best, given the realities of the federal confirmation process and the fact that Congress consistently followed the favorable recommendations by New Mexico's Surveyors General, thereby permanently deciding legal rights and extinguishing others. Even the GAO concedes, after proferring its initial claim, that the land grant situation was more akin to the facts in *Jenkins*, where individual property rights were irrevocably affected by commission action, than to those in *Hannah*. GAO at 130-31.

B. Court of Private Land Claims Era

Although the GAO does not address any due process concerns from the Court of Private Land Claims process, several have been noted by land grant scholars and lawyers. In particular, critics note that, under the adversarial CPLC process, the stakes were much higher for claimants and the risks of erroneous determinations greater, yet the procedure still lacked fundamental protections such as the systematic joinder and participation of third-party claimants. *See, e.g.,* Ebright, *Land Grants and Lawsuits* at 46-48. In cases such as the Juan Jose Lobato, Cundiyó and Truchas land grants, for instance, claims proceeded through the CPLC process without

evidence of adverse claimants being made aware of such pending claims. In other cases, such as the Pueblo Quemado grant, claimants were made aware of possible adverse claimants but there is no evidence that notice was ever provided to most of those potential third parties of the pending claim. *See* Davis, *Perceptions of Power*, at 25, 28-29.

Further, while the GAO notes the increasingly adversarial nature of the proceedings and exclusion of a number of presumptions that aided claimants under the Act of 1854, GAO at 78-81, concluding that such decisions were up to Congress (subject to due process, which it claims was satisfied), the GAO ignores some of the deeper systemic problems that arguably violated the procedural due process rights of claimants in the CPLC era. The fact that the action was adversarial in nature, was initiated under direction from the government[48] and prosecuted by U.S. attorneys against poor and often illiterate individuals, and often involved a complete deprivation of Treaty-protected property rights, arguably warranted additional due process safeguards under *Mathews v. Eldridge*. In particular, the vastly differing resources between land grant claimants and government attorneys substantially increased the risk of erroneous deprivation to claimants. These and other due process concerns under the CPLC process, omitted entirely from the GAO report, certainly deserve additional analysis and scrutiny.

C. The Finality of Confirmations under Both Processes

These apparent due process violations, including the insufficiency of notice, were particularly egregious in light of the finality of land grant confirmations under the Surveyor General and adverse claimants' inability to collaterally challenge such confirmations. *See* Section III. Throughout its due process section, the GAO relies heavily on the notion that the Surveyor General confirmation process did not require such rigorous due process since it did not

[48] Although the Act of 1891 did not require perfect claims to be brought before the CPLC, the GAO recognizes that this was the practical effect of the Act, given that land was not set aside from the public domain pending resolution of claims. GAO at 80-81.

constitute a final decision, the confirmation being ultimately up to Congress. *See* GAO at 132-40.

As discussed above, the GAO's contentions regarding the lack of finality could not be further from the truth. Rather, recommendations by the Surveyor General and decisions under the Court of Private Land Claims process sealed the fate of land grants and in only very limited, rare circumstances were subject to collateral attack by third parties in the courts. The GAO's analysis throughout this section should be reviewed in light of its misplaced reliance on this notion, supported only by the anomalous New Mexico district court decision in *Montoya v. Tecolote*, since reversed by the court of appeals.

In particular, the following points made by the GAO should be reviewed in light of the GAO's erroneous reliance on the "*Montoya*" principle: (1) the lack of finality under the Surveyor General process, in light of *Montoya*-type opportunities to establish title, required less rigorous notice to possible claimants; GAO at 132; (2) the lack of finality under the Surveyor General process, in light of *Montoya*-type opportunities to establish title, required fewer due process touch-stones such as opportunities for cross-examination and prohibitions on *ex parte* proceedings; GAO at 134; (3) the fact that the Surveyor General only "determine[d] who owned a tract as between a claimant and the United States…, not who owned the land as between all parties", meant that no potential adverse claimants, other than the U.S., were constitutionally entitled to cross-examine potential claimants, *much less even appear* in the proceedings, GAO at 136-37; (4) the lack of participation by adverse claimants in confirmation proceedings does not warrant due process criticism, since such adverse third-party claimants were in an even "better position" than the parties in *Hannah*, who were constitutionally denied the right to cross-examination, although they had no other means to do so, but who did not have the opportunity

for a second-bite at the apple under the *Montoya* principle, GAO at 137; and (5) the ability of adverse claimants to have a *Montoya*-type "post-deprivation" hearing justifies any due process violation that may have occurred in the confirmation process. GAO at 138. Particularly in light of these problematic conclusions, Congress should reconsider whether the federal government complied with constitutional due process when it deprived land grant claimants of their land grant rights in the confirmation process.

CONCLUSION

Clearly there are a number of reasons to dispute the GAO's conclusion that there was no legal violation in the confirmation process warranting relief by the federal government. Of these, the most significant are surely the GAO's superficial analysis of Treaty rights and problematic case law following the Treaty; its flawed analysis regarding the mis-confirmation of the majority of New Mexico's community land grants; its erroneous conclusion that third parties could collaterally attack federal confirmations and the implications of this irreversibility; and its problematic analysis regarding constitutional due process.

Even the GAO concedes that, as a matter of policy "or even law," GAO at 163, Congress may want to consider some sort of remedy to New Mexico land grant heirs in light of the many serious problems in the federal confirmation process. GAO at 143-44, 163-64. For instance, the GAO suggests Congress may want to legislatively overrule *United States v. Sandoval* – a remedy that may also be appropriate for Supreme Court cases such as *Botiller v. Dominguez,* which arguably misapplied the Treaty and federal statutes enacted under the Treaty, as well as *Hayes v. United States* and *United States v. Vigil*, which were decided on technical grounds in arguable contravention of the Treaty and federal statute.

Likewise, the GAO suggests Congress may want to establish a remedy for land grant losses under the federal confirmation in light of the following: the excessive burdens placed on claimants; the insufficient resources resulting in scant notice and other due process safeguards; the fact that the system required claimants to hire English-speaking lawyers and pay them in land grant land; the fact that similarly situated grants often fared much worse during the CPLC era than they would have under the Surveyor General and certainly under Spain or Mexico; the excessive and crippling costs of surveying required after a confirmation; and the fact that inalienable common lands under Spain and Mexico were converted by the government into alienable private lands and lost forever from many New Mexico communities. *See* GAO at 143-44, 164.

If Congress chooses to address the many legal and equitable problems in the confirmation process, the question remains, what type of federal remedy is appropriate? The GAO lists several possibilities, including: (1) taking no additional action at this time because the majority of the community land grants were "confirmed," the majority of the acreage claimed was "awarded," and the confirmation processes were conducted "in accordance with U.S. law"; (2) acknowledging difficulties in evaluating the original claims and that the process could have been more efficient and less burdensome and imposed fewer hardships on claimants; (3) creating a commission or some other entity to evaluate and resolve remaining concerns about individual claims or categories of claims or to reexamine community land claims that were rejected or not confirmed for the full acreage claimed; (4) transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants; and (5) making financial payments to heirs or other entities for the non use of land originally claimed but not awarded. GAO at 161-70.

Of these, New Mexico community land grant heirs are most interested in transfers of lands to communities where common lands were stripped or lost after being recast as private lands during the confirmation process. Certainly a claims commission could be established to evaluate such instances and possible land transactions. Financial payment is less attractive to most community land grant heirs, as money is never a substitute for land – particularly the land of one's ancestors – but could be appropriate in certain limited circumstances in which heirs could purchase comparable neighboring land.

In the past, Congress has shown an ability to provide such a remedy when it has had the political will to do so. For instance, in the case of the Santa Fe and Albuquerque land grants, Congress passed individual acts recognizing these grants after the Court of Private Land Claims rejected both grants as being based on equitable claims that lay beyond its jurisdiction. *See United States v. City of Santa Fe*, 165 U.S. 675 (1897).

New Mexico is hopeful that Congress will consider both the legal and equitable concerns regarding the loss of so much of New Mexico's common lands and community land grants, and will find an appropriate remedy to address such concerns. These concerns are just as palpable and painful today as they were a century ago for land grant heirs and for New Mexico as a whole.

APPENDIX A:

Historical Synopses of Community Land Grants in New Mexico

I. Land Grants Confirmed by Congress

1) Alexander Valle
Confirmed as an individual grant.

Alexander Valle petitioned Surveyor General William Pelham in 1857 and requested him to investigate the grant and report his findings to Congress so that the title might be confirmed. He claimed that the grant was valid and perfect, being made by Maynez, in accordance to the Royal Cedula of January 4, 1813. He asserted that while the Cedula required the ratification by the Provincial Deputation, this was impossible to attain as a Provincial Deputation was not established in New Mexico until after Mexico gained its independence in 1821. He asserted that under the prevailing customs of the time, the Governor had the authority to independently make valid and unconditional grants. Pelham **recommended the grant for confirmation and it was ratified by Congress in 1860**. The grant was considered a perfect grant and confirmed to Pino, as the conveyee of Juan de Dios Peña and to the legal representatives of Francisco Ortiz Jr. and Juan de Aguilar. The grant was surveyed in 1876, and after **three subsequently rejected surveys**, the land was finally patented for 1, 242 acres in 1927 by Assistant Commissioner Thomas C. Hovell. (Private, Individual Grant)
Significant federal impact: Grant was resurveyed three times.

2) Town of Antón Chico
Confirmed as a community grant.

David Steward, for himself and on behalf of the heirs of the original grantees, and ten inhabitants of the town filed a claim in 1859 to Surveyor General William Pelham seeking the confirmation of the grant. The claim was contested by Preston Beck Jr. as it conflicted with the Ojito de las Gallinas Grant. The contestants called attention to the fact that the grant was made after Mexico declared independence and therefore the grant was invalid due to the lack of the authority in the granting official. However two witnesses testified that New Mexico didn't receive word of Mexican independence until December 21, 1822 and that the Mexican government approved all of the public acts performed by Spanish officials from the date of the declaration up to the time the declaration was promulgated or published in New Mexico. In 1859, SG Pelham held that since a town existed that was recognized by the Mexican government, he believed that the grant to was valid and would recommend it to Congress for confirmation.

In 1860, **Congress confirmed the grant** and an official survey of the grant was made by Deputy Surveyors William Pelham and Reuben E. Clemens that same year. However, while this survey was approved by SG A.P. Wilbar in December of 1860, it was **subsequently rejected, and resurveyed** in July of 1878 by John T. Elkins and Robert G. Marmon. Their survey showed the grant contained 378,537.5 acres. In 1881 Rivera requested the grant be patented to him individually, however the Commissioner of the General Land Office held that **the grant had been confirmed to the several grantees and the town of Anton Chico** and thus could not be patented to Rivera individually. Thus a patent was issued in 1883 to Manual Rivera and others, being thirty six men to whom the grant was made. Since **the patent was ambiguous and it was not clear whether the title was vested in the thirty seven original grantees or all of the**

inhabitants of the grant, an **ejectment suit was brought** in U.S. District Court. The trial **court held for the defendant** and the plaintiff appealed. Upon appeal the **court held that the character of the grant must be confirmed from the confirmatory act** and that the court was precluded from going beyond the act. The court stated that **the act should prevail over the patent** in the event there was a conflict between the two. The court then proceeded to explore the act and concluded that it **confirmed title as a community grant**. *Reilly* v. *Shipman*, 266 F. 852 (8th Cir. 1920). However, this decision cast doubt on the status of the unallocated lands within the grant. Soon however, the New Mexico Legislature passed an act which provided that a person who by purchase or lease had acquired an interest in a particular tract or parcel of land within a grant would not thereby acquire any interest in the common or unallocated lands. **Thus the common lands were managed by a board of trustees under the statute relating to the supervision of community grants**.

In 1876 a suit was commenced in San Miguel County, for a partitioning of the Preston Beck Jr. Grant. The Board of Trustees of the Anton Chico Grant intervened in this suit in 1907, claiming title to 120,000 acres of land which were within the Anton Chico grant as patented, but in conflict with the Preston Beck Jr. Grant as patented. Based on precedent in *Jones* v. *St. Louis Land and Cattle Co.,* 232 U.S. 355 (1912), the court held for the intervenors since the Anton Chico Grant was the senior grant. The owners of the Preston Beck Jr. Grant appealed to the New Mexico Supreme Court who then reversed and remanded the case to the trial court for dismissal. The court's ruling was based on the theory that since the Anton Chico Grant was a community grant, the unallocated lands remained the property of Mexico and passed into possession of the U.S. when it acquired New Mexico. Thus **the Congressional act to confirm the land grant confirmed it as a de novo grant to the grantees on a co-equal basis**. Since the owners of the Preston Beck Jr. Grant secured a survey and patent prior to the date of the survey and patent of the Anton Chico Grant, the **Beck Grant became the senior grant and thus the conflicted overlapped land was vested to the Beck Grant**. *Board of Trustees of the Anton Chico Land Grant* v. *Brown*, 33 N.M. 398, 269 P. 51 (1928).

Furthermore, another attack on the Anton Chico land grant was underway, carried out by private actors. Atkinson, who was the Surveyor General at the time, and who was a incorporator of four cattle companies, acquired property interests from Manuel Rivera's remaining heirs. Atkinson hoped that by acquiring Rivera's property interests, since he was the only individual named in the Anton Chico Grant, that the patent would be issue in his name and Atkinson would acquire the lands. However when the Secretary of the Interior considered the issue, Secretary H.M. Teller held that the grant was confirmed to Manuel Rivera and the thirty six others and the patent was issue to said grantees in 1883. Thus since Atkinson had acquired all of Manuel Rivera's interests, and armed with the patent, he sued for quiet title to the Anton Chico Grant. *New Mexico Land and Livestock Company* v. *Winternitz, et at.*, Bernaliliio Country District Court Case No. 1246 (August 1884). Atkinson, as the president of the New Mexico Land and Livestock Company brought the suit in Albuquerque and only published notice in the Albuquerque Journal, solely in English and did not mention Anton Chico by name. The court declared all other unknown claimants to be in default and established the claim of the livestock company. Soon Thomas Catron bought all the shares of the New Mexico Land and Livestock Company and often leased the land in Anton Chico. It was then in 1906 that the residents

of Anton Chico discovered what New Mexico Land and Livestock Company had done and sued the company to set aside its decree from Albuquerque and quiet title the grant. The town retained Charles A. Spiess and Stephen B. Davis Jr. to represent them in the suit and promised them 1/3 of the grant as a fee. **In 1884 the quiet title decree was declared void and the Town of Anton Chico was declared the owner of the Anton Chico Land Grant**. Catron and the livestock company appealed the New Mexico Supreme Court and eventually the Town of Anton Chico settled with Catron for 35,000 acres along with deeding 100,000 acres for attorneys' fees.

- The Anton Chico Land Grant lost 120,000 acres as a result of the New Mexico Supreme Courts decision in *Board of Trustees of the Anton Chico Land Grant* v. *Brown*. Additional acreage was lost when the Town of Anton Chico settled with Catron for 35,000 acres and another 100,000 acres was lost to attorney's fees settling this matter. Total acreage lost was 255,000 acres.
- See Michael J. Rock, *Anton Chico and Its Patent*, in Spanish and Mexican Land Grants in New Mexico and Colorado, John R. and Christine Van Ness, Eds. 86-97 (1980 Sunflower University Press).

Significant federal impact: Congress confirmed the grant as a community grant, the grant was resurveyed twice, the issue as to whether the grant was confirmed as a community grant or an individual grant since the language of the confirmation and patent was different was decided by the court in *Reilly v. Shipman,* where the court ruled the confirmation act takes precedent over the language of the patent, the court awarded the Beck Grant the disputed lands that overlapped the Anton Chico grant in *Board of Trustees of the Anton Chico Land Grant* v. *Brown,* when they ruled that the acts that confirmed land grants were de novo grant and thus the Beck Grant was the senior grant.

3) Town of Belen
Confirmed as a community grant.

Thirty four colonists and Captain Diego de Torres, petitioned Governor Gaspar Domingo de Mendoza for a grant of vacant land located on both side of the Rio Grande. In 1857 Attorney M. Ashurst filed a petition on behalf of all the residents of the Belen Grant to the SG'a office to request confirmation of the grant. SG William Pelham recommended the confirmation of the Belen Grant in 1857 and found that the existence of a town at the time that the U.S. took possession of the territory and the grant and proceedings which gave the grant to the town was in conformity with the usage and custom of the government of Spain, which was the authority at the time. The grant was **confirmed by Congress in 1858**. A preliminary survey of the land was made in 1859 by D.S. John W. Garreston which showed the grant had 194,663.75 acres. Patent was issued to the Town of Belen and its successors in 1871 for all the lands described in Garreston's survey.

4) Bracito:
Confirmed as an individual grant.

In 1851 heirs of the original grantee, entered into an agreement with Hugh Stephenson to sell him two thirds of the Bracito grant for $1,000. In 1853 the **District Court heard a suit to partition the Bracito Grant and ordered Stephenson Archer to survey the grant and partition it.** The survey showed the grant was 20,193 acres, and

Stephenson was able to acquire his share. After this case, Stephenson and the heirs of Garcia presented a claim to the Surveyor General Pelham for confirmation in 1856. Even though the original grant was not available, SG Pelham believed the grant was a valid grant to Juan Antonio Garcia and recommended the grant to Congress for confirmation in 1856. After the confirmation, D.S. John T. Elkins and Robert Morman were directed to survey the grant in 1878. Their survey indicated that the grant was only 10,612.57 acres. The S.G. approved the survey, but the Commissioner of the General Land Office rejected it in 1893 and on the grounds that it did not correctly located the Rio Grande as it ran in 1854. The S.G. retained Deputy Surveyor Leonard M. Brown to **resurvey the boundary** using the Archer map as a guide. The Brown survey showed the grant contained 18,859.48 acres. The owners of the grant failed to purse any further approval of the survey or patent.

In 1900 the **CPLC confirmed the Santo Tomas de Yturbide Grant which shared the border of the El Bracito Grant**. Jay Turley was hired by the SG to survey the Santo Tomas Yturbide grant in 1901. The owners of the Santo Tomas Yturbide grant protested the results of the Brown survey and the court ruled in their favor and ordered another survey. Jay Turley **resurveyed the land in 1902** and his survey was finally approved by the court in 1903 and a **patent was issued** for the Santo Tomas Yturbide based on the Turley survey in 1905. Soon the owners of the Bracito Grant requested a patent based on the Brown survey in 1893. However this was protested by the Santo Tomas Yturbide owners who argued that the Brown Survey did not conform with the true boundary of the Bracito Grant. An investigation was ordered by the Secretary of the Interior in 1907 to determine Brown has correctly surveyed the west boundary of the Bracito Grant in accordance to the Archer survey. William N. Tipton was appointed the special investigator and in his report he found that the Brown survey did not follow the Archer survey and that the Archer survey itself was inaccurate.

The Secretary of the Interior in 1909 **rejected the Brown survey and ordered a new survey to be completed**. The owners of the Bracito Grant withdrew their petition for patent stating that they had full title to the grant by virtue of the Confirmation Act issued in 1860. While the owners of the Bracito Grant objected to any further surveys, the Secretary of the Interior acknowledged the Act did not require the issuance of a patent, but that when boundaries are in dispute it was necessary to survey them properly define the boundaries. The Bracito Grant was **again surveyed in 1909** by Sidney E. Blout, and his survey disclosed that the grant only contained 14,808.075 acres. Blout's survey was approved by the Commissioner of the General Land Office in 1910.
Significant federal impact: The survey for the partition suit in 1853 found the Bracito Land Grant to contain 20,193 acres. The subsequent survey after confirmation by Congress concluded that the grant included 10,612.57 acres. The survey conducted after the rejection of the previous survey by the Commissioner of the General Land Office in 1893 surveyed the grant and found the land grant to contain 18,859.48 acres. The final survey approved by the Commissioner of General Land Office in 1909 found the grant to contain 14,808.075 acres.

5) Town of Casa Colorado
Confirmed as a community grant.

In 1856 the Town of Casa Colorado presented its title to the Surveyor General Pelham and requested confirmation of the grant who subsequently found all the documents and signatures to be valid and genuine and recommended it for approval by Congress. The Casa Colorado Grant was **confirmed in 1858 as a community grant**. The grant was surveyed in 1877 by D.S. Sawyer and McElroy. Their survey showed that the grant had 131,779.37 acres. However, **all but a narrow strip containing 21,689.6 acres conflicted with the Belen Grant**. A patent was issued to the Town of Casa Colorado in 1909 covering all the lands that were surveyed by Sawyer and McElroy. In order to clear its title to the lands, the Board of Trustees of Belen filed suit in District Court against the Board of Trustees of Casa Colorado. In 1912 the **court held that the town of Belen was the lawful owner of the lands in question and quieted its title**. *Board of Trustees of the Belen Land Grant* v. *Board of Trustees of the Casa Colorado Grant*, No. 1766 (Records of the District Clerk's Office, Socorro, New Mexico). Due to the ruling in *Board of Trustees of the Belen Land Grant* v. *Board of Trustees of the Casa Colorado Grant* the Town of Casa Colorado Land Grant lost 109,487.77 acres to the Town of Belen in the suit for quiet title.

6) Town of Cebolleta
Confirmed as a community grant.

In 1859 the town petitioned the Surveyor General Pelham seeking confirmation of their grant and in 1861 Pelham found that the existence of the town at the time of the acquisition of New Mexico by the U.S. and the genuineness of the grant to the town was evidence of its validity and recommended the grant for confirmation. The **outbreak of the Civil War caused temporary delay in the recognition of the claim**. However, the **grant was approved in 1869** and the subsequent survey by D.S. Sawyer and McBroom disclosed that the grant included 199,567.92 acres and a patent was issued to the inhabitants in 1882. Later, as a result of the ruling of a district court case, the common lands of the Cebolleta Land Grant were partially partitioned in which large tracts of the common lands were awarded to private non-resident individuals and attorneys, leaving the grant itself with only about 16% of its former common lands.

7) Town of Chilili
Confirmed as a community grant.

Ynes Armenta for himself and the other inhabitants of the grant petitioned the S.G. Pelham in 1857 seeking confirmation of the grant. A certified copy was presented as well as witnesses. Pelham found that the existence of the town at the time New Mexico became a U.S. Territory and the grant was made by the proper authorities he recommended the confirmation of the grant to the town of Chilili in 1857 and **Congress confirmed it in 1858**. It was **surveyed in 1860** by D.S. Reuben .E. Clements and the results were that the grant included 38,453.17 acres of land. This **survey was rejected in 1875** by Commissioner S.S. Burdett on the ground that it did not correctly locate the boundaries of the grant and reordering a resurveying of the grant. The town appealed the decision to the Secretary of the Interior who affirmed Burdett's opinion. The resurvey was made in 1877 by D.S. Sawyer and White and concluded that the grant covered 23,626.22 acres. The inhabitants of the town **protested the approval of this survey on**

the grounds that it deprived them of their agricultural lands, and also argued that the translation of the grant papers had been incorrect.

In 1881 the Secretary S.J. Kirkwood rejected the Sawyer and White survey and **ordered the S.G. to resurvey the grant**. In 1882 D.S. Mailand surveyed the grant and found it to encompass 41,481 acres and a patent was issued in that amount to the town in 1909. The grant was governed under s special act of the legislature from 1876 until it was lost through tax foreclosure. Later, the grant was reacquired with assistance from FHA, but reorganized itself as a cooperative as a condition of that assistance. The cooperative collaborated with the state to allow for the physical division of the common lands into private tracts. The cooperative dissolved in 1980 and the grant is now governed again as a land grant under an act specific to Chilili.
Significant federal impact: The grant was resurveyed twice.

8) Domingo Fernandez Grant
Confirmed as an individual grant.

Ethan W. Eaton petitioned S.G. Pelham in 1855 for confirmation of the grant, stating that all the grantees except Fernandez had lost their interests under the grant by failing to comply with its conditions and requesting its confirmation to his as assignee of Fernandez. Pelham called a hearing in 1857 and found that the grant was good and valid and confirmed to E.W. Eaton as the assignee and legal representative of Domingo Fernandez and to the original grantees that had not forfeited their rights to the land by noncompliance. While **Pelham recommended the grant for confirmation in 1857, Congress took no action until 1860**. There was issue as to whether the other original grantees had forfeited their rights, and in an opinion by the Secretary of the Interior, he held that the language of the confirmation was ambiguous, but that it confirmed the grant to Eaton and the remaining original grantees that had not forfeited their rights, thus he would not confirm the entire grant to the Eaton, unless he could show that he was entitled to it by showing there were no remaining interests. A survey was completed in 1860 by Deputy Surveyors Pelham and Clements, and they found the grant to be 27,854.06 acres. However Eaton protested the survey and a subsequent survey found the grant to contain 81,032.67 acres for which a patent was issued in 1880.

9) John Scolly Grant
Confirmed as tenancy in common.

In 1856 John Scolly and the other grantees petitioned the SG for confirmation of their grant and in **1857 SG Pelham found the grant to be a valid grant to John Scolly and five other grantees for five leagues square (twenty five square leagues)**. Upon consideration by **Congress however, the grant was limited to five square leagues**. **Congress confirmed the grant in 1860** and authorized the grantees to locate their five square leagues anywhere within the twenty five league tract that they were originally granted. In 1876 the **SG was instructed to survey the twenty five league tract and have the grantees select their land**. The grantees filed a protest and questioned the authority of Congress to limit the size of the grant and insisted that Congress reconsider the Act of Confirmation. In 1892 Frank Springer was retained to represent the grantees and he wrote to the Land Department that the grantees had established their ranches in different parts of the grant and that while the total area actually improved was five square

leagues, it would be impossible to locate a five square league tract that would embrace all the ranches. By a decision in 1892 the Secretary of the Interior held that the grantees right to select a tract of land within the larger area was a privilege and that if they had not selected their land by the time the government was ready to proceed with the survey, the grant would be treated as a float, whose location could be established and fixed by the surveyor after giving due regard to the character of the land and the improvements made by the grantees. This compelled the grantees to select their land and a patent for 25,000 acres was issued in 1893.

Significant federal impact: Due to Congress' different interpretations and translations of the phrase "five square leagues" the land grant was decreased in size from twenty five square leagues to five square leagues to make a difference of approximately 88,289 acres.

10) Los Trigos

Confirmed as a tenancy in common.

Donaciano Vigil, on behalf of the original grantees petitioned the SG in 1855 seeking confirmation of the grant. In 1857, Rafael Gonzales on behalf of himself and the other settlers who had settled and acquired interests in the lands covered by the grant, contested Vigil's petition to confirm the grant. They argued that the Los Trigos Grant had never been approved by the Provincial Deputation as required by law, that the boundaries described in the grant papers were vague and indefinite, and that the Los Trigos Grant only covered the lands enclosed and cultivated by the original grantees and that the grantees never occupied the tracts of lands they claimed. After a hearing, SG Pelham held that the Ayuntamientos were authorized to grant land and the requirement that the absence of approval by the Provincial Deputation did not invalidate the grant, and in fact there was no Provincial Deputation in New Mexico prior to 1821. Furthermore, Pulham ruled that if the Ayuntamiento had the authority to issue an absolute grant, the conditions imposed upon the grantees by Governor Maynes were invalid and that Alcaldes had no authority to allot public land unless expressly directed to by the governor of territorial deputation. Pelham ultimately recommended the confirmation of the grant to the legal representatives of the three original grantees.

In 1860, **the grant was confirmed by Congress** and the grant was surveyed by Deputy Surveyors Williaim Pelham and Reuben R. Clemens. However **a new survey was ordered in 1877** and conducted by Sawyer and McElroy and approved by the current Surveyor General Henry M. Atkinson for 9,646.56 acres. However, Surveyor General George Julian recommended that the Sawyer and McElroy survey be rejected and the **grant be resurveyed in order to cover only the lands which were cultivated at the time the Treaty of Guadalupe Hidalgo was signed**. The Commissioner of the General Land Office, W.W. Rose, ultimately overruled Julian's recommendation and held that the grant had been confirmed to the full extent of the boundaries set out in the grant papers. Furthermore, there was a conflict between the eastern boundary of the grant as to whether it was located at Gusano Mesa or Gusano Arroyo and Commissioner Rose ruled that the boundary was to be set at Gusano Mesa. Surveyor General E.F. Hobart notified the owners of the grant of this decision and advised them that if they accepted the eastern boundary as Gusano Mesa, then a subsequent survey would not be necessary. Thus in 1909 a patent was issued for 7,342 acres.

Significant federal impact: The first survey of the Los Trigos Grant was taken in 1877 and concluded that the grant contained 9,646.56 acres. The actions of Surveyor General E.F. Hobart decreased the amount of the grant to 7,342 acres, for a net loss of 2,304.52 acres.

11) Town of Manzano Grant
Confirmed as a community grant.

Ramon Cisneros, for himself and on behalf of the Town of Manzano petitioned SG Pelham's office for the confirmation of their grant in 1856. Later that year, Pelham found the grant to be valid and recommended its confirmation by Congress to the Town of Manzano. **In 1860, Congress approved the grant** as Pelham recommended. The grant was surveyed in 1877 by Deputy Surveyors Sawyer and McElroy for 17,360.97 acres. In 1886, a request was made by one of the claimants of the grant seeking issuance of a patent for the grant. Commissioner Strother M. Stocklager ordered S.G. Julian to examine the case and if he found no objections to provide a description of the grant for a patent. S.G. Julian concluded that grant was for a diamond shaped track with its points one league in each direction instead of a four league tract. Julian ordered Deputy Surveyor Charles Ratliff to **resurvey the grant** and reported the grant to be only 8,689.74 acres. The owners of the grant protested and the Secretary of Interior rejected the Ratliff survey in 1904 and ordered a **resurvey of the grant**. A new survey of the grant was made for 17,360.24 and a patent for that amount was issued in 1907 to the Town of Manzano.

Significant federal impact: The grant was resurveyed at the order of the Surveyor General two times.

12) San Pedro Grant
Confirmed as an individual grant.

In 1857 Manuel Ramirez purchased petitioned SG Pelham asking that the grant be confirmed to him. That same year **Pelham held a hearing and recommended the grant be confirmed**. The grant was **confirmed to Ramirez in 1860**, and was surveyed in 1866 by Deputy Surveyor W.W. Griffin for 35,977.63 acres. This survey was rejected by the Commissioner of the General Land Office, S.S. Burdett on the grounds that Ramirez's petition only sought the confirmation of the original grant issued in 1839, and not the extension issued in 1845. The grant was resurveyed for 31,594.76 and a patent was issued for that amount in 1875.

Significant federal impact: The original survey for 35,977.63 acres was rejected by the Commissioner of the General Land Office, S.S. Burdett on the grounds that the petitioner only sought the confirmation of the original grant and not the extension. Thus a subsequent resurvey was ordered and the grant was found to obtain 31,594.76 acres. The size of the grant was decreased by 4,382.87 acres.

13) Town of Tajique
Confirmed as a community grant.

The inhabitants of the town petitioned SG Pelham in 1857 for confirmation of their grant. Pelham found that the title was valid and that the town existed at the time the U.S. came into possession of the territory and recommended the grant be confirmed to the

town. Congress confirmed the grant to the Town of Tajique in 1860, the grant was surveyed in 1877 and found to contain 7,185.55 acres and a patent was issued for that amount in 1912.

14) Town of Tejon Grant
Confirmed as a community grant.

Salvador Barreras petitioned the SG Pelham in 1858 seeking the confirmation of the Town of Tejon Grant. He argued that even though he could not produce the original grant, and that would invalidate the title to the land, his claim should not be defeated since the papers had been included in the public archives which had been lost when the U.S. acquired New Mexico. In support for his petition, Barreras filed a Spanish document which recited that he and a number of associates had appeared before Antonio Montoya, the Alcalde of the Pueblo of Sandia in 1840 and had requested him to give them a certificate showing that the land had been granted and possession delivered to them. Montoya examined the records and certified that a tract of land had been granted to Barreras and his associates. SG Pelham held a hearing and held the town was in existence when the U.S. took possession of the territory and thus recommended it for confirmation by Congress, and **Congress approved the grant in 1860**. The grant was surveyed in 1877 for 12,801.46 acres and a patent for that amount was issued in 1882.

15) Town of Torreon
Confirmed as a community grant.

In 1856, the representative of the town filed a petition for the confirmation of the grant with SG Pelham. In 1859, Pelham advised Congress that the grant appeared to be genuine, however he noted that while the claimants had contended that the Prefects had authority under the laws to make a grant of land, there was still some question to that issue. However, based on the fact that the town existed prior to 1846, when the U.S. acquired the territory, Pelham recommended the grant for confirmation by Congress**. Congress approved the grant in 1860** and the grant was surveyed in 1877 for 14,146.11 acres and a patent issued for that amount was issued in 1909.

16) Town of Chamita Grant
Confirmed as an individual grant.

Manuel Trujillo for himself and for the other residents of the Town of Chamita, petitioned SG Pelham in 1859 for the confirmation of their grant. Pelham conducted an investigation and found that since the grant was so old as to go beyond a period of being proven and no one had contested the claim, he considered the grant good and valid. However, since the claimants had presented no evidence linking themselves to the original grantees, he recommended that Congress confirm the grant to the legal representatives of Antonio Trujillo. **Congress confirmed the grant in 1860** and a preliminary survey of the grant was made in 1877 by Deputy Surveyors Sawyer and McElroy which showed that the grant had 1636.29 acres and that most of the grant was situated within the boundaries of the Pueblo of San Juan Grant which was senior to the Chamita Grant. In 1920 the heirs of Antonio Trujillo requested a patent for the grant. Commissioner Clay Tallman held that even though the Town of Chamita Grant conflicted with the Pueblo of San Juan Grant, the patent would only include a notation of the

problem. Thus all questions of priority and superiority of rights in the area would be left to judicial tribunals for determination.

However, before a patent was issued, Commissioner William Spry in 1923, revoked the previous decision. He held that a second patent to the same land would only add confusion and would in no way affect the confirmation of the grant in 1860. He held that the Land Department had no jurisdiction on the issue and the controversy could only be settled in the courts. Thus in 1929, the Pueblo Lands Board was created to quiet titles of non Indian land claims made to lands within the Pueblo Land Grants. In its report on the San Juan Pueblo, the Board found that the legal representatives of Antonio Trujillo had held continuous, exclusive and adverse possession of 838,814 acres of land within the Pueblo of San Juan Grant since 1889 and thus the board relinquished their title to those lands.

17) *Mesita de Juana Lopez
Confirmed as tenancy in common.

The heirs of Domingo Romero, the original grantee, petitioned SG James K. Proudfit for the confirmation of their grant in 1872. Proudfit investigated the validity of the grant and found that the grantees or their heirs had continuously occupied the grant and that Romero had inherited the interests formerly owned by the two other grantees. Thus later after the investigation, Proudfit found the grant papers to be genuine and recommended the confirmation of the grant to Domingo Romero, the two other grantees and their legal representatives with the estimate that the grant contained 69,000 acres. The grant was surveyed in 1876 by Deputy Surveyor Rolllin J. Reeves for 42,022.25 acres and the survey was approved by SG Atkinson in 1877 and forwarded to **Congress and they affirmed the grant in 1879**.

In 1882, Elian Brevoort claimed an interest in the Ortiz Mine Grant, petitioned the Commissioner of the General Land Office seeking an investigation of the Reeves survey which he alleged extended too far south and thus conflicting with 12,000 acres of land in the Ortiz Mine Grant. In 1883, the Commissioner N.C. McFarland **ordered a new survey** of the land and instructed SG Atkinson to investigate the matter. Atkinson reported the according to the language of the confirmation Act, which confirmed the Mesilla de Juana Lopez Grant as being duly surveyed and thus found that an investigation would be useless as it would not have any affect even if it found in favor of Brevoort's claim. McFarland accepted Atkinson's findings and **canceled the investigation** in 1883. However in 1886, Surveyor General Julian called Commissioner Willaim J. Sparks' attention to Brevoort's claim and stated that if the allegations contained in the petition were true, the grant contained not only portions of the Ortiz Mine Grant and the Pueblo of Santo Domingo Grant, but also public lands upon which were located a number of valuable coal beds. Thus Sparks ordered **SG Julian to conduct an investigation** and the successor to Commissioner Sparks, S.M. Stockslager, held that the Reeves Survey had exaggerated the grant to more than three times its proper size and **ordered a resurvey of the grant.** He stated that he did not believe that it was the intention of Congress to confirm a preliminary survey and preclude the government from investigating the true boundaries of the claim or detecting fraud. Stockslager further argued that the survey contained in the Act of confirmation was interpreted as a history of the claim and included only for the purpose of closer identification.

The owners of the grant appealed to the Secretary of the Interior, and in 1893, **Secretary of Interior Hoke Smith ruled that the survey could not be reconsidered since it was already acted upon by Congress**. Smith held that under *Astaizaran* v. *Santa Rita Mining Co.,* the final action on each claim reserved to congress is conclusive and is not subject to review by any body. 148 U.S. 80 (1893).
Significant federal impact: Grant was resurveyed once.

18) Pedro Armendaris Grant No. 33
Confirmed as an individual grant.

The heirs of Pedro Armendaris petitioned the SG in 1859 requesting the confirmation of their claim to the Valverde and Fray Cristobal Grants. SG Pelham investigated and consolidated the claims and in 1859 he recommended the grant for confirmation by Congress and **the grant was confirmed in 1860** to the legal representatives of Pedro Almendaris. The grant was surveyed in 1872 by Deputy Surveyor J. Howe Watts. His survey showed that the two grants included 397,235 acres. William A. Bell protested the survey and disputed the eastern boundary. As a result of Bell's protest, the **eastern boundary was relocated in 1877 to exclude 45,000 acres.** The amended survey was approved in 1877 and a patent was issued to the legal representative of Pedro Armendaris in 1878 for a total of 352,504.5 acres. In 1882, L.S. Dixon requested the Attorney General to file suit to have the Almendaris patent set aside on the grounds that, through fraud or mistake, the west boundary of the Fray Cristobal Grant had been located too far west. However, in 1893, the Secretary of Interior, Hoke Smith declined to recommend the Attorney General bring suit because there was no evidence that the boundary had been designated incorrectly.
Significant federal impact: The grant was originally surveyed in 1872 and found to include 397,235 acres. This survey was protested and a subsequent survey relocated the eastern boundary of the grant to exclude 45,000 acres. The patent was issued for the grant in 1878 for a total of 352,504.5 acres. The size of the grant was decreased by 44,730.5 acres.

19) Pedro Armendaris Grant no. 34
Confirmed as an individual grant.

At the same time Armendaris was requesting additional lands covered in the Fray Cristobal Grant, Armendaris was seeking a grant covering lands northwest of his original grant at Valverde. The attorney for the heirs of Pedro Armendaris filed a petition with the Surveyor General in 1857 for confirmation of the grant. After an investigation SG Pelham recommended the grant for confirmation to Congress in 1859 and **the grant was confirmed in 1860** to the legal representatives of Pedro Armendaris. The grant was surveyed in 1872 by Deputy Surveyor J. Howe Watts and approved that same year but modified in 1878 as a result of an agreement between the owners of the Pedro Armendaris Grant and the owners of the Bosque del Apache Grant. In 1878 a patent was issued to the legal representatives of Pedro Almendaris for 95,030 acres.

20) Rancho de Nuestra Senora De La Luz Grant
Confirmed as an individual grant.

John Lamy, Bishop of New Mexico, petitioned SG Pelham in 1856 seeking confirmation of a tract of land he held in trust for the Catholic Church. In support of his claim, Lamy presented a Spanish document that showed that sometime prior to 1807, a grant was made to Deigo Antonio Baca and that the grant had been given to Baca in exchange for a house and lot used as barracks for government troops. Carlos de Herrera purchased the grant from Baca and stocked the land with sheep he received on consignment under a contract with the Penitentes. However, 500 of these sheep were either lost or stolen and to compensate for the damages, Herrera devised the grant to the Catholic Church. In 1857 Pelham investigated the claim and ultimately recommended the grant for confirmation to Congress **and in 1860 Congress confirmed the grant** to the legal representative of Carlos Herrera. The grant was surveyed in 1861 by Deputy Surveyor Thomas Means for 16,546.85 acres and a patent was issued to the legal representative of Carlos Herrera in 1874 and delivered to John Lamy as the legal representative of Carlos Herrera.

21) The Town of San Isidro Grant
Confirmed as tenancy in common.

Francisco Sandoval and five other persons, as the heirs and legal representatives of the original grantees, petitioned SG Pelham in 1857 seeking the confirmation of their grant. Pelham recommended the grant for confirmation and **Congress confirmed the grant in 1860**. In 1877 the grant was surveyed by Deputy Surveyor Sawyer and McElroy for 11,467.88 acres. However, in 1877 SG Julian wrote Commissioner of the General Land Office, S.H. Stocklager to request permission to resurvey the grant on the grounds that northern boundary of the grant was incorrectly designated. In 1888, Stocklager held that the facts that SG Julian presented were not enough to warrant another survey, but that if Julian presented more facts, Stocklager would consider further action. Julian tried again to request that the land by resurveyed, but an investigation by the Rural Resettlement Administration refuted the claims by Julian that the grant's boundary was located incorrectly. The grant was patented in 1936 for the amount indicated in the Sawyer and McElroy survey.

22) Sangre de Cristo Grant
Confirmed as an individual grant.

In 1856, Charles Beaubien petitioned SG Pelham for the confirmation of the grant and Pelham recommended that the grant be confirmed. **Congress validated the grant in 1860**. The history of the Sangre de Cristo Land Grant does not end here. John G. Tameling attempted to homestead a 160 acre tract of land located within the boundaries of the grant. He claimed that since the colonization law of 1824 limited the amount of land which would be granted to an individual to eleven leagues, and that since this grant included more than twenty two leagues, he argued that it was void. He insisted that the SG report stated that Lee and Beaubien were the legal owners in fee of the claim and that since they could not be the legal owners of more than twenty two leagues, they must follow that the recommendation was for only the maximum amount of land which the grantees could legally receive under Mexican Law. The U.S. Freehold Land and Emigration Company which had purchased the portion of the grant filed an ejectment suit against Tameling in the District Court of Pueblo County Colorado.

The trial court ruled in favor of the plaintiff and the case was appealed to the Supreme Court of the Territory of Colorado. The Colorado Supreme Court ruled that the unconditional confirmation of the grant by Congress amounted to a grant de novo to the whole claim without regards to the question of whether or not the claim was originally valid. Their decision was subsequently appealed to the Supreme Court and the decision was affirmed. *Tameling v. United States Freehold and Emigration Co.*, 93 U.S. 644 (1876). The Secretary of the Interior in 1877 advised the Commissioner of the General Land Office that the decision of the Supreme Court in the *Tameling* case must be taken as the true construction of the Confirmation Act of 1860 and that a patent should be issued to Beaubien for all of the lands described in their petition even though the grant was for more than twenty two leagues. The land was surveyed in 1877 by E.H. Kellog to survey the grant and Kellog found the grant to contain 998,780.46 acres and a patent was issued to Beaubien for said amount in 1880.

In 1890, O.P. McMains, who represented unsuccessful homesteaders, urged the Commissioner of the General Land Office to set aside that patent on the grounds that in 1843, the lands covered by the grant were in Texas. Thus, if this were true, Governor Armijo had no authority to make the grant. Secretary of the Interior, John W. Noble issued a decision in 1890 and declined to recommend the suit. He pointed out that even if the land had been located within the Republic of Texas on the date the grant was made, Texas had sold the lands in question to the U.S. under the Compromise of 1850 and therefore, they unquestionably belonged to the U.S. government at the time the grant was confirmed. Under the *Tameling* case, it would make no difference if the grant was valid or not since the Act of 1860 quitclaimed all of its interests in the lands to Beaubein. **Significant federal impact:** The *Tameling* case held that unconditional confirmation of the grant by Congress amounted to a grant de novo to the whole claim without regards to the question of whether or not the claim was originally valid.

23) Sebastian Martin Grant

Confirmed as an individual grant. In 1859, Mariano Sanchez, the sole owner of the grant petitioned SG Pelham for the confirmation of the grant and that same year Pelham recommended that the grant be confirmed by Congress. **In 1860 the grant was confirmed** to the legal representatives of Sebastian Martin (Mariano Sanchez) and was surveyed in 1876 by Deputy Surveyor Sawyer and McBroom. The survey showed the grant included 51,387.20 acres and a patent for that amount was issued in 1893.

24) Las Trampas Land Grant

Confirmed as tenancy in common.

In 1751, Governor Vélez Cachupín issued twelve grantees the Las Trampas Land Grant that included private agricultural land and common lands for watering and pasturing. In 1859, a petition was filed with Surveyor General Pelham seeking confirmation of the grant on behalf of the heirs and successors of the original twelve settlers. Pelham conducted an investigation and found that the grant was continuously occupied and existed when the U.S. acquired the territory. Pelham recommended the grant for confirmation by Congress and **Congress confirmed the grant in 1860, to the Town of Las Trampas.**

The grant was surveyed in 1876 by Deputy Surveyor Sawyer and McBroom and found to contain more than 46,000 acres. However, this survey was rejected by the Commissioner of the General Land Office and a **subsequent survey conducted in 1891** found the grant only contained 28,000 acres and a patent was issued for this amount. Three years a partition suit was brought under the color of a New Mexico Statute that authorized partition suits of jointly owned land. Alonzo B. McMIllan filed suit for partition on behalf of David Martinez Jr. and four other descendents of the twelve original grantees. However their case only named five defendants, even though the heirs could have easily be identified, and notice of the proceedings were printed in a Taos newspaper and published only in English. After notice was published, the court appointed Ernest A. Johnson to determine the owners of the grant and the interests they had in the common lands as well as how much land was considered to be common lands and how much was privately held. Johnson reported that there was only 650 acres of privately held land and that the rest was commonly held.

This report was grossly inaccurate. Judge Daniel H. McMillian entered an order of partition and appointed a board of commissioners to physically divide the lands if possible. However, the commissioners reported that it would be impossible to divide the grant and thus the judge ordered the common lands to be sold. The villages were paid very little for their shares, and the rest of the common lands were sold to various companies and entrepreneurs. When the villagers came to realize the magnitude of what had happened to their common lands, they retained Charles Catron to help them recover their lands. The villagers argued that the partition suits were defective since not all of the defendants were named, served notice or given a chance to be heard and thus when the Las Trampas Lumber Company sued for quiet title to identify the lands had acquired through various transfers and purchases, they had to be very cautious to identify all the defendants. However the case never went to trial and instead Catron negotiated a user agreement where the private lands were surveyed and found to include 7,000 acres, the Las Trampas Lumber Company would continue their quit claim action but the villagers would retain user rights to the common lands.

While this agreement seemed to protect both parties' interests, the user rights agreement was never filed and thus not enforceable. Since the title was now clear, the Las Trampas Lumber Company tried to sell its interest in the grant for profit but was unable to and soon declared bankruptcy and as a result ended up selling the grant to the U.S. Forest Service. The villagers soon expressed concern that their user rights would not be acknowledged by the Forest Service and after an investigation which revealed that the lawyer for the Las Trampas Lumber Company and Carton had never filed or intended to acknowledge the user agreement or inform the purchaser. While the Forest Service initially intended to honor the user rights agreement, restrictions on wood gathering and grazing were placed on the Las Trampas common grounds and the Forest Service ultimately denied the validity of the user rights agreements.
See Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico*, 145-168 (University of New Mexico Press 1994).
Significant federal impact: Grant was resurveyed once to exclude 18,000 acres.

25) Town of Tecolote
Confirmed as a community grant.

In 1859, the heirs of Salvador Montoya, one of the original grantees, for themselves and behalf of the inhabitants of the Town of Tecolote, petitioned Surveyor General for the confirmation of their grant. SG Pelham investigated the claim and found the grant to be good and valid and recommended for confirmation by Congress. **Congress approved the grant in 1858** to the Town of Tecolote. The grant was first surveyed in 1859 by Deputy Surveyor John W. Garreston and found to contain 21,636.83 acres. **However this grant was rejected** on the grounds that it incorrectly identified two boundaries of the grant and was ordered to be **resurveyed in 1881**. The resurvey was conducted by Deputy Surveyor William McBroom and the grant was found to encompass 48,123.38 acres and this survey was approved in 1882. When the patent for the grant was going to be issued to the Town of Tecolote, the heirs of Salvador Montoya protested on the grounds that the patent should be issued to the heirs of the original grantees since the Town of Tecolote was not a corporate entity and thus could not hold legal title to the grant. However in a decision issued in 1886, the Assistant Secretary of the Interior held that the Confirmation Act of 1858 confirmed title of the grant to the town and not to the grantees as individuals and a patent was issued to the Town of Tecolote in 1902.

26) Town of Tomé
Confirmed as a community grant.

In 1856, the inhabitants of the Town of Tomé filed their claim with Surveyor General Pelham for investigation for confirmation. Pelham found the titles for the grants to be genuine and recommended the grant for confirmation in 1856 and **Congress confirmed the grant to the Town of Tome in 1858.** The grant was surveyed in 1860 by Deputy Surveyor John W. Garrison and was found to contain 121,594.53 acres. The question arose as to whether this grant and grants like these were individual grants in favor of the original grantees or community grants in which all the land within the boundaries of the grant, except for the individual tracts had been allotted to the villagers, was to be held in trust for the benefit of the village. The Supreme Court of New Mexico held that the title which passed to the Town of Tome was to the individual allotments and that title to the common lands remained with the sovereign and that when the areas passed into the authority of the U.S. title to the unallocated lands vested in the U.S. which through the confirmation act, vested the lands to the Town of Tome. *Bond v. Unknown Heirs of Juan Barela,* 16 N.M. 660 (1911). The case was appealed to the U.S. Supreme Court and the court affirmed the New Mexico Supreme Court's decision. *Bond* v. *Unknown Heirs of Juan Barela,* 229 U.S. 438 (1912).

27) Town of Cañon de San Diego
Confirmed as a tenancy in common.

Francisco Garcia, Jesus Baca, and Pablo Gallegos, on behalf of themselves and in the name of the settlers of the Town of Cañon de San Diego petitioned Surveyor General Pelham in 1859 seeking confirmation of the Cañon de San Diego Grant. Pelham's investigation concluded that the town was in existence when the U.S. took possession of the territory and Pelham recommended that the grant be confirmed to the original grantees and those claiming under or through them. **Congress confirmed the grant in 1860** and the grant was surveyed in 1876 by Deputy Surveyor Sawyer and McBroom for 116,286.89 acres and a patent for that amount was issued in 1881.

Meanwhile, in 1879, Amado Chavez for himself and on behalf of the other heirs of Francisco and Jose Antonio Garcia de Noriega petitioned Surveyor General Atkinson for the recognition of a grant also known as the Cañon de San Diego Grant, which was located entirely within the boundaries of the other grant. In 1880, Surveyor General Atkinson reported that evidence indicated that the grant was valid and that notwithstanding the fact that the lands already were patented, recommended that the grant be confirmed by Congress. A preliminary survey was made of the 1799 grant by Deputy Surveyor Robert G. Marmon in 1880 and found the grant to contain 9,752.51 acres. **Since Congress had not acted upon the claim, Chavez presented the grant to the Court of Private Land Claims in 1893** and the government asserted as a special defense against the recognition of the grant that since the Garcias had participated in the grant of 1799, and there was no reference of the previous grant in the 1799 grant, the Garcias had abandoned their claims in favor of tall the grantees of the larger and junior grant and thus were unable to assert their rights under the prior grant. Chaves v. United States, No.100 (Mss., Records of the Ct. Pvt. L. Cl.).

The Court rejected the 1788 grant on the ground that the Garcias and those claiming under them forfeited their rights to the earlier grant as a result of their joining in the petition seeking the grant in 1799. **Chavez appealed the decision** to the United States Supreme Court where the Supreme Court affirmed the ruling of the Court of Private Land Claims. Chaves v. United States, 168 U.S. 177 (1897).

28) The Town of Mora
Confirmed as tenancy in common.

In 1859, Jose Maria Valdez and Vincento Romero, on behalf of the residents of the Town of Mora, petitioned Surveyor General Pelham for confirmation of their grant. Their petition expressly forfeited any claims they had to the lands that conflicted with the John Scolly Grant which had previously been approved by Pelham. The U.S. District Attorney R.H. Tompkins protested the approval of the grant on the grounds that there was no documentary evidence that the grant had actually been made by Governor Perez, or that the Perez had been ordered a partitioning and distribution the land. Pelham however, found that even though no documentary evidence of the grant would suggest that the grant had never been made, he presumed that the Alcalde would not have distributed the land unless he was instructed to by the appropriate authority. Several witnesses also testified that they had seen a copy of the grant signed by the Alcalde. In 1859, Pelham held that the grant was good and valid and recommended the grant for confirmation by Congress.

Congress confirmed the grant in 1860 to the original grantees and those claiming under them. In 1861 the grant was surveyed by Deputy Surveyor Thomas Means and was found to contain 827,621.1 acres of land and the survey was approved by the Surveyor General later that year. A patent was issued for said amount to Jose Tapie and the other grantees on 1876 on the condition that it recognized the rights of the U.S. to the Fort Union Military Reservation. After the owners of the John Scolly Grant selected their five leagues out of the twenty five league tract that they were entitled to receive, the owners of the Town of Mora Grant petitioned the General Land Office requesting that the patent to the Town of Mora Grant be amended to include the portion of the twenty five league tract that conflicted with the Town of Mora Grant. In 1895, Commissioner E.F.

Best held that the exception of the conflicting portion of the John Scolly Grant applied only to the confirmed and patented portions and thus the portions of the twenty five league tract which conflicted with the Town of Mora Grant were covered by the original grant and thus were not public lands and thus awarded the Town of Mora Grant approximately 890,000 acres of land.

29) Town of Las Vegas Grant
Confirmed as a community grant.

The Las Vegas Land Grant was approved by Congress in 1860 to the Town of Las Vegas. However the language of the Confirmation and to whom the grant was confirmed was vague. Congress approved the grant as recommended by the Surveyor General. However, Surveyor General Pelham had recommended two conflicting claims for confirmation, one for the confirmation of a private grant filed by the heirs of Luis Maria Cabesa de Baca and the other by the Town of Las Vegas. Cabesa de Baca had received a private grant for the land but had failed to settle it due to Indian raids and he abandoned the land in 1831. Pelham ruled that both grants were valid, but held that the job of adjudicating which grant was proper was for another tribunal.

The conflict was resolved by an agreement with the Baca heirs being issued the amount of land from the public domain in place of their interest in the Las Vegas Grant. Thus in order to find out how much land they were entitled to, the Las Vegas Grant had to be surveyed. The Las Vegas Grant was surveyed in 1860 and found to include 496,446 acres and that it conflicted with three other grants. However there were conflicts as to whether the common lands should be included in the area of the grant or if the grant should only be limited to the privately allotted lands. For example, in 1875, Joab Houghten was retained by the Las Vegas Land Grant and urged the government to issue a patent for the Las Vegas Grant. However the General Land Office stated that a reexamination of the boundaries of the grant was necessary because the exterior boundaries of the grant were so large. In 1887, Surveyor General Julian **recommended to the General Land Office that the Las Vegas Grant be resurveyed** and limited to the allotted private tracts of land and the General Land Office approved Julian's request. However there were many obstacles to surveying the privately allotted lands. For example, many of the lands were spread out along the Gallinas River, often deeds were unrecorded, and uncooperative individuals. At the same time there was an attack on the size of the Las Vegas Grant, there were also disputes over the ownership of the valuable common lands.

One example of these disputes was a complaint filed in 1873 seeking to enjoin the three commissioners of the grant from distributing farm tracts from the common lands to various individuals. The complainants challenged the commissioners' authority to partition the common lands. The San Miguel County District Court ruled in favor of the complainants and enjoined the defendants from any further land partitions. In 1887, another case was filed in court against three locals who had fenced highly desirable lands basing their claims on adverse possession, Homestead laws, and on deeds from the original grantees or their heirs. The plaintiffs in the case claimed that their descendents had sold their interests in the grant to Louis Sulzbacher, who transferred his interest to the plaintiffs. The plaintiffs asked the court to enjoin the defendants from fencing the common lands on the ground that they had an interest in the common lands as purchasers

of the shares of two of the original grantees. The judge in the case ruled on behalf of the defendants and ruled that the common lands of the grant did not belong exclusively to the original grantees and that the common lands were owned by the Town of Las Vegas and that the common lands could be occupied, farmed and fenced in by one person.
The next issue to plague the Town of Las Vegas was the fact that Las Vegas was not an incorporated entity and thus there was an issue as to whom to issue the patent.

For more on the history of this grant, *see* Ebright, *Land Grants and Lawsuits in Northern New Mexico* 203-221.

30) Tierra Amarilla Grant, SG, Type C
Confirmed as a private grant.

1832 grant from Mexico, reviewed and recommended for confirmation by SG Pelham in 1856, **confirmed by Congress** in 1860 as a private grant to the person claiming under Manuel Martinez, the *poblador principal*. Patented for 594,515.55 acres in 1881. Residents tried numerous times to gain judicial recognition of grant as community grant or to otherwise gain access to the former common lands, but the court has denied each time based on the U.S. confirmation language which vested ownership of the grant in a private individual.
Significant federal impact: classic case of incorrect confirmation as private grant by Surveyor General, who (1) overlooked important features in granting documents indicating it should have been regarded as a community grant, and (2) conducted *ex parte* proceeding that lacked constitutionally sufficient notice to other potential claimants. U.S. Supreme Court *Tameling* ruling foreclosed courts from correcting S.G. error.

II. <u>Grants Confirmed by the CPLC</u>

1) La Majada, CPLC 89, Type OI
Confirmed as an individual grant.

The original grant was made in 1695 by de Vargas. During the following fifty years the grant was revalidated, regranted and partitioned. A petition for the claim was filed by Benigno Ortiz y Sandoval before the CPLC in 1893. In support of his claim Ortiz y Sandoval submitted a certified copy of all the above proceedings by a civil and military authority in 1791 and a list of archival conveyances that linked the claimant to the original grantees. During the CPLC proceedings in 1894, **the government objected to the introduction of the certified copy on the basis that the civil and military authority who made the copy did not have the authority to do so. The Court overruled the objection**, however, and the only other defense the government mounted was to assert the claim conflicted with the Peña Blanca and Cochiti Pueblo grants. **The Court found the claim valid** and confirmed it to the heirs and legal representatives of the original grantee. The grant was surveyed in 1895 and found to contain 54,404.1 acres, some of which conflicted with the Caja del Rio, Cochiti Pueblo and Santo Domingo Pueblo grants. A series of legal actions followed to resolve these conflicts, but Bowden does not indicate what the ultimate outcome was with regard to the total acreage of the La Majada grant.

2) Santo Domingo de Cundiyo, CPLC 211, Type OI

Confirmed as tenancy in common.

This grant was made in 1743 by Governor Gaspar Dominguez de Mendoza to four residents of Chimayo who claimed they were without sufficient land. A 1776 church census of New Mexico missions showed the settlement contained nine families including thirty-six people. During the nineteenth century José Antonio Vigil, formerly of Santa Cruz, began purchasing portions of the grant and by the time the grant was adjudicated in 1900 Vigil's heirs controlled most of it. Because of the unimpeachable authenticity of the grant documents, the government's attorney attempted to reduce the size of the grant rather than question its authenticity. He therefore sent a deputy surveyor to conduct an investigation, which resulted in a **report whose conclusions were contrived to drastically reduce the acreage. The plaintiffs lawyer, Ralph Emerson Twitchell, unaccountably agreed to the government's stipulated boundaries without even consulting with his client,** Vigil's son, and thus the grant, which according to Victor Westphall actually consisted of approximately 20,000 acres, was reduced to 2,137.08 acres.

Significant federal impact: deputy surveyor survey of grant drastically reduced acreage.

3) Cubero (Town of), CPLC 1, Type C, SG file 26-no report

Confirmed as a community grant.

The original claim was filed before SG Pelham in 1856, but because there were no actual grant papers, the SG deferred action on the claim (thus there was no SG report) and the one surviving grantee and the heirs and legal representatives of the other grantee were forced to resubmit their claim to the CPLC. That claim alleged that the grant contained about eleven square leagues (48,000 acres) and that the grant papers had been included in the Archive of New Mexico but had been lost or destroyed. In addition to Cubero-Laguna document and oral testimony, the plaintiffs called William Tipton, who administered the Spanish Archives for the SG, to testify. Tipton acknowledged that the archives were in fragmentary form and that one of the most important books listing Spanish and Mexican grants was missing. The government argued that there was insufficient evidence to substantiate the claim, but in an **1892 decree the CPLC confirmed the claim.**

The government appealed the decision to the Supreme Court which in 1895 ruled that there was sufficient evidence of the claim and the legitimate loss of the original grant papers to warrant the introduction of secondary evidence and that the record of sixty years of undisturbed possession by the grantees and **their heirs adequately substantiated the claim.** The Court then went on to state that as a general rule a grant could be presumed upon proof of an exclusive and uninterrupted possession for twenty years. The grant was surveyed in 1896 and found to contain 16,490.94 acres**.** That survey, however, contained overlaps of the already confirmed Rancho de Paguate grant owned by the Pueblo of Laguna (10,138.4 acres) and the Pueblo of Acoma grant (283.23 acres). In a district court case that went all the way to the Supreme Court, **the validity of the Cubero grant was sustained**. The issue was later taken up by the Pueblo Lands Board, which sustained the Cubero claim regarding the Paguate grant (and actually awarded Cubero an additional 420.85 acres), but upheld the legitimacy of the Acoma claim and extinguished title to the overlap of that claim.

4) Nuestra Señora del Rosario, San Fernando y Santiago, CPLC 28, 225, Type C
Confirmed as tenancy in common.

This is a well-documented grant made in 1754 to eleven residents of Chimayo by Governor Tomás Velez Cachupin. Pedro José Gallegos, for himself and the other heirs and legal assigns petitioned the CPLC in 1892 for confirmation of the claim, which they asserted contained 20,000 acres. The government offered no special defense and the **CPLC confirmed the grant in December of 1892**. The subsequent survey, however, significantly overlapped the unconfirmed Pueblo Quemado claim (thus contributing to PQ's failure to be confirmed) and, according to the heirs, failing to extend far enough to the east. While it remains a contentious issue, the survey for 14,786.58 acres was not appealed. **While this grant was incorrectly adjudicated as a tenancy in common, the New Mexico State Legislature in 1909 enacted a special act by which the grant would be governed by a board of directors as a community grant.**

5) Ojo de San José, CPLC, 130, 182, 259, Type C, SG 185 file-no report
Confirmed as tenancy in common.

The heirs and legal representatives originally presented their claim to SG Atkinson in 1881, but for some unexplained reason Atkinson failed to investigate it. Three conflicting suits, one on behalf of all the heirs and legal assigns, and two on behalf of individuals were filed in the CPLC. Their estimates of the grants area varied between 18,000 acres and 182,130 acres. The suit on behalf of all the heirs and assigns was consolidated with one of the individual claims and the third was tried separately. **The CPLC upheld the validity of the claim in 1894** (the third claim tried four years latter was rejected), but the confirmation was followed by a lengthy disagreement regarding the extent of the claim. An initial survey found the grant contained 16,849.62, much of which conflicted with the Pueblo of Jemez and the Cañon de San Diego grants. A resurvey, based on a reassessment of where the boundaries were actually located, was ordered the Office of the SG. However, a preliminary estimate of the area contained within the newly located boundaries contained approximately 100,000 acres.

Alarmed by this potential loss of public domain, **the government filed a motion to amend the decree so that it limited the claim to one square league within the boundaries set forth in the act of possession.** The government argued that the governor specifically limited the area in the concession and therefore the grant was one of quantity rather than fixed boundaries. The plaintiffs argued that the decree was final and the Court had no authority to amend it. **In an 1898 decision the CPLC ruled that the mistake was one of fact rather than law and it therefore had the authority to amend its decree.** That decision was appealed to the Supreme Court, which dismissed the appeal in 1900. **The CPLC then amended its decree** and the **grant was resurveyed** in 1901 and found to contain 4,340.278.

Significant federal impact: The government's motion to amend the lands included in the grant and subsequent litigation decreased the acreage of the grant by 95,659.278 acres.

6) Ranchito, CPLC 157, Type C
Confirmed as a community grant.

This unique claim consisted of five private grants to Hispano elites purchased separately by the Pueblo of Santa Ana between 1709 and 1763. Although the muniments

of title were recorded in Kearny's Register, the claim was never presented to the Office of the SG. The Pueblo filed suit in the CPLC in 1893 and estimated the five adjoining tracts contained a total of 95,630 acres. **The government** offered no special defense against the legitimacy of the claim, but **contended the area was excessive.** The Pueblo therefore amended its petition and the claim was confirmed in 1897. An 1898 survey of the amended boundaries showed the tract contained 4,945.24 acres of which 694.61 conflicted with the Pueblo of San Felipe grant. According to Bowden, in order to expedite the patent, Santa Ana Pueblo waived their right to the disputed area and the claim was patented for 4,250.63 acres.
Significant federal action: Governments contention that the area was excessive forced the petitioners to amend their grant for decreased amount.

7) Bartolome Sanchez, CPLC 264, Type OI
Confirmed as an individual grant.

The great grandson of one of the original grantees, petitioned the CPLC in 1893 for confirmation of the claim, which he asserted contained approximately 10,000 acres. The government responded that regardless of whether the original 1707 grant and the 1711 revalidation evidenced a valid grant, the subsequent proceedings were inconsistent with the contention that the grant remained valid. **In an 1897 decision, however, the CPLC found the claim valid** because it believed the government's accusations were mere supposition. **The initial CPLC decision recognized the grant's original boundaries, but an 1898 decision reconsidered the boundaries and a decree was issued substantially reducing the area confirmed.** The government apparently was not satisfied with this reduction and appealed the decree to the Supreme Court, which dismissed the appeal on a motion by the appellant**.** There was subsequently a controversy about locating the boundaries as designated in the 1898 decree, but the court eventually approved a legal description and the grant was patented in 1914 for 4,469.828 acres. As a result of the confirmation of this grant the Antonio de Salazar claim, which the GAO Report designated a self identified community grant, and the Critoval Crespin claim, which the GAO Report unaccountably designated a private grant, were abandoned because they were contained within the Sanchez claim. There remains the question of whether any or all of these grants were actually community grants.
Significant federal impact: The CPLC reconsidered the boundaries and issued a decree that substantially reduced the area confirmed.

8) Santa Rosa de Cubero, CPLC 267, Type OI
Confirmed as tenancy in common.

In 1893 six persons claiming ownership of the grant filed suit in the CPLC. In 1896 the government answered that petition by demonstrating to the Court that the claim conflicted with the already confirmed Pueblo grants. The plaintiffs responded that the Pueblo surveys were incorrect and requested the Court to extinguish the Pueblos' title to the disputed lands or award the plaintiffs fair value compensation for the claim. The government responded that the Court had no jurisdiction to act upon land that had already been separated from the public domain and that in any case the plaintiffs did not have title to the south half of the grant. The assertion regarding the south half of the grant was predicated on an archival document that showed the original co-grantee, José Quintana,

had a son, who as a minor exempt from the residency requirement, was entitled to half the grant. It also showed that Quintana's son had subsequently sold his half of the grant to San Felipe Pueblo. **The CPLC, nonetheless, found the claim valid, but fixed its boundaries so that the tract was approximately half a mile wide and nine miles long and therefore practically worthless.** The government therefore waived its right of appeal and a 1900 survey showed the grant contained 1,945.496 acres, which was awarded to the heirs and legal assigns of both Fernandez and Quintana. The decision subsequently withstood a reversal in judgment by the Pueblo Land Board that was itself reversed in District Court and that judgment was upheld by the Tenth Circuit Court of Appeals.
Significant federal impact: CPLC fixed the boundaries of the grant so that it was rendered practically useless.

9) Santa Cruz, CPLC 181, 194, Type C, SG file 103-no report
Grant confirmed, but restricted only to the individual allotments.

An initial claim was filed 1872 during the tenure of SG Spencer by Tomás Cabeza de Baca, the grandson of Luis Cabeza de Baca, whose family was awarded the "Baca Floats" in recompense for their loss of the Las Vegas grant. Baca claimed that sometime before 1824 his great grandfather was granted approximately 60,000 acres either as an allotment under the Santa Cruz grant or through a private grant from Governor Cubero. **He alleged, however, that the grant papers had been lost and the SG, therefore, took no action on the claim**. **Three separate claims were filed for the grant before the CPLC in 1893:** one by Frank Becker on behalf of himself and all the heirs and legal representatives of the original grantee; one by Baca; and a third Francisco A. Romero, who evidenced his claim with an archival document that showed an ancestor of his had been granted a piece of agricultural land in 1696 by Governor Cubero.

The government responded to all three petitions. The Baca claim and the Romero claim were both abandoned after the government asserted there was insufficient evidence to substantiate the Baca claim and the Romero claim was merely an allotment within the Santa Cruz grant. The government advanced two defenses to the Becker claim: 1) that the original settlement had been abandoned and that a large number of the original settlers had received private grants for their agricultural allotments; and 2) that the grant was a community grant and under the precedent established by the *Sandoval* case the grantees were only entitled to their individual agricultural tracts. The government further argued that in either event the claimants had failed to prove the extent of their individual claims or sufficiently connect themselves to the original grantees and the claim therefore should be completely rejected. **In 1899, however, the CPLC confirmed the claim as a community grant and under the *Sandoval* precedent awarded the agricultural and residential parcels within a narrowly defined tract**. A 1901 survey showed these parcels amounted to 4,567.6 acres.
Significant federal impact: The CPLC applied the *Sandoval* precedent to the grant and thus denied the grant all their common lands.

10) Black Mesa, CPLC 56, Type OI
Confirmed as tenancy in common.

The heirs and assigns of the original grantee filed a petition for confirmation of their claim before the CPLC in 1892. They evidenced their claim with a certified copy of the expediente, which the government objected to on the grounds that an alcalde was not authorized to make certified copies. This preceded the *Hayes* precedent, however, and the Court overruled the objection. The government then proceeded to contest the western boundary call indicated in the petition. **In an 1894 decision the CPLC upheld the legitimacy of the claim, but sustained the government's argument regarding the boundary.** Neither party appealed the decision and an 1896 survey showed it contained 19,171.35 acres.
Significant federal impact: Court upheld the governments contest to the western boundary location.

11) Badito, CPLC 197, Type C, rejected
Grant was rejected. This grant was made to Antonio Armijo and fifteen associates for agricultural purposes in 1835 by Governor Albino Perez with the consent of the Territorial Deputation. However, the only document evidencing that process was an 1840 agricultural allotment from Alcalde Felipe Sena to one of the grantees which referred to the grant and noted that its "general boundaries are already named in the grant of said place." **When the case came up before the CPLC in 1898, the Court rejected the claim ruling that the 1840 document only evidenced an allotment and the alcalde had no authority to make a valid grant.**

12) Rio del Picuris, CPLC 65, Type C, SG file 71-no report, rejected
Grant was rejected.
This grant was originally requested from the Territorial Deputation in 1829 by Rafael Fernandez and twenty-three associates. It was investigated and recommended by the Ayuntamiento of Santa Cruz provided the pastures and watering places remained open for public use. That recommendation was protested by Mariano Rodriguez who asserted the grant was part of the Picuris Pueblo common lands, the applicants were speculators not settlers, and the application should have been investigated by the Ayuntamiento of Taos not Santa Cruz. Based upon this information the petition was rejected by the Deputation. However, three years later Fernandez and twenty-two of his original associates renewed their petition before the Ayuntamiento of Taos, which approved the application and referred it to "his Exellency" for approval.
As a result forty-two families were placed in possession of the grant in 1832 and individual agricultural tracts were allotted. **The inhabitants of the grant petitioned SG Pelham for confirmation of the grant in 1859** and evidence of its legitimacy was submitted**. Pelham, however, failed to act upon the petition** and no report was issued by his office. As a result, Rafael Fernandez' heir, **Juan Fernandez filed a petition for confirmation of the grant before the CPLC in 1893** asserting that the grant contained approximately 20,000 acres. The government contended that the grant was made by the Territorial Deputation and not the Governor. **Using the precedent established by the *Vigil* case,** the Court ruled that only the Governor had the authority to make the grant and it therefore **rejected the claim.** The plaintiff did not appeal the decision.
Significant federal impact: The Surveyor General's failure to act on the petition caused the grant to be adjudicated under the CPLC, and after the *Vigil* ruling, thus barring the

court from considering whether the granting official in this case was customarily authorized to make grants.

13) Embudo, CPLC 173, Type OI, SG file 91-no report, rejected
Grant was rejected.

This grant was made in 1725 to three men by Governor Juan Domingo de Bustamante. According to historian Malcolm Ebright the initial settlement consisted of eight families and a 1776 church census included fourteen families totaling sixty-nine people. So **clearly this was a community grant** from the outset. Moreover, there is abundant archival documentation of the continuous occupation of this grant. In 1786 the heirs of one of the original grantees requested a certified copy of the grant papers from the local alcalde because the original had become torn and dilapidated and this document was filed in the Office of the SG in 1863. **However the SG failed to investigate the claim** and the grant residents **subsequently filed a claim before the CPLC** asserting the grant contained approximately 25,000 acres. The case was tried in 1898, during which the government asserted the alcalde had no authority to make a certified copy of the grant and under the *Hayes* precedent the Court could not recognize the certified copy as legitimate evidence of the grant. In an 1898 three to two decision the CPLC sustained the government's argument and **rejected the claim**. In a dissenting opinion two of the Court's justices (including its Chief Justice) pointed out that the Court had confirmed the Town of Benalillo grant on " substantially the same character of evidence the court now rejects." The plaintiffs appealed the case to the Supreme Court which dismissed it because the appeal had not been docketed in conformity with the rules of the Court. **Significant federal impact:** The Surveyor General's failure to act on the petition caused the grant to be adjudicated under the CPLC, and after the *Vigil* ruling, thus barring the court from considering whether the granting official in this case was customarily authorized to make grants.

14) Sanguijuela, CPLC 170, Type OI, rejected
Grant was rejected.

This grant was beset by several problems from the outset. Four settlers petitioned the Alcalde of San Miguel del Vado for the grant in 1839. The Alcalde granted the request and referred the matter to Governor Armijo, who didn't ratify the grant until 1842. The Governor then reapproved the grant in 1843 and ordered the Alcalde of Las Vegas to place the petitioners in possession. In 1844 one of the original petitioners requested Governor Armijo revalidate the grant in order to remove any objection to the grant because it lay entirely within the boundaries of the already established Town of Las Vegas grant. Apparently no action was taken on this request, however. The owners of the grant **filed a petition in the CPLC seeking confirmation of their claim in 1893.** In support of their claim they submitted an 1855 certified copy of the grant recorded by San Miguel County and the act of possession certified in the Kearny Register.

The government questioned the legitimacy of both of these documents and the Court sustained its objections. The government also argued that the previous confirmation of the Town of Las Vegas grant deprived the Court of jurisdiction. For all of these reasons, **the Court rejected the claim** and the plaintiffs did not appeal that decision.

Significant federal impact: CPLC sustained the objection that the officials who issued the grant had no authority to do so and rejected the grant.

15) Barranca, CPLC 97, 265, Type C, rejected
Grant was rejected.

This grant had a very complicated and controversial history and its adjudication is a graphic example of the narrow way the CPLC chose to interpret its mandate. The Barranca grant was one of several grants (including the José Antonio Torres grant and the Juan Estevan Garcia de Noriega grant) made by Lieutenant Governor Juan Paez Hurtado in the late winter and early spring of 1735 while Governor Cervasio Cruzat y Gongora was in El Paso on official business. The Barranca grant was made to five residents of Puesto de Chama (present day Hernandez) the most well known of whom was Geronimo Martín, who was involved in several other grants as well. However, when Governor Cruzat y Gongora returned to Santa Fe, all the grants conceded by Hurtado were revoked and Martín was ordered to dismantle and remove the structure he had begun to erect on the grant.

In the meantime, the chief Alcalde of Santa Cruz, Juan José Lobato, petitioned and received a grant that included all of the original Barranca grant and at least parts of twelve other grants. The Lobato grant, however, coincided with a rash of Indian attacks in the area that resulted in the abandonment of all settlements in the area. Then, in 1750, Governor Velez Cachupin ordered the resettlement of all these abandoned Rio Arriba grants under penalty of forfeiture. Ironically, archival documents demonstrate that Geronimo Martín was one of the settlers that complied with this order and that in 1764 he conveyed the grant to José Martín. Upon Martín's death, his son, also named José, requested Governor Anza revalidate the grant, which he did in 1784. Between 1764 and 1886 there was evidence of twelve conveyances of land within the grant. Moreover, a community named Barranca was established confirming that the grant had evolved from a private grant into a quasi-community grant. In 1893 four residents of the grant, on behalf of themselves and all other interested parties, petitioned the CPLC for confirmation of the claim, which they estimated contained 25,000 acres. The government responded that the **Barranca grant was entirely contained within the already confirmed Juan José Lobato grant, thus exhausting the Court's jurisdiction**, and that in any event the Cruzat y Gongora revocation extinguished any legitimacy the claim may have had.

The Court's 1896 decision ignored the 1784 revalidation of the grant, the presence of a continuously occupied community and concluded by stating "We do not deem it necessary to discuss the question whether under a proper construction of certain provisions contained in the act creating this court we have jurisdictional authority to confirm a grant lying within the boundaries of another grant which upon full hearing has been previously confirmed by this court." The claim was therefore rejected and a 1935 New Deal census showed that the community of Barranca owned just 165 acres of agricultural land.

Significant federal impact: The CPLC responded to the petition of confirmation stating that they did not have jurisdiction to hear the matter as the grant was encompassed within a grant that had already been confirmed.

16) Los Conejos, CPLC 109, Type C, SG file 80-no report, rejected
Grant was rejected.

In 1861 José Maria Martinez, on behalf of himself and all other grantees, petitioned SG Pelham for confirmation of their claim. Because the majority of the grant was in Colorado**, Pelham transferred the case to the SG of Colorado who apparently took no action.** As a result, **one of the heirs petitioned the CPLC for confirmation of the claim, which he asserted included 2.5 million acres**. According to Bowden, by this time there were numerous towns and at least 1,000 people held conflicting claims under public land laws. When the court ordered the plaintiff to make all of these people defendants, he waived all right to lands previously disposed of by the government. The case was tried in 1900 at which time the government asserted that the grantees had forfeited their right to the grant by not complying with the occupancy requirement and that the Prefect had no authority to regrant the tract. The CPLC upheld the government's arguments and **rejected the claim** thus protecting the government's control of some of the richest agricultural lands and mineral deposits in the southwest.
Significant federal impact: The failure of the Surveyor General to take action on the claim caused the petition to be considered under the CPLC, which subsequently rejected the claim.

17) Cañada de los Mestaños, CPLC 163, Type C, SG file 82-no report
Grant was rejected.

In 1893 Julian Martinez submitted a claim for confirmation of the grant to the CPLC. He alleged that the concession included 16,000 acres. The case was heard in 1896 at which time the government asserted, as it had in the *Hayes* case, that in 1828 an alcalde did not have the authority to make a grant. **The Court upheld the government's argument and rejected the claim.** Martinez appealed the case to the Supreme Court, which dismissed the appeal.
Significant federal impact: The CPLC applied the *Hayes* precedent to refute the authority of the granting official and rejecting the claim.

18) Real de Dolores del Oro (Town of), CPLC 111, Type OI
Grant was rejected.

This grant had no documentation, but was alleged to have been made in 1830 by Governor José Antonio Chavez and had been continuously occupied by no less than forty people from that time on. Guadualupe Montoya, on behalf of himself and the other inhabitants of the town, filed a petition for confirmation in the CPLC in 1893. He alleged the town was in existence at the time the United States acquired the area and by operation of Spanish law was entitled to four square leagues of land (17,361 acres). In addition to the government, the suit included the owners of the Ortiz Mine Grant, the owners of the Mesita de Juana Lopez grant and a number of other defendants. The government responded that there was no substantial evidence of a grant ever having been made and in any **event the claim fell entirely within the Ortiz Mine grant, which had already been confirmed** thus extinguishing the Court's authority over the tract. In an 1897 ruling the Court held that the grant was imperfect at the time of the change of sovereignty and that its authority over the land had been exhausted by the confirmation of the Ortiz Mine

grant. The plaintiffs appealed the case to the Supreme Court, which cited the Conway decision (175 U.S. 60) to uphold the decision of the CPLC.
Significant federal impact: The CPLC refused to hear the grant for want of jurisdiction over land which had already been confirmed, the case was appealed and the decision of the CPLC was upheld by the Supreme Court.

19) San Antoñito, CPLC 27, Type C, SG file 77-no report
Grant was rejected.

A petition for this grant was submitted to the Prefect of the District of Bernalillo on behalf of twenty-seven applicants in 1840. Although the tract had formerly been granted to Cristobal Jaramillo, it had been abandoned for more than fifteen years and the alcalde sent to investigate the request for it vacant and irrigable. He thereupon laid out the boundaries, allotted agricultural plots and designated the remaining area as a commons. The GAO notes an SG file, but Bowden's synopsis does not reference it. In 1892 Manuel Crespin, for himself and the other heirs and legal representatives, filed a petition for confirmation of the grant in the CPLC. The petition asserted the grant contained 32,000 acres. In support of the claim, the plaintiffs filed a certified copy of the grant papers. During the trial, which commenced in 1892 and concluded in 1893, the plaintiffs pointed out that the San Pedro, Town of Torreon and Town of Tejon grants had all been made by prefects and had been confirmed by Congress. The government conceded that the grant papers were genuine and that possession by the settlers had been demonstrated. However, it asserted that a **prefect had no authority to make a grant** (*Vigil*) and that possession subsequent to 1840 created no valid claim. The Court upheld the government's arguments and **rejected the claim**. Crespin appealed the case to the Supreme Court (*Crespin v. United States,* 168 U.S. 208), which upheld the CPLC claims decision and advised the claimants to seek relief through the legislative branch of the government.
Significant federal impact: The CPLC refuted the prefect had the authority to make grants by applying the *Vigil* precedent, and the Supreme Court affirmed the decision of the CPLC.

20) Rio Tesuque (Town of), CPLC 123, 215, Type OI, SG file 71-no report
Grant was rejected.

The adjudication of this grant is unique because the ***Sandoval* precedent was applied retroactively** in a rehearing following an initial confirmation of the grant by the CPCL. The residents of the grant first petitioned the Commissioner of the General Land Office in 1871 stating that the grant papers for the settlement had been lost or destroyed and they wanted to know how to protect the grant from speculators. The letter was passed on to SG Spencer who apparently took no action whatsoever. As a result the heirs and legal representatives filed a claim in the CPLC in 1893 once again stating that the grant papers had been lost, but asserting that the grant had been made to Juan Benavides in 1745. This was followed by an amended petition elaborating on the history of the grant to Benavides. This, in turn, was followed by a second amended petition supported by an archival document from which the claimants inferred that the original grant had been made prior to 1744 to Pedro Vigil and through several conveyances had been purchased by Benavides in 1744. The claimants further evidenced their claim by noting the boundary description for the Juan de Gabaldon grant called for the western boundary to

be located along the boundary of Juan Benavides. The claimants estimated the grant contained 7,300 acres. The case was tried in 1897 and oral testimony demonstrated that at least thirty families resided on the grant and their families had possessed the grant for generations.

In a May 25, 1897 **decision the Court held that the unquestionable evidence of the residents' long possession raised a presumption that a valid grant had been made.** However, on May 24, the day before the Tesuque decision, the Supreme Court had ruled in the *Sandoval* case that the settlers had no vested right to unallotted lands within the exterior boundaries of a community grant and the government requested and was granted a rehearing. In an 1898 rehearing **the government vacated its previous decision** and told the plaintiffs that they were only entitled to their individual agricultural tracts under Sections 16 and 17 of the 1891 Act that created the CPLC.

Significant federal impact: While the CPLC ruled in favor of the grant, the government vacated its decision and applied the *Sandoval* precedent which denied the grant their common lands.

21) Rancho de Ysleta, CPLC 33, Type C

Grant was rejected.

This grant was made by the Governor and Constitutional Congress of Chihuahua in 1828. In fell into the hands of land speculators who believed that if they were able to get the small New Mexico portion confirmed by the CPLC they would have a much better chance of getting the remainder of the grant confirmed in Texas. In an 1894 decision the CPLC **rejected the claim** noting that the claimants produced insufficient evidence of the claim and more importantly that the Court believed it did not have jurisdiction to adjudicate a claim that was clearly within the boundaries of Texas at the time of the Treaty of Guadalupe Hidalgo. The owners continued to pursue their claim in both Texas District Court and the federal court system, but it was ultimately rejected by both venues.

Significant federal action: The CPLC rejected the claim on the ground that the claimants had insufficient evidence of the claim and they also held they had no jurisdiction as the claim was within the boundaries of Texas.

22) Heath, CPLC 59, Type OI

Grant was rejected.

This was an *empresario* grant, a grant made under the Mexican colonization laws to an individual who was responsible for inducing settlement of the grant (the Sangre de Cristo grant is another example). The grant, which encompassed twenty five leagues, was made to John Heath, a New Yorker who migrated to Missouri and then became part of Stephen Austin's Texas colony, by the Ayuntamiento of El Paso del Norte in 1823 subject to the approval of the Governor and the Territorial Deputation. The Ayuntamiento surveyed and placed Heath in possession of the grant and Heath returned to Missouri to recruit settlers. In the mean time, however, the Territorial Deputation repudiated the actions of the Ayuntamiento asserting that it had granted land to a foreigner, which prejudiced Mexican settlers and was in violation of the law under which it purported to act. Moreover, there had been a change in administration and the Colonization Laws had been repealed until the new government could promulgate a new constitution. Heath

returned to Mexico with his colonists and was told his grant had been repealed. He protested, but was forced, under penalty of death, to abandon the grant and all the personal property he had brought to establish the colony.

The Heath grant was subsequently regranted by the Mexican Government and formed most of the colonies that were established for Mexicans who had resided in New Mexico, but chose to be repatriated following the Mexican-American War (the Doña Ana Bend Colony, the Mesilla Civil Colony and the Santo Tomás de Iturbide Colony). In 1893 Heath's heirs retained attorney J.B. Cessna to petition the CPLC for confirmation of the grant. In an 1895 decision the **Court held that Ayuntamiento did not have the authority to make the grant** and that, in any event, the grant was legitimately revoked prior to settlement. Cessna appealed the decision to the Supreme Court, which in an 1898 decision (*Cessna v. United States*, 169 U.S. 165) upheld the CPLC decision and further asserted that Heath's successors' failure to assert their claim for more than seventy years raised a presumption against the validity of the claim.

Significant federal impact: The CPLC ruled that the official that made the grant did not have the authority to do so, and the Supreme Court affirmed the CPLC's decision.

III. Community Land Grants in Which Proceedings Did Not Reach Merits of Claim

A. "Original Documentation" Community Grants in Which the Proceedings Never Reached the Merits of the Land Claim

1) Angostura del Pecos, No SG file or case number

The petition for this grant was submitted to the Alcalde of San Miguel del Vado on October 4, 1842 by José Manuel Sanchez, for himself and in behalf of fifty-three others. On Jan 28, 1843 Geronimo Gonzales received an allotment of 400 varas within the grant from the alcalde.

The inhabitants of the Town of Angostura del Pecos filed a petition to the Surveyor General seeking confirmation of their grant on June 28, 1856. Sometime inn 1860 Gonzales filed a separate petition seeking recognition of his allotment. According to Bowden, **the entire grant was in the disputed overlap between the Preston Beck grant and the Anton Chico grant** and the Surveyor General was, therefore, reluctant to act on it. After the confirmation of the Preston Beck and Anton Chico grants, the petitioners failed to pursue their claim.

2) Bartolome Trujillo, PLC cases 257 and 263 consolidated into 257 (Thomas Catron, attorney)

Two claims were filed before the CPLC on the last day claims could be filed, March 3, 1893; one by the great grandson of Bartolome Trujillo (who had the same name) and the other by Francisco Serna. However, **both claims were totally encompassed by the Juan José Lovato claim** and by the time the Bartolome Trujillo claim appeared on the court's docket, the **Lovato claim had already been confirmed**. As a result, the grant's lawyer, Thomas B. Catron, moved the court to enter a decree dismissing the case without prejudice to any interests the claimants might have to adverse title.

3) Cadillal, No SG file or case number

T he petition for this grant was submitted to the Ayuntamiento of Santa Fe on January 31, 1846 by Joaquin Chaves and twenty eight other citizens of Galisteo. The petitioners were placed in possession of the grant on February 23, 1846 with each head of household receiving fifty varas of land adjacent to the creek.

According to Bowden, the grant **was entirely within the Domingo Fernandez** (Ethan Eaton) grant (SG19), which was confirmed in 1860. As a result, grant residents took no action towards gaining confirmation of their claim.

4) Town of Chaperito, SG file number (7)

Santiago Martin and eighteen inhabitants of the town of Cuesta petitioned the Alcalde of Las Vegas on February 4, 1846 for a vacant tract of land known as El Chaperito. On March 10, 1846 the Departmental Assembly made the grant.

Although the inhabitants of the town filed their grant papers with the Surveyor General on June 27, 1855, an actual petition seeking its confirmation was not filed until 1888. Apparently there was quite a bit of conflict during Surveyor General Julian's review of the claim in July of 1888. Although convinced of the authenticity of the grant, Julian was unable to recommend it because **it lay entirely within the already confirmed Antonio Ortiz grant** (SG42), which Julian was actively campaigning to have reversed. However, in September of 1893 the Secretary of the Interior upheld the validity of the Antonio Ortiz confirmation thus preventing the inhabitants of the town from pursuing their claim before the CPLC.

According to Bowden, grant residents were able to acquire perfected limitation title to their private tracts through continuous possession. They were then able to extend their holdings within the Antonio Ortiz grant to include all the land they "actually possessed, cultivated and occupied" prior to February 1888 through a decision by the New Mexico Supreme Court *(Waddington v. Robledo,* 6 N.M. 347, 28).

5) Los Manuelitas, PLC case 242 (E.W. Pierce, attorney)

Some time before April 9, 1845, Pedro Alcantara Vigil petitioned the governor of New Mexico for himself and on behalf of nineteen other heads of households for a tract of land between Mora and Las Vegas known as Las Manuelitas. After some controversy, the Departmental Assembly made the grant on July 2, 1845 with the proviso that all lands not actually under cultivation were to remain open to "public use."

A claim for this grant was filed before the CPLC on the last day on which claims could be filed, March 3, 1893. However, on the day of the trial, July 5, 1898, the petitioners failed to appear and the claim was dismissed. Bowden speculates that the **1896 decision (*Chavez v. United States*, PLC 20 upheld by the Supreme Court),** which held that the Departmental Assembly had no authority to make grants, probably convinced the claimants that they had no hope of a favorable decision.

6) Mesita Blanca, PLC case 159, Claim submitted March 2, 1893

On February 3, 1843 Jesus Griego, for himself and on behalf of seven others, petitioned the Ayuntamiento of Santa Fe for a tract of land known as the Mesita Blanca.

On February 7 the Ayuntamiento made the grant, and on February 15 the Alcalde of Santa Fe placed the eight petitioners in possession of the tract.

On March 2, 1893 Antonio Baca, on behalf of himself and the other heirs of the original eight grantees filed a petition seeking confirmation of the tract. However, by 1897 when the case came to trial, the court had **erroneously established through several previous cases that the Ayuntamiento did not have the authority to make grants** and Baca, therefore, indicated that he would not pursue the claim.

7) Pueblo Quemado, PLC case 212, Claim submitted March 3, 1893 (Thomas B. Catron, attorney)

The official documents associated with Pueblo Quemado grant were lost, but the grant was referred to as a boundary in both the Cundiyo and Nuestra Señora del Rosario San Francisco y Santiago grant documents. There are also documents in the archive that note the Pueblo Quemado settlers were granted permission to abandon the grant due to attacks by nomadic tribes in 1748 and resettle it in 1749. In 1776, when Fray Francisco Atanasio Dominguez conducted a tour of the missions of New Mexico, he visited the community and stated that it was a "large settlement" with 52 families consisting of 220 persons. The archival information leaves no doubt that it was established before 1743 and was continuously occupied from 1749 forward.
On March 3, 1893, the last day a claim could be filed before the CPLC, four members of the community petitioned the court to confirm the grant to themselves and the heirs and legal assigns of the original settlers. Their lawyer, Thomas B. Catron, suggested the grant was approximately thirty miles from east to west and fifteen miles from north to south and contained approximately 288,000 acres. Because there were no grant papers, he suggested that if the boundaries could not be located the settlement was entitled to four square leagues by operation of Spanish law.

The case did not come up for hearing until May of 1900. Based upon the adjudications of other undocumented claims that preceded it, Catron realized that the claim had little chance of success. Moreover, the 1895 survey of the **Nuestra Señora del Rosario San Francisco y Santiago grant had erroneously encompassed a significant portion of the Pueblo Quemado claim** and the court, therefore, had no authority over the land in question. When the case came up for hearing the claimants announced through their attorney that they had no evidence to substantiate their claim and consented to a decree rejecting the claim.

8) Santo Toribio, PLC case 256, Claim submitted March 3, 1893 (Thomas B. Catron, attorney)

This claim was beset by multiple problems. The claimant, Refugio Valverde (who made his claim to the CPLC the last day claims could be made), asserted that Juan Bautista Anza, during his tenure as governor (1778-1779), granted the petition of a group of settlers for a tract of land bordering Jemez Pueblo and the Cañon de San Diego land grant. He further claimed that the settlers were placed in possession by Alcalde Paulin Montoya and that he had obtained a partial and undivided interest in the grant from Toribio Gonzales, one of the original grantees. He also asserted that under Spanish law each town was entitled to four square leagues, an argument the CPLC had dismissed in

adjudications that preceded the Santo Toribio Moreover, according to Bowden, there was no documentary evidence that the concession was ever made.

When the claim came to trial on December 8, 1898, Valverde requested his suit be dismissed without prejudice to any adverse claim he might have on the Ojo de San José grant, which had already been confirmed and which he asserted conflicted with his claim. The **court rejected the Santo Toribio claim** and dismissed Valverde's petition without prejudice to any rights he might have under the Ojo de San José grant.

9) Vallecito de San Antonio, SG file 183, PLC case 141, Claim submitted February 28, 1893 (George Hill Howard, attorney)

Sometime before April 7, 1807 José Garcia de la Mora and twelve other men petitioned Governor Joaquin de Real Alencaster for a grant of land south of Abiquiu. On April 7, 1807 Governor Alencaster directed the Alcalde of Santa Cruz to find out whether there would be any objections to the grant and who the twelve unnamed petitioners were. On April 18, 1807 the Alcalde reported the names of the twelve others and indicated that there would be no objection or potential injury from the issuance of the grant as long as the pasturelands remained common and the grantees enclosed their fields. This seems to indicate that the area was a public commons and the grant privatized thirteen tracts within it, but the excess land remained open to both the grantees and other third parties who had established grazing rights. **The actual act of possession, however, appears to have been lost or destroyed.**

The heirs of José Garcia de la Mora petitioned Surveyor General Clarence Pullen for confirmation of their claim, but **no action was ever taken by that office**. On February 28, 1893 José Asabel Martinez and five other people claiming an interest as heirs or legal assigns of the original grantee petitioned the CPLC for confirmation of the grant, which they estimated contained 38,000 acres. According to Bowden, the claimants realized that, at best, they could only prove that there were thirteen small individual grants for farmland along the river and they chose to secure patent to these through the Homestead Act. As a result, when the case came up for trial on September 30, 1897, the claimants stated that they no longer wished to prosecute the claim and the petition was dismissed and the claim rejected.

B. "Self Identified" Community Grants that Lacked Proceedings on the Merits of the Land Claim

10) Antonio de Salazar, SG case 132, PLC case 235, Claim submitted March 3, 1893 (Thomas B. Catron, attorney)

On August 25, 1882 Ramon Salazar, for himself and the other owners of the grant, filed a petition before the Surveyor General seeking confirmation of the grant. Surveyor General Atkinson acknowledged the validity of the grant recommended it be confirmed to the heirs, legal representatives, and assigns of the Salazar family. A preliminary survey showed it contained 23,351.12 acres.

Because **Congress failed to act on the recommendation, it was reviewed by the new Surveyor General, George W. Julian.** Julian acknowledged the validity of the grant papers, but speculated that when title was questioned in 1716, it raised the issue of

whether title was ever perfected. He also questioned the western boundary call leading the Commissioner of The General Land Office to submit a report to Congress estimating that the grant didn't contain more than 2,900 acres.

Because none of these recommendations were acted upon, Bernardo de Salazar filed suit in the CPLC on the last day claims could be filed, March 3, 1893. **The government forced the petitioners to amend their petition to include the adverse claims of San Juan and Santa Clara Pueblos, and the Cristoval Crespin, Juan Jose Lovato, Juan d Ulibarri and Bartolome Sanchez grants.** According to Bowden: "Since the Bartolome Sanchez grant, which under Julian's theory covered all of the lands embraced within the boundaries of the Antonio de Salazar grant, had been previously confirmed, the plaintiff realized the court had no power to confirm the grant." On June 13, 1898 Salazar announced he did not wish to prosecute the claim and a decree rejecting the claim was entered by the CPLC.

11) Arkansas, SG file 100

The Arkansas grant was what historians refer to as an "empresario" grant; that is, a grant issued to an empresario or land speculator who contracted to induce settlement of frontier areas. These grants were issued by the Mexican government after 1823 in a desperate attempt to protect their northern territories from the raids of nomadic tribes and the incursions of foreign governments.

The Arkansas grant was an enormous tract encompassing millions of acres, mostly in Texas, but including parts of New Mexico, Oklahoma, and Colorado. Although large sums of money changed hands and a great deal of legal and political pressure was brought to bear, an 1891 Supreme Court decision (*Inter-state Land Company v. Maxwell Land Grant Company*, 139 U.S. 569) ruled that the grant ". . . was simply a designation of a tract within which the petitioners might establish a colony. It of itself passed title to no portion of the land to them." This decision settled the issue of the grant's validity on which there had never been any settlement.

12) Arquito, SG file number 75, but no case number. PLC case145 (Thomas B. Catron, attorney)

This grant was evidenced by two documents filed at the Office of the Surveyor General on January 28, 1861. The first certified that Romaldo Archiveque had been placed in possession of a tract of land by Alcalde Antonio Montoya. Bowden mentions no date for this concession. The second document was a deed dated November 28, 1851 conveying the concession to José Leandro Perea.

On the basis of these two documents, Pedro Perea, the son of José Leandro, on February 28, 1893 filed a claim for confirmation of the grant, which he estimated contained 2,000 acres. According to Bowden: "Since the concession obviously was 1) **a grant by an Alcalde which would be void for want of authority**; or 2) **merely an allotment under a community grant**, which would have to be alleged and proved in order to be confirmed, . . . Perea announced that he no longer wished to prosecute his suit . . ." and the court rejected his claim.

13) Town of Candelarios, SG file number (99), no case number

On January 9, 1872 the inhabitants of the towns of Candelarios, Los Griegos, Los Gallegos, Los Pueblanos, Los Ranchos and El Rancho collectively petitioned the Surveyor General for confirmation of their grants, which covered all the non-Indian land lying between the Town of Albuquerque and the Town of Alameda grants. **They stated that the papers evidencing the issuance of the grants had been lost or destroyed**, but they would be able to prove that the land had been occupied for more than a hundred years. Apparently, no further action was ever taken to resolve these claims.

14) Town of El Rito, SG case 151, PLC case 224, Claim submitted March 3, 1893 (M. Wicks and James Purdy, attorneys)

The documents for this grant were lost, but there were two conflicting claims submitted to the Surveyor General Henry M. Atkinson. The first claim was submitted by Jesus Maria Vigil who alleged that the grant had been made to his great grandfather about 1780. He pointed to the fact that several town were located on the grant evidencing continuous possession and that there was a significant oral tradition that the grant had been made. The second was a petition from Epifanio Lopez who alleged that the grant had been made for the purpose of forming a colony and was therefore entitled to four square leagues as an operation of Spanish law.

In the meantime George W. Julian succeeded Atkinson and he continued the investigation, by taking a great deal of oral testimony that substantiated both claims. Moreover, there were a number of deeds for individual tracts executed between 1808 and 1843. Julian ruled that although the petitioners had failed to establish legal title, the heirs and legal representatives of the original grantee had established equitable title to their residences and irrigated tracts, which he suggested should be recognized by the United States.

Congress failed to act upon this recommendation and Tomasa Tenorio de Quintana filed suit before the CPLC seeking confirmation of the claim as an heir of the original grantee. When the case came up for trial on June 11, 1898, however, Tenorio de Quintana announced she would not further prosecute her claim. This was probably because the **Juan José Lovato grant, which encompassed much of the El Rito claim, had already been confirmed and the court held that it had no authority over land that was previously severed from the public domain**. Bowden asserts that the claimants were able to perfect title to their individual tracts under the homestead law.

15) Guadalupita, SG file 94, SG case 152, PLC case 131, Claim filed February 27, 1893 (George Hill Howard, attorney)

Two claims were filed for confirmation of the grant before the Office of the Surveyor General. On March 4, 1866 George Gold filed the first claim stating that he had acquired an interest in the grant by purchasing conveyances from several of the original colonists. This petition, according to Bowden, was never acted upon. On December 28, 1885 the heirs of the three original named grantees submitted a second petition. They claimed that the Governor of New Mexico and the Departmental Assembly had approved the grant, but that the papers evidencing this process had been lost or destroyed. Surveyor General Julian, however, ruled that because there was no evidence of such approval, the only documentation substantiating the legitimacy of the grant was the Alcalde's act of

possession. **The Alcalde, Julian asserted, did not have the authority to make the grant and he therefore recommended the claim be rejected.**

The heirs of the original grantees made another effort to secure title to the grant by filing a petition before the CPLC on February 27, 1893. **Probably realizing that because the vast majority of the their claim was encompassed by the already confirmed Mora grant**, the claimants, when the cause came up for trial on November 24, 1895, announced they did not wish to further prosecute their claim. As a result, the CPLC dismissed their petition and rejected their claim.

16) Hacienda del Alamo, PLC case 155, Claim submitted March 2, 1893 (George Hill Howard, attorney)

The **documentation for this claim was lost or destroyed,** but the plaintiff, Pinito Pino, alleged that it was granted to José Reano sometime before 1714 and that he held an interest through inheritance and purchase. He stated that the grant contained approximately 50,000 acres and that it was evidenced by a number of documents containing references to the grant. Pino filed his claim on March 2, 1893, the day before the deadline for filing.

The government filed a motion to make a great number of people and land grants who potentially held adverse interests party to the suit. The case came up for trial on May 4, 1897 and was postponed till the 28th at which time the **claimant's attorney withdrew**. The court gave the plaintiff till June 2, the last day of the term, to find alternate representation, but he failed to appear on that day and the court issued an order dismissing the petition and rejecting the claim.

17) José Ignacio Alari, SG case 227

On March 3, 1893 Juan Antonio Quintana an heir of Gabriel Quintana, petitioned the CPLC for confirmation of the grant, which he estimated contained 1,000 acres along the Ojo Caliente River. On October 20, 1896 **the government filed a motion asking the court to require Quintana to make the owners of the Ojo Caliente grant party to the suit because his claim was encompassed by it**. No further action took place until May 5, 1900 when the case came up for trial. By this time the CPLC had firmly established that it had no authority to adjudicate land claims that had already been severed from the public domain and, **since the Ojo Caliente grant had been confirmed, the Alari claim was doomed**. As a result, the plaintiff announced that he no longer wished to prosecute the claim and the court dismissed his petition and rejected his claim.

18) José Trujillo, SG case 112, PLC cases 115 and 268, Claim submitted February 23, 1893 (James Purdy, attorney)

On September 28, 1877 Silvestre Gomez, for himself and on behalf of the other heirs and legal representatives of José Trujillo, petitioned Surveyor General Atkinson for confirmation of the Mesilla and Arroyo Seco grants. He claimed that the Mesilla grant comprised approximately 6,100 acres and the Arroyo Seco 12,000 acres. In his opinion of December 13, 1878, acknowledged the legitimacy of the grant papers and the evidence that two communities on the grant, Mesilla and Polvadera, had been continuously occupied for some time. He, therefore, recommended the combined claims for confirmation. A preliminary survey, however, showed that the two claims only amounted

to 5,999.69 acres and that almost all of the land conflicted with the already confirmed claims of Pojoaque, Santa Clara, and San Ildefonso Pueblos. The claimants protested the survey asserting that the survey located the eastern boundary two leagues too far west and that it only covered the Mesilla tract and not the Arroyo Seco tract.

Congress failed to act on the claim and on February 23, 1893, just before the deadline for entering claims, Manuel Archuleta, for himself and the other heirs and legal representatives of José Trujillo filed a claim for the Arroyo Seco portion of the grant (PLC 115) before the CPLC. He apparently realized, however, that it would be impossible to contest the preliminary survey and abandoned the claim in favor of pursuing the Mesilla portion of the grant (PLC 268). **Finally, realizing that all the land within this claim had already been severed from the public domain and was no longer within the court's authority**, he requested his suit be dismissed, which the court did on November 26, 1896.

19) Juan de Ulibarri, PLC case 253 (Thomas B. Catron, attorney)

A petition for confirmation of this grant was submitted on March 3, 1893, the last day petitions could be filed. The government initiated a motion to have the owners of the Bartolome Sanchez, Town of Chamita, Cristobal Crispin, Antonio de Salazar and Pueblo of San Juan grants made party to the suit as the **500 acre claim conflicted with all of them.** Moreover, the government pointed out that during the adjudication of the Bartolome Sanchez claim it was demonstrated that the Ulibarri grant was revoked and regranted to Sanchez. Realizing there were insurmountable hurdles, the plaintiff announced he did not wish to pursue his claim and his petition was dismissed and his claim rejected.

20) Las Lagunitas, SG case 154

The archival documents associated with this **grant were alleged to have been lost**. The claimants, Francisco Griego and fourteen others who filed their petition before Surveyor General Julian on March 21, 1887, alleged that Antonio Sandoval (the grant is also known by his name) purchased the grant just south of Albuquerque from the members of the original settlement between 1807 and 1815. They further asserted that he held undisputed possession of the tract from that time till his death in 1862. His heirs then partitioned the grant into twenty individual allotments and the claimants acquired their interests by inheritance or purchase from these heirs.

In his opinion of August 5, 1887, Surveyor General Julian stated that it could not be presumed that Sandoval, whom he acknowledged had resided on and occupied portions of the grant, had acquired ownership of the entire tract, which amounted to several thousand acres. He was also concerned that many of the claimants did not reside upon the tract and that their claims conflicted with third parties who did. **As a result he refused to act upon the claim and suggested it was an issue for the General Land Office and the Territorial courts**. According to Bowden "Julian, by usurping the prerogative of congress, blocked the claim and quashed all hope of securing the recognition of one of the most valuable private land claims in the Southwest."

21) Ojito de Galisteo, CPLC case 164 (Thomas B. Catron, attorney)

This grant was evidenced by a Spanish document, which showed that Juan Cruz Aragon, a retired soldier, submitted a petition to the Alcalde of Santa Fe on February 1, 1799 seeking a grant of land near Galisteo for pasturage. On February 4, 1799 Governor Fernando Chacon approved the concession and on April 9, 1799 the Alcalde placed Cruz in possession of the tract. The document itself was an undated certified copy made at a latter date by the alcalde because the original grant documents had been destroyed. On March 2, 1893 Nicolas Pino, who claimed an interest in the grant by inheritance, submitted a petition seeking confirmation of the grant. In its answer to the petition, **the government asserted that the document was a forgery**. When the claim came up for trial on November 16, 1896 Pino announced that her wouldn't prosecute the claim. Perhaps his failure to pursue the claim was an acknowledgement of the illegitimacy of the documentation. However, although the Hayes decision had not as yet been made, the issue of whether alcaldes had the authority to make certified copies of grant documents had already been called into question and the claimant may have realized he faced an insurmountable argument.

22) Rio del Oso, SG file 112, PLC case 177 (N.B. Laughlin, attorney)

The claimant, José Luis Valdez, alleged that José Antonio Valdez (Bowden doesn't explain the relationship between the claimant and the grantee) and five associates petitioned the Prefect of the Departmental Assembly and acting governor for a grant of land in Rio Arriba County sometime before June 20, 1840. He further alleged that the acting governor approved the petition and that both of these acts were evidenced by the act of possession (dated August 3, 1840), which had been submitted to the Surveyor General on April 27, 1876. The petition stated that the grant contained approximately 5,000 acres.

In response, the government filed a motion on December 29, 1896 to join the owners of the Juan José Lovato grant, which had already been confirmed, as adverse claimants. **Because the Rio del Oso claim was completely encompassed by the Lovato claim and the CPLC asserted that it had no authority to adjudicate claims that were already severed from the public domain**, the claimant, when the cause came up for trial on May 17, 1897, requested that his petition be dismissed.

23) San Cristobal, SG case 110

The San Cristobal grant has a complicated history. Sometime before August 4, 1815 Severino Martinez petitioned Governor Alberto Maynez for a grant of agricultural land along the San Cristobal River north of Taos. On August 4, 1815 Governor Maynez directed the Alcalde of Taos to put Martinez in possession of as much land as he could till and to accommodate others who might seek land in the same area. On October 8, 1815 the alcalde placed Martinez in possession of a tract in the valley. He also placed Juan Antonio Lucero in possession of another tract nearby.

Sometime late in 1835, Father Antonio José Martinez, son of Severino, presented the Alcalde of Taos with his fathers grant documents and requested that land to the east of his father's tract be granted to him and four associates. The alcalde believed that Maynez' instruction to accommodate others gave him the authority to extend the grant and on November 13, 1835 he granted five additional tracts within the valley. The alcalde

allegedly retained the 1815 grant documents for the archives and issued a certified copy of both the 1815 and 1835 proceedings.

On January 19, 1878, Daniel Martinez, for himself and the other owners of land within the valley, filed a claim with Surveyor General Henry M. Atkinson seeking confirmation of the land granted in both 1815 and 1835. In support of their claim, Martinez filed the alcalde's certified copy of the grant documents. Atkinson took extensive testimony which asserted the following: 1) The certified copy was genuine; 2) The archives containing the original grant documents were destroyed during the Taos Rebellion in 1847; and 3) While none of the claimants actually lived on the grant, their peones and tenants had been in continuous occupation.

Atkinson's opinion dated October 4, 1878 **recommended rejecting the claim** because: 1) There was no archival evidence of the 1815 proceedings; 2) Atkinson believed that Severino Martinez had failed to perfect title because he had not met the four year occupancy requirement and, he asserted, occupancy by peones and tenants did not fulfill that requirement; and 3) Atkinson believed that the 1815 grant did not give the alcalde the authority to make the 1835 concession.

T**he San Cristobal claim was one of only six claims rejected by the Office of the Surveyor General before the tenure of George W. Julian.** Bowden also states that the petitioners were able to secure their claims through the Homestead Act and therefore did not pursue their claim before the CPLC.

24) Santa Rita del Cobre, SG files 107 and 194
It is impossible to understand how the GAO construed this as a community land grant as there was never a grant. It was a mining claim that was worked under a "Denouncement," which "established a procedure . . . whereby the discoverer of a new mineral deposit could acquire the privilege of mining a two hundred vara square tract of land surrounding the new mine. As worked progressed, additional lands could be denounced. The crown reserved a royalty of one fifth of all minerals mined."

25) Tacubaya, PLC case 239 (N.B. Laughlin, attorney)

The claim was plagued by multiple problems: **there were no actual grant documents; the description of the boundaries was defective; the government questioned whether the acting governor had the authority to confirm the grant; and most critical, the entire claim was encompassed by the by the Domingo Fernandez grant, which had already been confirmed**. As a result, when the suit came up for trial on May 17, 1897, the petitioner indicated that he no longer wished to prosecute the claim and the CPLC dismissed his petition and rejected the claim.

IV. <u>Community Grants Recommended For Approval By The SG But Not Acted Upon That Were Ultimately Adjudicated By the CPLC</u>

***** indicates it was examined by SG Julian
****** indicates it was reexamined by SG Julian

1) * **Abiquiu**, SG 140, CPLC 52, Type C
Confirmed as tenancy in common

This grant was made in 1754 by Governor Velez Cachupin to a group of Genizaro (Christianized) Indians. The claim was reviewed by SG George W. Julian in 1885, who in a very lengthy review first questioned its legitimacy, but ultimately recommended its confirmation based on his belief that the Spanish and Mexican governments would have acknowledged its legitimacy. He estimated it contained 10,980 acres. It was ultimately **confirmed by the CPLC for 16,547.20 acres**, **making it one of the few claims whose confirmed acreage exceeded the SG's recommendation. Significant federal impacts: According to Ebright the Abiquiu grant was lost after confirmation to back taxes and repurchased by a consortium of heirs and other community members, who organized it as a grazing association. Some heirs who could not afford membership in the grazing association have been excluded from use of the former common lands.**

2) ** **Alameda (Town of),** SG 91, CPLC 11, Type OI
Confirmed as a private grant.

This grant was made in 1710 to Francisco Montes Vigil (the father or grandfather of the Francisco Montes Vigil who received a grant in Rio Arriba County about 45 years latter) in consideration of his military service during the recolonization of New Mexico following the Pueblo Revolt. According to Bowden, a small settlement had been established on the grant before New Mexico became part of the United States. Antonio Lerma, as legal representative of the inhabitants of the Town of Alameda, petitioned SG Spencer for confirmation of the claim in 1872. It was not fully reviewed until 1874 when Spencer's successor SG James K. Proudfit recommended it for confirmation. A preliminary survey in 1878 included 106,274.87 acres. The claim was reexamined by SG Julian in 1886, who recommended it be rejected based on his belief that the evidence failed to demonstrate that Montes Vigil had ever complied with the occupancy requirement. **The claim was resubmitted to the CPLC, however, which confirmed and patented it, after protests by both Sandia Pueblo and members of The Elena Gallegos grant, for 89,346 acres. Significant federal impacts: This grant clearly evolved into a quasi-community grant, but its confirmation as a private grant allowed the common lands to be privatized.**

3) **Alamitos**, SG 69, CPLC 91, 183, Type C
Confirmed as tenancy in common.

This was an agricultural grant made in 1840 to twelve settlers from Peña Blanca. According to Bowden, it was only occupied by two of the original twelve grantees and then for only one year. A petition for confirmation was submitted by one of the original grantees to SG Proudfit in 1872. Proudfit recommended it for confirmation, and a preliminary survey in 1877 included 436.42 acres. Congress didn't act on the recommendation and the claim, which had subsequently been sold, was presented to the CPLC in 1893. **The government argued that the claim was void because it had not been approved by the Departmental Assembly and conflicted with the already confirmed Mesita de Juan Lopez grant. The CPLC, however, ruled the claimants (who included Thomas B. Catron) were entitled to the portion of the grant lying outside of the Lopez grant. A survey included only 297.55 acres**, but the government, feeling it set a bad precedent, appealed the case to the Supreme Court. In the meantime, **several decisions involving the approval of California grants that had not been**

approved by the Departmental Assembly prompted the government's attorney to drop the appeal in return for the claimants agreeing not to seek compensation for the overlapping and excluded portion of the grant.

4) ** **Antonio Baca,** SG 101, CPLC 70, Type OI
Confirmed as a private grant.

This grant was originally made in 1759, but was rescinded and regranted to three other individuals. The original grantee, Antonio Baca, protested and a lengthy legal battle ensued, resulting in the restoration of the grant to Baca. The claim was presented to SG Proudfit in 1874 by the heirs and legal representatives of the original grantee. Proudfit recommended confirmation of the claim, and a preliminary survey in 1877 showed it contained 46,653.03 acres. The claim was reexamined by SG Julian in 1888, who recommended its rejection based on his assertion that there was no evidence that the grantee complied with the occupancy requirements. Congress took no action on either recommendation, and Mariano S. Otero, who claimed he was the legal representative of the original grantee, petitioned the CPLC for confirmation.

After much debate concerning Otero's legal connection to the original grantee and whether Antonio Baca and his heirs actually occupied the grant, **the CPLC confirmed the claim to the extent of 11 square leagues. This ruling was an unjustified application of the 1824 Mexican Colonization (the grant was made under Spanish sovereignty), which stated that no individual claim could exceed 11 square leagues..** The grant was resurveyed in 1898 and found to contain 51,772.54 acres, almost 9,000 acres of which conflicted with the Town of Cebolleta grant. Moreover, the survey exceeded 11 square leagues by approximately 4,000 acres. Otero, therefore, was ordered to select his 11 square leagues from the survey. In the meantime, that survey was withdrawn and a new survey, which conformed to the 11 square leagues limitation was undertaken. It contained 47,196.496 acres, but conflicted with 8,012.05 acres of the Cebolleta grant. Bowden does not explain how that conflict was resolved.

5) ** **Antonio de Salazar** SG 132, CPLC 235, Type OI, **claim never reached merits**

Antonio de Salazar, on behalf of himself and his brothers, petitioned Governor Juan Ignacio Flores Mogollon for a tract of land, which had been granted to their grandfather, Captain Alonzo Martin Barba, prior to the Pueblo Revolt. Mogollon made the concession on August 25, 1714 and Alcalde Sebastian Martín placed the petitioners in possession on August 31, 1714. This grant was closely connected to several neighboring grants, all made between 1707 and 1716 and granted to soldiers from the army that recolonized New Mexico following the Pueblo Revolt. There is archival evidence that several of these grantees had trouble meeting the residency requirement to perfect title because their service to the government or illness prevented them from occupying their grants. As a result they requested the government extend the period during which they could fulfill this obligation, and the requests were granted. There is also archival evidence that these grants may have overlapped each other, as well as the Pueblos of Santa Clara, San Juan, and San Ildefonso. Appended to the Salazar grant papers is a note from Juan Paez Hurtado, a Spanish Territorial official, who collected all the pertinent grant documents and presumably investigated the issue in 1716. There is, however, no evidence that the Antonio de Salazar grant was rescinded or diminished, and the

descendants of the Salazars were in possession of the grant when the United States assumed sovereignty.

On August 25, 1882 Ramon Salazar, for himself and the other owners of the grant, filed a petition before SG Henry M. Atkinson seeking confirmation of the grant. SG **Atkinson acknowledged the validity of the grant papers** and noted that the depositions of two elderly locals, who had no interest in the grant, confirmed continuous occupation by the Salazar family. **He therefore recommended it be confirmed to the heirs, legal representatives, and assigns of Antonio de Salazar. A preliminary survey showed it contained 23,351.12 acres.** Because Congress failed to act on Atkinson's recommendation, the claim was again reviewed by the new SG, George W. Julian, in September of 1886. **Julian acknowledged the validity of the grant papers**, **but** asserted, based entirely on speculation, that when the Salazar tract and its neighboring grants were investigated by the government in 1716, the government **questioned whether title had ever been perfected by continuous occupancy. Based on this speculative presumption, he suggested that the heirs could only make claim to equitable title, which the government was not bound to recognize. He also questioned the location of the preliminary survey's western boundary, leading the Commissioner of The General Land Office to submit a report to Congress estimating that the grant contained no more than 2,900 acres**.

Because neither of these recommendations was acted upon, Bernardo de Salazar filed a claim before the CPLC on March 3, 1893. The government demanded the petitioners amend their petition to include the adverse claims of San Juan and Santa Clara Pueblos, and the Cristoval, Crespin, Juan Jose Lovato, Juan de Ulibarri, and Bartolome Sanchez grants. According to Bowden: "**Since the Bartolome Sanchez grant, which under Julian's theory covered all of the lands embraced within the boundaries of the Antonio de Salazar grant, had been previously confirmed, the plaintiff realized the court had no power to confirm the grant." On June 13, 1898 Salazar announced he did not wish to prosecute the claim and a decree rejecting the claim was entered by the CPLC. Significant federal impacts: the final adjudication of this grant ignored evidence of continuous occupation and arbitrarily reduced the grant to an area totally encompassed by a previously confirmed grant, thereby eliminating any possibility of confirmation.**

6) * **Arroyo Hondo**, SG 159, CPLC 5, 174, 175, 176, 186, Type C
Confirmed as a tenancy in common.

This grant was made in 1815 by Governor Alberto Maynes to forty-families. It was made with the conditions that the land was to be held in common for themselves and all who might wish to join them in the future; that all families fence their agricultural allotments; and that families arm themselves against attack. According to Bowden, by 1887 there were three hundred people living on the grant. Various grant papers were filed with the SG in 1861 and 1881, but the residents did not submit a claim until 1887. The claim was reviewed and recommended for confirmation by SG Julian in 1888, but Congress failed to act upon the petition. As a result, seventy lineal descendants and legal assigns filed a petition before CPLC in 1891 estimating the grant contained 23,040 acres. It was ultimately confirmed, and an 1896 survey showed it contained 30,674.22 acres. The government protested the survey regarding the location of the eastern boundary, and

after the *Sandoval* decision sought to have the confirmation limited to the agricultural allotments. The Court rejected the government's argument regarding *Sandoval* because it's initial decision preceded it, but upheld the government's argument regarding the eastern boundary, which in the initial survey included valuable mining lands. The grant was resurveyed and patented for 20,000.38 acres.
Significant federal impacts: The government deliberately attacked the eastern boundary of the grant because it contained valuable mining claims. The grant's total acreage was reduced by approximately one third as a result of the government's questionable assertions about the true location of this boundary.

7) * **Atrisco (Town of),** SG 145, CPLC 45, Type C
Confirmed as a community grant.

This is a very complicated grant made by Governor Pedro Fermin Mendinueta in 1768 to José Hurtado de Mendoza and fourteen associates who resided in the Town of Atrisco. The grant documents note that the petitioners were without adequate pasturage. In response Mendinueta granted the tract, but expressly excluded Atriscans who already had adequate pasturage. The grant was then protested by members of the neighboring Town of San Francisco (aka the Bernabe Manuel Montaño grant, see below), who claimed infringement of their grazing lands, but the alcalde who oversaw the proceedings ruled that the San Franciscans had fraudulently altered their grant papers to include the disputed area. An initial petition on behalf of the heirs of Hurtado and the other inhabitants of the town was originally submitted to SG Atkinson in 1881. Bowden infers that petition was not acted upon, and a supplemental petition was submitted to SG Julian in 1885, which asserted claim to the 1768 concession and a 1700 concession to the town itself, whose papers had been lost.

Based on irrefutable evidence of the long existence of the town and the 1768 grant papers, Julian recommended confirmation of both tracts and estimated they included about 72,000 acres. Congress, however, failed to act upon the recommendation. In the meantime, 225 people claiming ownership of the grant submitted a petition to Bernalillo County District Court in 1892 to incorporate their interest. Once this was accomplished, the corporation submitted a claim to the CPLC seeking confirmation of both tracts. **The petition asserted that the initial grant included 41,500 acres and the second 26,000 acres.** It further asserted that the Town of Albuquerque grant conflicted with the 1700 grant, which preceded the founding of Albuquerque and should thus prevail. The government responded that there was no evidence of the 1700 grant and that the 1768 grant was a private grant made to fifteen individuals and therefore the corporation had no standing to bring a claim. **After much legal wrangling concerning these allegations the CPLC, in 1894, ruled that Atrisco was a community grant and that its founding preceded and therefore trumped the City of Albuquerque's claim to the disputed area. A survey of the two tracts included 82,728.72 acres.**

8) ** **Bernabe Manuel Montaño**, SG 49, CPLC 7, 77, Type C
Confirmed as tenancy in common.

This grant was made to Bernabe Manuel Montaño and eleven associates by Governor Tomas Velez Cachupin in 1754. The grant stipulated that the pastures, woods,

and watering places were to be held in common, the settlement was to be built around a fortified plaza, and that the agricultural lands were to be individually allotted. However, the grantees failed to occupy the grant until 1759, at which time they submitted a petition for revalidation of the grant that was favorably acted upon. The grantees subsequently had several boundary disputes with neighboring grants during which they were found guilty of fraudulently altering their grant papers to include the disputed areas. In 1770 the residents, claiming an insufficient water supply, petitioned Governor Mendinueta for an additional grant that included a permanent water source.

This tract was granted, additional agricultural lands were allotted, and two new settlers were included in the expanded grant. The two grants were abandoned in 1785, due to hostile attacks by nomadic tribes and not reoccupied, according to Bowden, until 1866, when the descendants of the original grant established three settlements on the grant. In 1869 the residents submitted a petition to SG Spencer, who in 1870 found the grant papers legitimate and the abandonment warranted. He therefore recommended its confirmation to the extent of seven square leagues (approximately 31,000 acres), but a preliminary survey based upon the act of possession found it contained 151,056.9 acres. That survey was protested by the members of the Atrisco grant, and the claim was reexamined by SG Julian in 1886. Julian asserted that the original grant papers had been tampered with and once again recommended the confirmation be limited to 7 square leagues. Congress took no action on these recommendations and the grant was subsequently acquired by an Anglo investor who petitioned the CPLC for confirmation. The government contested the confirmation, asserting that grantees had failed to comply with the terms of the grant by abandoning it.

The CPLC, however, found both grants valid in an 1892 decision. After much disagreement about the eastern boundary of the grant, the government reached a compromise with the claimant and waived its right of appeal. The claim was confirmed as two adjacent tracts. The confirmation was followed by more disagreement regarding the survey. An initial survey that included 43,727.35 acres was protested, and the final survey included 44,070.6 acres.

Significant federal impacts: Confirmation as tenancy in common allowed this grant to be partitioned. In addition, with all the speculation about the grant's boundaries there is a serious question as to whether this grant received all the acreage to which it was entitled.

9) **Bernalillo (Town of)**, SG 83, CPLC 146, 208, 217, 258, Type OI

There is some question as to how this grant was confirmed, but we have tentatively designated it a tenancy in common.

This grant was made shortly after the reconquest of New Mexico in 1701 to Felipe Gutierrez by Governor Pedro Rodriguez Cubero. Because of his military duties, Gutierrez was unable to take immediate possession and petitioned de Vargas for revalidation in 1704. Gutierrez, however, did not take actual possession until 1708. By 1776 a town of eighty-one people had been established on the grant, and by the time the United States took possession it was one of the leading towns in the Rio Abajo. In 1874 J.L. Perea petitioned SG Proudfit for confirmation of the claim. As evidence of his claim Perea introduced a certified copy of a 1742 document granting the claim to one of his lineal ancestors, Luis Garcia. This document was very damaged, and Proudfit ultimately based his recommendation for confirmation on the 1854 Act that mandated the SG to

recognize the existence of a city or town as *prima facie* evidence of a grant. **An 1877 preliminary survey included 11,674.37 acres.**

Congress failed to act upon the recommendation, and in 1893 Pedro Perea, for himself and the inhabitants of the town, petitioned the CPLC for confirmation under the Garcia claim. Several other claims by heirs of Gutierrez were filed, and they were all consolidated into one legal suit. The government contested the legitimacy of a "certified" copy of the original grant papers which were made by an alcalde , but in a unique decision the CPLC ruled in 1897 that the plaintiffs' copy of the muniments of title was admissible because New Mexico was too remote to have a royal notary who had the express authority to make certified copies of legal documents. **Despite stipulating with the government to confine the grant to a very limited area, the government attorney recommended the decision be appealed. The Justice Department, however, refused to support the appeal, and it was dropped. Perea then dismissed his suit based on the Garcia claim and an 1898 survey included 3,404,67 acres.**

Significant federal impacts: This grant was significantly diminished by the stipulation. The precedent this case set with regard to "authorized" copies of original grant documents being admissible evidence was not subsequently adhered to by the CPLC. (see the Embudo grant for example).

10) ** **Bosque Grande,** SG 100, CPLC 66, 272, Type OI

Confirmed as a tenancy in common.

This grant was made to the sons of the original Abiquiu grantee, Miguel Montoya, whom Governor Velez Cachupin had promised to compensate when he regranted the Abiquiu tract to the Genizaro settlement. The alcalde examined two tracts in the Rio Abajo and found one along the Rio Puerco that was suitable. He put the two Montoya brothers in possession of the tract in February of 1767. A claim on behalf of the heirs and legal representatives of the original grantees was submitted in 1874 to SG Proudfit, who recommended it for confirmation. **A preliminary survey showed it contained 3,253.09 acres**. No action was taken on that recommendation, and **in 1888 SG Julian reexamined the claim. He found that there was no evidence the occupancy requirements had ever been complied with and recommended the claim be rejected.** Congress took no action on either recommendation, and in 1893 Clinton M. Cotton, who asserted he had purchased the grant from the legitimate heirs, filed suit in the CPLC. The government, however, contended that Cotton's deed was fraudulent and its argument was upheld. Then **in 1895, three members of the Montoya family filed suit asserting that because the title was perfected before the United States acquired the territory, their claim was not barred by the two-year statute of limitations. The government contested this assertion, but the CPLC, in a split decision, confirmed the grant to the Montoya heirs. An 1899 survey showed it contained 2,967.57 acres.**

11) **Caja del Rio,** SG 63, CPLC 39, Type C

Confirmed as a private grant.

Like the Cañada de los Alamos grant this was probably a private grant that was misidentified by the GAO because the grant papers stipulated that the pastures and watering places remain open for public use. It was made to Captain Nicolas Ortiz in 1742 by Governor Gaspar Domingo de Mendoza in recompense for forty-nine years of military

service during the recolonization of New Mexico following the Pueblo Revolt. Ortiz continuously occupied the grant, and in 1751 brought a trespass suit against a newly made grant. Governor Velez Cachupin upheld Ortiz' appeal and rescinded the conflicting grant. Ortiz and his heirs remained in possession of the grant thereafter and in 1871 presented a claim to SG Proudfit**. Proudfit recommended it for confirmation in 1872, and an 1877 preliminary survey included 62,343.01acres.** Congress failed to act on the recommendation, and the heirs and legal representatives brought their claim to the CPLC**. The grant was confirmed by that Court in 1893, and the survey showed it contained 68,070.36 acres. However, Cochiti Pueblo claimed the survey overlapped its grant by 1,221.58 acres, which the plaintiffs relinquished, leaving approximately 66,850 acres.**
Significant federal impacts: Confirmation as a private grant resulted in this grant subsequently being partitioned.

12) **Cañada de los Alamos** (1), SG 53, CPLC 53, Type C
Confirmed as a private grant.

This grant was made to Lorenzo Marquez, a resident of Santa Fe, by Governor Juan Bautista de Anza in 1785. It was clearly a private grant and was misidentified by the GAO because the grant papers stipulated that pastures and watering places were to remain open for public use. According to Bowden, the Marquez family remained in continuous possession of the grant until 1856 when it was sold to four members of the Delgado family. The grant papers were filed in the Office of the SG in 1856, but the Delgados did not formally request an investigation of the claim until 1871. SG Spencer completed an investigation in 1874, finding the grant papers valid, but questioning whether the Delgados were sole owners. He therefore recommended confirmation to the heirs and legal representatives of Lorenzo Marquez without prejudice to the Delgado claimants**. A preliminary survey showed it contained 13,706.02 acres.** Congress took no action, however, and Francisco A. Manzanares, for himself and all other legal representatives and assigns filed suit in the CPLC for confirmation of the claim. The government offered no special defense and the CPLC confirmed the claim in 1893. **A resurvey of the grant showed it contained 12,068.39 acres.**
Significant federal impacts: The Prince papers contain many documents regarding a quiet title suit, but no partition suit was found. This grant may have been partitioned.

13) **Cañada de San Francisco**, SG 57, CPLC 98, Type C, **rejected**

This was an agricultural grant made to a group of "landless citizens" in 1840. The grant was reviewed and recommended by the Ayuntamiento of Santa Fe, who referred the matter to the "Prefect of the Central District of New Mexico." **The Prefect made the concession** and ordered the Alcalde of Santa Fe to place the grantees in possession. The grantees and their heirs continuously occupied and cultivated the tract and in 1871 petitioned SG Spencer for confirmation of their claim. After reviewing the grant documents, **Spencer recommended the claim for confirmation. A preliminary survey showed it contained 1,589.87 acres.** Congress failed to act on the recommendation and Nasario Gonzales, who had purchased the grant, petitioned the CPLC for confirmation. **The government's contended that under Mexican law the Prefect had no authority to make the grant and the Court upheld the argument and rejected the claim.**

Significant federal impacts: Application of the Hayes/Vigil precedent resulted in the rejection of this legitimate claim.

14) * **Cañon de Carnue**, SG 150, CPLC 74, Type C
According to Bowden the claim was presented to SG Spencer in 1871 but was not acted upon until 1886 by SG Julian. **Julian recommended confirmation of the claim, but only within the Cañon itself, which the claimants asserted excluded the common lands surrounding the Cañon.** When the **claimants** filed suit in the CPLC they **asserted the grant contained 90,000 acres including the common lands**. In an 1894 decision the CPLC, following closely on its decision in the San Miguel del Vado case, ruled that the claimants were only entitled to their residential and irrigated tracts within the Cañon and **the survey limited the grant to 2,000.59 acres.**
Significant federal impacts: Application of the Sandoval legal theory resulted in the common lands being excluded from the confirmation.

15) ** **Cañon de Chama**, SG 71, CPLC 107, Type C
Confirmed as a community grant.

The claim was first submitted to the SG in 1861, but according to Bowden was not acted upon until 1872. The claimants estimated the tract encompassed 184,320 acres**. In 1872 SG Proudfit recommended the grant for confirmation as a community grant, and an 1878 preliminary survey found it contained 472,736.95 acres. The claim was reviewed by the House Committee on Private Land Claims in 1880, and Commissioner J.A. Williamson again recommended the grant be confirmed. In 1886 SG Julian once again reviewed the claim and suggested the claimants had failed to establish legal title and could only assert an equitable title to their individual allotments, which he said included only 166.22 acres.** He also attacked the surveyor for searching for natural objects named in the grant papers as boundary calls outside the confines of the Cañon. The grant was subsequently purchased by Anglo land speculators who petitioned the CPLC for confirmation. **While the CPLC found the claim valid, it only confirmed the individual farm and residential tracts within the Cañon, as suggested by SG Julian. The claimants appealed the case to the Supreme Court, which found that the claim was a valid community grant, but as in the *Sandoval* decision, only confirmed the individual tracts within the Cañon**. It accordance with the Supreme Court's decision, the tract was resurveyed in 1901 and found to contain 1,422.62 acres.
Significant federal impacts: Application of the Sandoval legal theory resulted in the common lands being excluded from the confirmation.

16) Cañon de San Diego, SG 25 and 122, CPLC 100, Type C
Confirmed as a tenancy in common.

This claim, which was based on a 1798 grant, was originally reviewed and recommended for confirmation by SG Pelham in 1859. **It was confirmed by Congress in 1860, surveyed and found to contain 116,286.89 acres in 1876, and patented for that amount in 1881**. However, in 1879 land speculator Amado Chavez filed a conflicting claim based on a 1788 grant that fell within the boundaries of the confirmed grant. SG Atkinson reviewed the Chavez claim in 1880, found it valid, and recommended

it for confirmation. A preliminary survey in 1880 found it contained 9,752.51 acres, all within the already patented tract. Congress failed to act upon the second claim and it was brought before the CPLC in 1893. The CPLC in a 3 to 2 decision ruled that the second claim was "estopped" because the heirs, under whom Chavez was making his claim, had also participated in the claim based on the later 1798 grant, which had already been confirmed. Chavez appealed the decision to the Supreme Court, which upheld the opinion of the CPLC.

Significant federal impacts: Confirmation as tenancy in common allowed this grant to be partitioned in 1907 or 1908. 110,000 acres of common lands were purchased by lawyer and land speculator Alonzo McMillen who was supposed to be assisting the community in a land dispute.

17) **Cebolla**, SG 61, CPLC 108, Type C, **rejected**

This grant north of Taos was made in March of 1846, just before the Mexican-American War, to a group of landless residents of the Town of Arroyo Hondo. According to Bowden, there was no evidence that the grantees settled the grant prior to the change in sovereignty, although he infers that they had used it to pasture their livestock. Moreover, many of the original grantees sold their interests in the grant early on and the claim was presented to SG Spencer in 1872 by land speculators John T. Graham and William Blackmore. **Spencer recommended confirmation of the claim, and an 1877 survey showed it contained 17,159.57 acres.** The recommendation was not acted upon by Congress, and Clarence P. Elder, who obtained an interest in the grant, petitioned the CPLC for confirmation of the claim. Elder also contended that the 1877 survey was erroneous and the grant contained substantially more acreage.

The government conceded the genuineness of the grant papers, but argued, among other things, that the governor did not have the authority to make the grant, that there was no evidence that the occupancy requirements had been met, and that the grant was limited to the agricultural allotments of the individual grantees. In an 1896 decision, the CPLC recognized the validity of the grant but upheld the government's argument that it should be limited to the agricultural allotments. Although the area confirmed by the CPLC was severely limited, the government felt that its other arguments were important to adjudications still pending before the Court and appealed the ruling to the Supreme Court. The Supreme Court upheld the government's arguments that the governor did not follow the procedures outlined in the Mexican Colonization Laws of 1824 and 1828, that only a temporary use of the tract was intended, and that the grantees had not complied with occupancy requirements. It therefore overruled the CPLC decision and rejected the claim.

Significant federal impacts: This claim was initially severely reduced through application of the Sandoval legal theory concerning ownership of the common lands. It was subsequently entirely rejected based on the Hayes/Vigil precedents regarding granting authority and procedure.

18) ** **Chaca Mesa**, SG 96, CPLC 34, Type OI

Confirmed as a tenancy in common.

This grant was made in 1768 to five elite residents of the Atrisco grant who specifically requested it for grazing purposes. Governor Mendinueta granted it with the proviso that it only be used for grazing and that the Navajo and Apache Indians living on the tract be allowed to remain. The alcalde who put the grantees in possession of the tract estimated that it contained "four leagues, somewhat more." **In 1874 an attorney for the legal representatives of the original grantees petitioned SG Proudfit for confirmation of the claim. Proudfit recommended it for confirmation, and a preliminary survey showed it contained 243,036.43 acres. The House Committee on Private Land Claims recommended the confirmation of the tract three times, in 1882, 1883, and 1886, but Congress failed to act on any of these bills. As a result, the claim was reexamined by SG Julian in 1886, who pointed out that the alcalde's estimate of four leagues would amount to 17,712 acres, but the preliminary survey was over 240,000.** He also, as with many of the claims he reexamined, asserted that there was no evidence that the grantees complied with the occupancy requirements, and he therefore recommended its rejection. In the meantime, William P. Miller acquired the interests of all of the heirs and submitted a claim to the CPLC. In an 1895 decision, the Court ruled that the grant was valid but that the preliminary survey was erroneous. A great deal of argument regarding the boundaries ensued, and the CPLC unaccountably ruled it should be limited to the 11 square league provision (i.e., 47,258.71 acres). **Significant federal impacts:** It is unclear how much land this grant actually contained, but the Court's application of the 11 square league provision was clearly inappropriate.

19) ** **Cieneguilla (Town of),** SG 62, CPLC 84, Type C, **rejected**

This claim was submitted to SG Spencer in 1872 by four land speculators. **In support of their claim they submitted a certified copy of a 1795 Act of Possession, which stated that in 1795 the Alcalde of Taos had placed 20 grantees in possession of the tract. Attached to the certified copy was an 1826 certificate stating that the Secretary of Taos Ayuntamiento had made the certified copy because the original was "torn and ripped."** Two witnesses also testified to the genuineness of the certified copy, the continuous occupation of the grant, and the existence of the Town of Cieneguilla**.**

Based on this evidence, Spencer recommended the grant for confirmation, and a preliminary survey showed the grant included 43,961.54 acres. Congress failed to act upon the claim, and in 1886 the claimants introduced additional evidence that consisted of a series of letters between Governor Facundo Melgares and the Ayuntamiento regarding a group of Jicarilla Apaches who sought permission to settle in the Town of Cieneguilla. The Ayuntamiento protested the Governor's authorization of the Jicarillas' petition, specifically stating that the original grant had been specifically for a Spanish settlement. Depositions included in these papers supporting the Ayuntamiento's protest testified that the settlement had been continuously occupied for some time. As a result of this new evidence, SG Julian reexamined the claim**. Julian concluded that no formal title existed but that there was enough evidence of an equitable title that he did "not feel warranted in recommending its rejection."** Congress, nevertheless, did not act upon the claim, and it came before the CPLC in 1896**.**

The CPLC ruled "We are not furnished with any law or usage which would give to the certificate of the Secretary of the Ayuntamiento of Taos the force and

effect of evidence. We are, therefore, compelled at the outset to reject the evidence of title that is offered and we, therefore, reject the claim and dismiss the plaintiff's petition."
Significant federal impacts: This legitimate claim was unjustly rejected based upon the Hayes/Vigil legal theory that a certified copy of a concession was not admissible evidence. Compare this ruling with the Town of Bernalillo adjudication, which completely contradicts this theory.

20) * **Cristobal de la Serna,** SG 158, CPLC 21,Type OI
Confirmed as a private grant.

The original petition for this grant was submitted in 1876 to SG Atkinson, but according to Bowden, was not acted upon until a supplemental petition was filed in 1887 before SG Julian. In 1888 Julian recommended the grant be confirmed, but no preliminary survey was undertaken. Congress failed to act upon Julian's recommendation and **the claimants filed a petition before the CPLC estimating the grant encompassed "about thirty thousand acres.**" The CPLC confirmed the claim in 1892, and an 1894 survey included 22,232.57 acres.
Significant federal impacts: Although the Serna grant may initially have been a private grant, it clearly evolved into a quasi-community grant. The confirmation of this claim as a private grant led to the privatization of former common lands some of which are currently being developed as an "upscale" subdivision.

21) **Cuyamungué**, SG 54, CPLC 112, Type OI
Confirmed as a tenancy in common.

In 1871 John Conway, who acquired an interest in the grant, petitioned SG Spencer for confirmation of this grant, which he **estimated contained 5,000 acres. Spencer recommended the grant for confirmation, and a preliminary survey showed it contained 1,086.30 acres, all but 100 acres conflicting with the Pojoaque and Nambe Pueblo grants.** Congress took no action, and Conway's widow and 21 other claimants petitioned the CPLC for confirmation. **The CPLC confirmed the grant in its entirety, but the Pueblos objected, and the government appealed the case to the Supreme Court. The Supreme Court ruled that the CPLC had no authority to confirm the portions of the grant that conflicted with the Pueblos.** The CPLC, therefore, set aside its original decision and confirmed only the portions lying outside the Pueblo boundaries. A survey showed that this included 604.27 acres.

22) **Don Fernando de Taos**, SG 125, CPLC 149, Type C
Confirmed as a tenancy in common.

According to Bowden, this grant was originally made in 1796 to sixty-three Hispano families who had formerly lived on Taos Pueblo. **In 1799, following the steady growth of the settlement, the Alcalde of Taos made individual agricultural allotments to the grant residents.** The inhabitants of the grant petitioned SG Atkinson in 1878 for confirmation of their claim, which he recommended**. An 1883 preliminary survey of the grant showed it contained 1,899.89 acres.** Congress failed to act upon the recommendation, and **Juan Santistevan, for himself, the other heirs and legal assigns of the original grantees, filed suit in the CPLC for confirmation of their claim,**

asserting the grant contained approximately 38,400 acres. **The claim came to trial after the Sandoval case, and the government asserted it should therefore be limited to the individual agricultural allotments.** Much testimony was taken regarding the legitimacy and the extent of these allotments, many of which conflicted with each other and Taos Pueblo. **The CPLC finally confirmed 1,817.34 acres divided into individual allotments, but the allotments overlapping the Pueblo tract were not resolved until 1938** when they were adjudicated by the Board that administered the Pueblo Lands Act of 1924.

Significant federal impacts: Because this grant was clearly designated a community grant by the Spanish authorities, application of the Sandoval precedent unjustly deprived the claimants of their common lands. However, because this grant overlapped and was inextricably connected to Taos Pueblo, it is difficult to determine how much land was lost.

23) **Doña Ana Bend Colony**, SG 85, CPLC 24, Type C

Confirmed as a tenancy in common.

The petition for this grant was submitted to SG Proudfit in 1874. **Proudfit recommended the grant for confirmation, and a preliminary survey showed it contained 29,323.57 acres.** This recommendation, however, was not acted upon and the claim was resubmitted to the CPLC in 1892. The story of **the CPLC adjudication is quite complicated, calling into question the Territorial authorities power to make the grant** and questioning whether the land was mortgaged by the Mexican Government in 1837, prior to the grant, to pay off an enormous national debt. **The CPLC, nevertheless, in a divided opinion, found the claim valid. The U.S. Attorney proceeded to appeal the case to the Supreme Court, but withdrew that appeal as a result of the *United States v. Chavez,* 159 U.S. 452 (1895) decision. A subsequent survey found the grant contained 35,399.017 acres, making it another one of the few grants that were confirmed for larger areas than recommended by the SG.**

24) *** El Rito (Town of),** SG 151, CPLC 224, Type OI, **claim never reached merits**

The documents for this grant were lost, but there were **two conflicting claims submitted to SG** Henry M. Atkinson. The first claim was submitted by Jesus Maria Vigil, who alleged that the grant had been made to his great grandfather, Joaquin Garcia, about 1780. He pointed to the fact that several town were located on the grant, evidencing continuous possession, and that there was a significant oral tradition that the grant had been made. The second was a petition from Epifanio Lopez, who alleged that the grant had been made for the purpose of forming a colony and was therefore entitled to four square leagues as an operation of Spanish law. With both claims still pending before the SG, George W. Julian succeeded Atkinson and continued the investigation by taking a great deal of oral testimony that substantiated both claims. **Witnesses testified that the grant included about 51,000 acres** and submitted a number of deeds for individual tracts executed between 1808 and 1843.

Julian ruled that although the petitioners had failed to establish legal title to the entire grant, the heirs and legal representatives of Joaquin Garcia had established equitable title to their residences and irrigated tracts, which he suggested should be recognized by the United States. Congress failed to act upon this

recommendation, and **Tomasa Tenorio de Quintana filed suit before the CPLC seeking confirmation of the claim as an heir of the original grantee. She alleged that the grant contained approximately 50,000 acres.** When the case came up for trial on June 11, 1898, however**, Tenorio de Quintana announced she would not further prosecute her claim. This was probably because the Juan José Lovato grant, which encompassed much of the El Rito claim, had already been confirmed, and the court held that it had no authority over land that was previously severed from the public domain. Bowden asserts that the claimants were able to perfect title to their individual tracts under the homestead law.**
Significant federal impacts: At the very least this was a legitimate quasi-community claim evidenced by long continuous occupation. It should have been entered into the Juan José Lovato adjudication as an adverse claimant and was therefore denied due process.

25) ** **Francisco de Anaya Almazán**, SG 115, CPLC 214, 243, Type OI
Confirmed as a private grant.

This grant just west of Santa Fe was originally made before the Pueblo Revolt, and the original grantee was de Vargas' Adjutant when he recolonized New Mexico in 1693. De Vargas regranted the land to Anaya Almazán at that time, but included no designation of the boundaries in that grant. Anaya Almazán's widow petitioned Governor Flores Mogollon to revalidate the grant in 1714, and her petition, which was granted by the Governor, included specific boundary calls. Anaya Almazán's widow sold the grant to Andres Montoya in 1716, and it was Montoya's heirs and legal representatives who petitioned SG Atkinson in 1878 for confirmation of the grant. According to Bowden**, Atkinson reasoned, based on an estimate of the original grantee's livestock holdings, that this was a small grant and suggested that the claimants be allowed to select 491 acres in two contiguous tracts from the land described in Anaya Almazán's widow's 1714 petition to Governor Mogollon for revalidation. However, a preliminary survey included all the land within the 1714 boundary calls, which amounted to 45,244.73 acres. SG Julian was asked to review this claim in 1886, and he suggested that the description of the claim was so vague that it was "void" for want of certainty and recommended that only an equitable claim for the lands actually occupied by the Montoya heirs (constituting less than 500 acres) be confirmed by Congress.** He also stated that Atkinson's approval of the preliminary survey "rank[ed] among the most shocking of the land frauds of New Mexico. Congress failed to act on either SG's recommendation, and in 1897 the CPLC considered a claim for the tract made by one of the Montoya heirs.

The Court found the claim valid, but noted that there was considerable controversy regarding the location of the boundaries. **Through a very complicated reasoning process the Court determined a set of boundary calls that neither the claimant nor the government contested. Using those boundaries the claim was surveyed in 1898 and found to contain 3,202.79 acres.**

26) ****Francisco Montes Vigil**, SG 128, CPLC 14, Type OI
Confirmed as a private grant.

This grant was originally a grazing grant made to an elite from Santa Cruz de la Cañada but evolved into a quasi-community grant that was used by members of the

neighboring Nuestra Señora del Rosario, San Fernando y Santiago grant (now known as the Truchas grant). **It was first reviewed by SG Atkinson in 1881 and recommended for confirmation. A preliminary survey showed it contained 10,314.65 acres, but the claimants protested the locations of the eastern and southern boundaries. They suggested it actually contained approximately 35,000 acres.** The heirs to the Las Trampas grant also protested the survey, claiming it overlapped the southern boundary of their grant. In 1886 SG Julian reviewed the claim and, to my knowledge, it was the only claim he reviewed without finding a need to enter a supplemental report**.** Congress failed to act on either SG recommendation, **and the CPLC confirmed the grant in 1892. An 1894 survey showed in contained 8,253.74 acres,** and the grant was patented for that amount.
Significant federal impacts: The final survey may have unjustly limited the claim with regard to its eastern boundary.

27) **Galisteo (Town of),** SG 60, CPLC 54, Type C

The adjudication of this grant has an extraordinarily complicated history. Originally the sight of several Tano Pueblos, by the end of the 19th Century small pox and Comanche raids had decimated the native population. In 1814 four named petitioners, on behalf of themselves and "other associates" and all citizens of Santa Fe, sought a grant from Governor Alberto Maynez for the now deserted area. Governor Maynez made the grant immediately following the petition, with the provision that all the inhabitants of Santa Fe maintained the right to pasture and water their livestock on the premises. **Although the Act of Possession was lost, the Town of Galisteo was in existence at the time the United States acquired it. In 1871 the heirs and legal representatives of the original grantees petitioned SG Spencer for confirmation of the grant, which they estimated contained 9,000 acres.** The claim was protested by E.W. Eaton, owner of the adjacent Domingo Fernandez grant, but he agreed to withdraw his protest when the Galisteo claimants amended their petition to exclude any lands within his grant. The claim was evidenced by an undated copy of the original 1814 petition and granting decree.

In a lengthy opinion SG Spencer recommended rejection of the claim, asserting the copies of the original grant papers were fraudulent, and he did not, according to Bowden, acknowledge the existence of the Town of Galisteo as *prima facie* evidence of a legitimate grant as he was mandated to in the 1854 letter of instructions from the Department of Interior. **The claimants renewed their efforts for confirmation before the CPLC, asserting ownership of a 24,000 acre tract based on an 1816 oral order by Governor Maynez and evidenced by title papers (*hijuelas*) for individual agricultural tracts within the grant issued between 1822 and 1846. The CPLC confirmed sixteen of those allotments in 1894. An 1897 survey showed these allotments contained a total of 335.38 acres, but it was protested by both the claimants and the government. An 1898 resurvey contained 260.79 acres,** and the 1927 patent was based on that survey.
Significant federal impacts: This was undoubtedly a community grant that was not only robbed of its common lands, but many legitimate agricultural allotments were not confirmed.

28) **Gervacio Nolan**, SG 39, CPLC 46, Type C, **rejected**

This grant has a very complicated history. **Nolan** was a French Canadian who had become a naturalized Mexican citizen after residing in New Mexico for 23 years. He **received two grants, supposedly in recompense for services to the Mexican Government during the Indian wars.** The first was made in 1843 and was known as the Rio Don Carlos (SG 48). It was contained entirely within Colorado. **The second was an enormous grant made to Nolan and two associates in 1845, and that grant was SG 39.** Nolan died in 1858, and **his widow and children petitioned SG Pelham for confirmation of the claims. They were both recommended, and a preliminary survey of SG 39 showed it contained 575,968.71 acres. However the Rio Don Carlos was acted upon first and confirmed to the extent of the 11 league provision. A caveat attached to the Rio Don Carlos confirmation stated that issuance of the patent would be taken as "full satisfaction of all further claims . . . against the United States."**

In an 1886 decision the Secretary of the Interior dismissed the SG 39 claim on the grounds that confirmation of SG 48 prevented the heirs and assigns from making any further claims. This decision was appealed to the Supreme Court, which refused to rule upon the question of the prior confirmation. **The claim was therefore brought before the CPLC, which in 1894 upheld the government's assertion that the prior confirmation extinguished any other claims the heirs and assigns might make.** An appeal to the Supreme Court on this decision was dismissed for technical reasons. **The rejected grant was one of several empresario grants (all made in the 1840s) given to Nolan and other land speculators to induce development. As such, it was not a true community grant.**

29) **Gijosa**, SG 109, CPLC 16, Type OI

Confirmed as a private grant.

This grant was originally made in 1715 to the widow of one of the men who recolonized New Mexico after the Pueblo Revolt. It was sold by her in 1725 to Baltazar Trujillo, who consolidated it with an adjacent tract that had been granted to him in 1702. The consolidated tract was subsequently conveyed to a group of families and evolved into a densely populated community grant. **A petition for confirmation was filed in 1876 before SG Atkinson. Atkinson found the original grant valid, but found no evidence that a grant was made to Trujillo in 1702 and exempted that portion of the grant from his recommendation. An 1883 survey showed the grant contained 1,557.83 acres but was protested by the claimants, who offered an affidavit from a 75 year-old man who claimed he had been familiar with the grant for more than 50 years. Based on this new evidence the grant was resurveyed and found to contain 16,365.45 acres.**

Congress, however, did not act upon Atkinson's recommendation, and the CPLC considered a new petition in 1893. In the meantime, the claimants had found archival documentation that substantiated the 1702 Trujillo tract, and the **CPLC confirmed the consolidated tract in 1893. The grant was surveyed in 1897 in accordance with the CPLC description of the consolidated tract and found to contain 15,794.47 acres.** That survey was protested by Taos Pueblo and the SG himself. The CPLC, therefore, issued an amended decree excluding the area protested by Taos Pueblo and including the

area the SG asserted had been exempted by the 1897 survey. **A new survey was undertaken in 1901 in accordance with the new decree and found the grant included 16,240.64 acres**.

30) **Gotera**, SG 56, CPLC 83, Type OI, **rejected**

This was an agricultural grant made to seven residents of Santa Fe in 1830 by the Territorial Deputation. Five of the petitioners were each granted 500 varas of land and the other two, one hundred varas each. **Their heirs and legal representatives petitioned SG Spencer for confirmation of the grant, which they estimated contained 490 acres.** The claim was protested by the New Mexico Mining Company that owned the Ortiz Mine grant, claiming it conflicted with its as yet unconfirmed claim. As a result, Spencer ordered the mining company to demonstrate the invalidity of the Gotera claim, which it failed to do. He therefore recommended the grant for Congressional confirmation.

The grant was subsequently surveyed four times because of conflicting descriptions by the claimants and the owners of the Ortiz Mine grant, which in the interim had been confirmed. The first survey in 1877 found the grant contained 2,571 acres, almost all of which conflicted with the mine. The grant was surveyed for the second time in 1879, following a new legal description and was found to contain 471.49 acres. The claimant protested that survey and submitted a number of affidavits, which claimed the survey did not include lands described in the original grant. SG Atkinson upheld the claimant's protest and a third survey was ordered in 1882 that included 1,833.94 acres. This survey was subsequently amended and reduced to 785.5 acres, most of which conflicted once again with the mine claim. The claimants again protested the survey, and a fourth survey was ordered in 1885 and found to contain 598.44 acres. Congress failed to act upon this final survey, and **the claimant filed a new petition in the CPLC asserting the grant contained approximately 1,800 acres. The government asserted, however, based on the Hayes and Vigil decisions, that the Territorial Deputation did not have the authority to make the grant in the first place, and in 1895 the CPLC rejected the claim for want of authority.**

Significant federal impacts: This was a legitimate claim that was first manipulated so that it would not conflict with a lucrative mining claim and then subsequently rejected on the basis of a specious legal technichality.

31) * **Guadalupita**, SG 152, CPLC 131, Type OI, **claim never reached merits**

On February 20, 1837 Pedro Antonio Gallegos, José Maria Silva, and Miguel Silva, residents of las Trampas de Nuestro Padre San José (not the Las Trampas land grant, but a settlement near Ranchos de Taos), on behalf of themselves and other residents of that community, petitioned the Alcalde and Ayuntamiento of that community for a grant of unoccupied land in the Guadalupe Valley along the Coyote River within the Mora grant. The Alcalde, Juan Nepomoceno Trujillo, approached the principal settlers on the Mora grant seeking their permission for the new grant, which they gave. Accordingly, on April 7, 1837 Trujillo surveyed and formally placed the settlers in possession of the tract. **Two claims were filed for confirmation of the grant before the Office of the Surveyor General.** On March 4, 1866 George Gold filed the first claim, stating that he had acquired an interest in the grant by purchasing conveyances from several of the original colonists. This petition, according to Bowden, was never acted upon.

On December 28, 1885 the heirs of the three original named grantees submitted a second petition. They claimed that the Governor of New Mexico and the Departmental Assembly had approved the grant but that the papers evidencing this process had been lost or destroyed. They asserted that the grant encompassed approximately 115,200 acres. SG Julian, however, ruled that because there was no evidence of such approval the only documentation substantiating the legitimacy of the grant was the Alcalde's act of possession. The Alcalde, Julian asserted, did not have the authority to make the grant and he therefore recommended the claim be rejected. The heirs of the original grantees made another effort to secure title to the grant by filing a petition before the CPLC on February 27, 1893. **Probably realizing that because the vast majority of the their claim was encompassed by the already confirmed Mora grant, the claimants, when the case came up for trial on November 24, 1895, announced they did not wish to further prosecute their claim.** As a result, the CPLC dismissed their petition and rejected their claim.
Significant federal impacts: The evidence of a town should have been sufficient to underwrite the legitimacy of this claim. Moreover, the claimants were denied their constitutional rights by not being made aware of Mora adjudication proceedings.

32) **José Trujillo**, SG 112, CPLC 115,268, Type OI, **claim never reached merits**

The José Trujillo grant (also known as the Arroyo Seco and Mesilla grants) has a long, complicated history. José Trujillo was a soldier stationed in Santa Fe. Sometime in early 1700 he petitioned governor Pedro Rodriguez Cubero for a grant of land near the Pueblos of Pojoaque, Santa Clara, and San Ildefonso to support his family. On April 23, 1700 Governor Cubero granted the petition, and on May 22, 1700 the Alcalde of Santa Cruz placed Trujillo in possession of the tract. Sometime shortly thereafter, Trujillo was promoted to the rank of Captain and transferred to the garrison at Santa Cruz. He then took up residence on the grant and cultivated the lowlands adjacent to the Rio Grande and grazed livestock on the upland areas. By 1707 his operations had expanded to the point where he required additional grazing land and he petitioned Governor Francisco Cuerro y Valdez for an adjoining tract known as the Arroyo Seco. On May 23 1707 the Governor granted the additional land, and on June 16, 1707 the Alcalde placed Trujillo in possession. Bowden notes that as a result of his successful campaigns against the Navajos, Trujillo became one of the most important elites in northern New Mexico. In 1709 Solicitor General Juan de Ulibarri investigated a charge by the residents of Pojoaque Pueblo that Trujillo had encroached upon their grant.

However, on July 15, 1709 he issued a decree affirming that Trujillo was the lawful owner of both tracts. Following Trujillo's death, his widow petitioned the Alcalde of Santa Cruz for a partition of both tracts among his heirs. Once again there was a protest by a neighboring Pueblo, this time San Ildefonso, and once again the Alcalde ruled in favor of the Trujillo family. The Alcalde subsequently partitioned the arable portions of the grant among the heirs and designated the remaining portions as a commons. **On September 28, 1877 Silvestre Gomez, for himself and on behalf of the other heirs and legal representatives of José Trujillo, petitioned SG Atkinson for confirmation of the Mesilla and Arroyo Seco grants. He claimed that the Mesilla grant comprised approximately 6,100 acres and the Arroyo Seco 12,000 acres.** In his opinion of December 13, 1878, he acknowledged the legitimacy of the grant papers and

the evidence that two communities on the grant, Mesilla and Polvadera, had been continuously occupied for some time**. He therefore recommended the combined claims for confirmation.**

A preliminary survey, however, showed that the two claims only amounted to 5,999.69 acres and that almost all of the land conflicted with the already confirmed claims of Pojoaque, Santa Clara, and San Ildefonso Pueblos. The claimants protested the survey asserting that the survey located the eastern boundary two leagues too far west and that it only covered the Mesilla tract and not the Arroyo Seco tract. Congress failed to act on the claim and on February 23, 1893, just before the deadline for entering claims, **Manuel Archuleta, for himself and the other heirs and legal representatives of José Trujillo, filed a claim for the Arroyo Seco portion of the grant (PLC 115) before the CPLC. He apparently realized, however, that it would be impossible to contest the preliminary survey and abandoned the claim in favor of pursuing the Mesilla portion of the grant (PLC 268). Finally, realizing that all the land within this claim had already been severed from the public domain and was no longer within the court's authority, he requested his suit be dismissed, which the court did on November 26, 1896.**

Significant federal impacts: Since there is so much archival evidence of the legitimacy of these grants, the claimants were clearly denied their constitutional rights by not being made aware of the Pojoaque, Santa Clara, and San Ildefonso adjudication proceedings.

33) ** **Juan Bautista Valdez**, SG 55, 113, CPLC 179, Type C

Confirmed as a private grant.

This grant was made in 1807 to Valdez and nine companions for agricultural and residential lands within the Pedernales Cañon and grazing lands to the west of the Cañon. In 1814 the grantees requested a formal partition of the agricultural lands and Valdez as *poblador principal* was additionally granted a large portion of the original tract west of the Cañon. At the time the United States acquired New Mexico, there were two settlements on the grant: the original settlement within the Pedernales Cañon and what became known as Encinas, west of the Cañon where the Valdez family had settled following the 1814 partition. **In 1871 the heirs of Juan Bautista Valdez petitioned SG Spencer for confirmation of the Encinas portion of the grant, which they estimated contained 20,500 acres.** This claim was evidenced by the 1814 *hijuela* issued to Valdez by the Alcalde of Abiquiu, who partitioned the grant. The claimaints stated that they believed the original 1807 *testimonio* had been lost. Based on the *hijuela* and a great deal of oral testimony substantiating the existence of a town with long continuous occupancy, Spencer recommended confirmation of the grant. **A preliminary survey, however, indicated it contained only 6,583.29 acres.**

Seven years later, however, the original 1807 *testimonio* was found and the heirs made a second claim before SG Atkinson for the remainder of the grant know as the Cañon de Pedernales, which the claimants asserted contained approximately 256,000 acres. Atkinson, however, stated that the original 1807 petition only referenced the lands within the Cañon and despite the fact that the Act of Possession referenced a much larger area, he recommended confirming only the agricultural and residential tracts within Cañon. Moreover, his recommendation was limited

only to the Valdez heirs because none of Valdez' companions were actually named in the petition.

Both claims were reexamined by SG Julian in 1886. **Julian recommended the rejection of the Encinas for lack of documentation and viciously denounced the Cañon de Pedernales as patently fraudulent despite the evidence of a town and long continuous possession**. **The two claims were subsequently combined and submitted to the CPLC. In 1898 the CPLC ruled the original 1807 grant was valid but limited its confirmation to the heirs of Juan Bautista Valdez and then only to the agricultural and residential tracts within the Cañon de Pedernales, despite the evidence of the second settlement in Encinas and continuous use of the rest of the grant for grazing and other resource extraction. Thus more than 250,000 acres were lost to the residents of the two communities.**

Significant federal impacts: This adjudication was a blatant example of the government ignoring the community nature of this grant and robbing the claimants of their common lands.

34) **Juan de Gabaldón**, SG 65, CPLC 86, 202, Type C

Confirmed as a private grant.

A claim for confirmation of this grant on behalf of the legal representatives of Juan de Gabaldón was presented to SG Proudfit by Pablo Dominguez in 1872. Dominguez stated that he had inherited an interest in the grant from his parents and had occupied it since the early 19th Century. **Proudfit recommended confirmation of the claim to the legal representatives of Gabaldón later that same year, and the grant was surveyed in 1878 and found to contain 11,619.56 acres.** Congress, however, did not act upon the claim, which in the meantime had been purchased by Thomas B.Catron. Catron submitted a petition for confirmation to the CPLC in 1893. **The CPLC confirmed the claim later that year and its survey included 10,690.05 acres. This is another example of a private agricultural grant, which had shared pasture lands and watering places being labeled a community grant.**

35) Los Serrillos, SG 59, CPLC 78, Type C

Confirmed as a private grant.

This grant has a complicated history dating back to 1692 when de Vargas originally granted the land to one of the members of his garrison, Alonzo Rael de Aguilar. Aguilar, however, was forced to abandon the grant due to his military obligation, and in 1750 Aguilar's heirs petitioned Governor Velez Cachupin for reconfirmation. Velez Cachupin denied the heirs petition, however, due to several technical deficiencies and the tract's importance as pasturage for the Santa Fe garrison's horses. **No further claim was made until 1788 when Aguilar's descendants and the husband of one of his granddaughters "registered" the tract for grazing and agricultural purposes with Governor Facundo de la Concha. According to Bowden, de la Concha granted the tract to the petitioners, who immediately partitioned it into three parts, which were all subsequently acquired by Manuel Delgado in 1804. Delgado's heirs petitioned SG Spencer for confirmation of the tract in 1871.** The petition, however, was protested by John Gwynn and Robert B. Willison, who asserted the claim conflicted with 360 acres they had purchased from the government at a public sale**.**

In an 1872 decision Spencer acknowledged the legitimacy of the 1788 grant and recommended confirmation to the heirs and legal representatives of that concession. A preliminary survey showed the grant contained 2,287.41 acres. The recommendation was not acted upon by Congress, and in 1892 an heir of one of the 1788 grantees' filed a claim for the tract before the CPLC. This petition was also protested by Gwynn and Willison. **In 1894 the CPLC confirmed the grant to the heirs of Alonzo Rael de Aguilar except for the portion that had previously been sold to Gwynn and Willison. An 1896 survey included 1,478.81 acres.**

36) **Maragua**, SG 121, CPLC 276, Type OI, **rejected**

This grant was made by the Territorial Deputation for agricultural purposes to three residents of Galisteo in 1826. Each grantee was allowed 500 varas of land situated in adjoining plots. According to Bowden, the grantees continuously utilized these plots until 1847 when one of the original grantees, Agustin Duran, acquired the interests of the other two. Duran then sold all of his interest to Andres Murphy, who in turn sold it to Richard Campbell. **The claim was presented to SG Atkinson who, based on an entry in the Journal of the Territorial Deputation that referenced the grant, recommended it for confirmation in 1880.**

A preliminary survey showed it contained 389.82 acres. Congress took no action on Atkinson's recommendation, and **in 1897 Campbell's daughter filed a claim for the tract in the CPLC, asserting that because the claim was complete and perfect she was not subject to the two year limitation for filing claims. When the claim was tried in 1898 the plaintiff did not appear, and the government, referencing the Hayes decision, asserted the grant was void for want of authority. The CPLC upheld the government's argument and the claim was rejected.**

Significant federal impacts: During this period of civil and military unrest within the Mexican federal government, Territorial administrators made a number of grants. The authority of the Territorial Deputation to make this grant was substantiated by the fact that the Mexican federal authorities neither questioned nor rescinded the grant for which there were several precedents.

37) **Mesilla Civil Colony**, SG 86, CPLC 151, Type C

Confirmed as a community grant.

This grant has an extraordinarily complicated history. Under the terms of the Treaty of Guadalupe Hidalgo, New Mexico residents who did not wish to become American citizens were free to become repatriated by the Mexican Government, which made provision for their resettlement in northern Chihuahua. As a result, 60 people left their homes in southern New Mexico in 1850 and resettled on the Mexican side of the Rio Grande. They were granted two tracts of land for agriculture and pasturage. Between 1852 and 1853 the Mexican authorities distributed farm tracts within the colony to more than 2,000 people who fled New Mexico. The Mesilla grant subsequently became so populous that the Mexican Government established another colony of refugees at nearby Santo Tomás de Yturbide. In the meantime, the International Boundary Commission fixed the boundary between the United States and Mexico west of the Rio Grande and the United States' government made the decision to purchase a disputed area that included both colonies from the Mexican Government in what became known as the Gadsden

Purchase. The residents of the Mesilla Civil Colony, therefore, once again found themselves within the United States**. In 1874 they filed a claim for confirmation before SG Proudfit. Proudfit acknowledged the authority of the Mexican Government to make the grant and recommended the claim for confirmation.**

A preliminary survey showed it contained 33, 960.33 acres. Congress, however, failed to act on the recommendation, and the colonists were forced to file another petition before the CPLC. **In its 1899 decision the CPLC confirmed that the Mexican Government had the authority to make the grant but ruled the grant of pasture lands, because it exceeded one square league, was void for want of authority. The Court, therefore, awarded the colony its agricultural lands as they were outlined in the original grant but severely limited the pasturage tract. The agricultural was surveyed and found to contain 17,784.43 acres while the pasturage tract was limited to 3,844.09 acres.**

Significant federal impacts: The common lands (pasturage) were severely and unjustly diminished by the CPLC decision.

38) * **Nicolás Duran de Cháves**, SG 155, CPLC 57, Type C

Confirmed as a private grant.

This grant was made to Duran de Cháves in 1739 by Governor Gaspar Domingo de Mendoza. Between the Act of Possession in 1739 and 1749 Cháves had numerous boundary disputes with his neighbors that were referenced by series of archival documents. Cháves and his heirs, however, remained in continuous occupation of the grant. In 1880 Atchison, Topeka, and Santa Fe Railroad built its line across the grant and, according to Bowden, "attracted a number of homesteaders to the area."

In an effort to get the lands within the grant withdrawn from settlement, José Cháves y Gallegos, with nineteen others for themselves and on behalf of all other heirs and legal representatives of Cháves, petitioned SG Julian for confirmation of the grant in 1887. While Julian acknowledged the validity of the grant papers, his recommendation asserted that only the cultivated lands be confirmed and the common areas (designated by a 1743 archival document), which included the majority of the grant, be excluded. In the meantime, one of the Cháves heirs and two other homesteaders sought and received patents from the government under public land laws. These patents were challenged in District Court, which held that the government had the authority to disperse the land. That decision was upheld by the New Mexico Supreme Court. At the same time, Cháves y Gallegos filed suit before the CPLC naming the federal government and the three homesteaders as defendants. In a unanimous decision the CPLC determined the grant was valid and legal title was held by the heirs and legal representatives of Cháves at the date of the Treaty of Guadalupe Hidalgo. However, the court was divided in its decision regarding the three homesteaders, and in a majority decision held that the patents to the homesteaded areas, which amounted to 410.9 acres, were valid, but that the plaintiffs had the right to sue the federal government for compensation.

The grant was subsequently **surveyed and found to contain 40,248.57 acres**. The 410.9 acres were then subtracted leaving a net area of 39,837.67 acres. According to Bowden, however, this survey was protested by the Land Department, and a new survey was ordered. **Bowden does not reference the amount of land contained in the**

resurvey, nor does the GAO report, which states that there was "No indication of issued patent." Bowden does go to say that the Cháves heirs successfully sued the government for the land dispersed to the homesteaders and were compensated at the rate of $1.25 per acre, making it the only case in which a monetary compensation was awarded for a land claim adjudicated by the CPLC.
Significant federal impacts: While the government financially compensated the claimants for land it patented under public land laws, it had a Treaty obligation to withdraw that land from entry prior to the grant's adjudication.

39) **Ojo Caliente**, SG77, CPLC 88,94, Type C
Confirmed as a tenancy in common.

This grant was first settled in 1790 by eighteen residents of Bernalillo, but the actual grant was made three years later to Luis Duran and fifty-two other colonists. Felis Galbis petitioned SG Proudfit in 1873 for confirmation on behalf of himself and all other residents of the grant. A plat attached to the petition asserted the grant contained 92,160 acres**. Proudfit recommended the grant for confirmation in 1874 and a preliminary survey showed it contained 38,490.2 acres.** That survey was protested by Antonio Joseph, who claimed he had purchased the interests of most of the original grantees, but no action was taken on this protest or on the SG's recommendation. As a result, two claims were filed before the CPLC, one from an heir of an original grantee and the other by Antonio Joseph for himself and all other heirs and legal representatives of the original grantees. The two claims were consolidated, and **in an 1894 decision the CPLC found the grant valid but asserted a preponderance of evidence demonstrated that the eastern and western boundaries confined the grant within the cañon of the Ojo Caliente River.** Neither party protested the decision, and a 1894 survey showed the grant as described by the CPLC decision contained only 2,244.98 acres.
Significant federal impacts: This grant was severely limited by a dispute over the location of the boundaries.

40) ***** **Pajarito**, SG 157, CPLC 73, Type OI
Confirmed as a private grant.

This is an interesting and unique case with regard to the decisions of both SG Julian and the CPLC. The claim was evidenced only by an archival reference in a will, which suggested that a grant was made to Josefa Baca sometime before 1746 and that her heirs and legal representatives had been in uninterrupted and undisputed possession since that time. In an 1887 opinion regarding the petition of seventeen legal successors, **Julian recommended confirmation of the claim despite the lack of documentation because, according to Bowden, he believed the governments of Spain and Mexico would have recognized its validity and that the Treaty of Guadalupe Hidalgo obligated the United States to act as those countries would have.** This is puzzling considering his decisions in other cases that lacked documentation but had evidence of continuous occupation (Guadalupita, for instance).

No preliminary survey was undertaken, however, and no further action taken until the same claimants filed suit before the CPLC. Their new petition was evidenced by 23 archival documents demonstrating their legal connection and continuous occupation and possession of the grant. It further asserted the grant contained about 40,000 acres.

Surprisingly, the government did not challenge the claim for lack of actual grant papers and the CPLC confirmed it in 1894. An 1898 survey showed it contained 28,724.22 acres.

41) ** **Petaca**, SG 105, CPLC 99, 153, 233, Type C
Confirmed as a community grant.

The Petaca grant has a complicated history and is the only land claim, to my knowledge, to be reviewed by three different Surveyors General. Although the original grant was made to three named men, the Act of Possession included thirty-three other "associates." A petition for confirmation was submitted to SG Proudfit in 1875 on behalf of all the heirs and legal representatives of the original 36 grantees. **Proudfit found the grant valid and recommended its confirmation to the heirs and legal representatives of the original 36 grantees. A preliminary survey in 1878 found it contained 186,977.11 acres.** In 1883 S.S. Farwell wrote SG Atkinson stating that he had acquired the interests of several of the original colonists and questioned whether Proudfit's recommendation to confirm the grant to the heirs and legal representatives of the original 36 grantees named in the Act of Possession was correct in view of the fact that the grant itself named only the three original petitioners. Interestingly, **Atkinson's opinion, which supported Farwell's contention that title vested only in three men named in the petition and grant**, questioned whether he had the statutory authority to review the recommendations of his predecessors.

Congress failed to act on either of these recommendations, and in 1885 SG Julian was asked to review the claim for the third time. **In an 1886 opinion Julian challenged the legitimacy of the grant papers because they were obtained from the claimants rather than found among the archival documents, but asserted that there was proof of an equitable title. He also questioned the extent of the preliminary survey and suggested that because the grant was made to only three named petitioners, it be limited to 33 square leagues under the 11 square league for each individual petitioner provision of the 1824 Mexican Colonization law.** The claim was reviewed again in 1887 by Land Commissioner A.J.Sparks, who concluded that the claimants held only an equitable title based upon occupation and suggested that it did not exceed four square leagues.

Three different claims were filed before the CPLC: one by the heirs and legal representatives of the heirs and legal representatives of the original 36 grantees named in the Act of Possession; a second by L.Z. Farwell, who had purchased most of the interests of the three grantees named in the original petition and concession and contended he owned the entire grant with the exception of the individual allotments distributed to the other thirty-three colonists named in the Act of Possession; and a third by José A. Garcia, who had purchased the interest of one of the other thirty-three colonists named in the Act of Possession. The three suits were consolidated and CPLC, in an 1896 decision, ruled that Petaca was a valid community grant made to all thirty-six petitioners but that it should not exceed eleven square leagues (approximately 48,000 acres). **The government appealed the decision to the Supreme Court, asserting that the grant should be limited to the thirty-six individual agricultural allotments detailed in the Act of Possession. The Supreme Court upheld**

the government's appeal and a 1901 survey found the grant contained only 1,392.1 acres.
Significant federal impacts: This community grant was reviewed by federal administrators on six different occasions and only the initial review by SG Proudfit got it right. The grant was completely stripped of its common lands by the Supreme Court based on the Sandoval precedent.

42) * **Plaza Colorado**, SG 149, CPLC 2, Type OI

This grant near Abiquiu was issued to Rosalia Baldes and her two bothers Ignacio and Juan Lorenzo in 1739. The grantees and their heirs remained in continuous possession until the mid- 1820s when Rosalia's grandson conveyed his interest in the grant to J. M. Chaves. In 1885 Chaves' son, J.M.C. Chaves, petitioned SG Pullen for confirmation of the grant on behalf of himself and all other owners. The petition was reviewed by Pullen's successor**, SG Julian, in 1886, who recommended it for confirmation. No preliminary survey was undertaken, but according to Bowden, from the testimony taken before SG Julian the grant was estimated to contain about 18,200 acres.** Congress took no action, and the heirs and legal assigns petitioned the CPLC for confirmation. **In an 1893 decision the CPLC confirmed the validity of the claim. An 1895 survey showed the grant contained 7,577.92 acres. The plaintiffs protested the approval of this survey, contending the western boundary was mislocated, but in an 1896 ruling the Court upheld its approval.**
Significant federal impacts: this grant was reduced by more than half based on a contested survey.

43) ** **Polvadera**, SG 131, CPLC 43, Type OI
Coinfirmed as a private grant.

The Polvadera grant was made by Governor Velez Cachupin to militia lieutenant Juan Pablo Martín in 1766. He and his heirs continuously occupied the grant from that time forward and in 1876 filed a claim for confirmation of their title before SG Proudfit. The Office of the Surveyor General did not act upon the petition until 1882 when SG Atkinson had succeeded **Proudfit. Atkinson recommended approval of the claim, a**nd **an 1883 survey showed it contained 35,924.18 acres**. That survey, however, was protested by J.M.C. Chaves, who asserted it conflicted with the western boundary of the Pueblo of Abiquiu grant. Congress took no action on either the confirmation or the protest, and in 1888 SG Julian reviewed the claim. Julian asserted that there was no proof the conditions of settlement outlined in the grant had been met and recommended it be rejected. In the meantime, Eastern land speculator Frank Perew purchased most of the interests of the heirs and filed a claim before the CPLC. Several other people who had also purchased interests subsequently intervened as party plaintiffs. **In an 1893 decision the CPLC found the claim valid** and confirmed to the heirs, legal representatives, and assigns of Juan Pablo Martín. The government initially appealed the ruling, but before the case came before the Supreme Court it withdrew its appeal. A survey showed the grant contained 35,761.14 acres. However, according to Bowden, approximately 5,000 acres conflicted with the Abiquiu and Juan José Lovato grants. Bowden goes on to say, "Notwithstanding this conflict, the survey was approved and a patent bases thereon was

issued . . .", so presumably the Polvadera claimants were awarded the full amount of the survey.

44) **Rancho del Rio Grande**, SG 58, CPLC 10, Type C
Confirmed as a tenancy in common.

This grant was made in 1795 to members of the Cristobal de la Serna grant who were trying to prevent other settlers from obtaining this tract because its use for agricultural purposes, they believed, would impair the Serna grant's water rights. The members of the Serna grant then used the grant primarily for grazing. According to Bowden, the owners of the grant first sought confirmation of their claim sometime between late 1860 and early 1861, but no action was taken. They therefore requested Congressional Representative J. Francisco Cháves introduce a bill directly into Congress for the grants confirmation. The bill passed both houses of Congress, but the President failed to sign the Act into law. A similar bill was introduced the following year and was approved by the Senate but was never acted upon by the House. To my knowledge, this is the only instance of a claim from New Mexico circumventing the Surveyor General's investigation and being considered directly by Congress. Having failed twice with Congress, however, the claimants filed a supplemental petition before SG Spencer in 1872. This time **the SG acted quickly in recommending the grant for confirmation. An 1879 preliminary survey showed it contained 109,043.8 acres**. However, 20,523 acres conflicted with the already confirmed Mora grant. Congress failed to act upon the SG's recommendation, and a new claim on behalf of the heirs and legal representatives was filed in the CPLC. **The Court acknowledged the legitimacy of the grant** and stated, with regard to the boundary dispute the claim had with the Mora grant, that it had no authority to settle it and it was up to a lower court to decide. Neither party appealed the decision **and a survey found it contained 91,813.15 acres** for which a patent was issued in 1901. **This grant was partitioned.**

45) **Refugio Civil Colony**, SG 90, CPLC 150, 193, Type C
Confirmed as a community grant.

This was another grant, like the Mesilla Civil Colony grant, that was made after the Treaty of Guadalupe Hidalgo for Mexican citizens of New Mexico who wished to be repatriated by Mexico. The original grant was made in 1852 to eighty-three claimants and consisted of an agricultural tract and a grazing tract. However, in the mid 1860s several new groups of colonists settled on or near the grant causing numerous boundary disputes that were resolved internally by a special commissioner. In 1874 the residents, through their lawyer, presented SG Proudfit with a petition for confirmation with boundaries outlined in an affidavit from one of the colonists. **Proudfit recommended confirmation of the claim as described in the affidavit, and an 1877 preliminary survey found it contained 26,130.19 acres**. No attempt was made to survey the tract as it was originally outlined in the 1852 grant. Congress took no action on the recommendation, and two claims were filed before the CPLC: one by the commissioners of the grant, which had incorporated, and one by three individuals who owned tracts within the grant. The two claims were consolidated, and a third private claim for a quarter section was allowed to intervene. The government offered no special defense but asserted the claim should be

limited to the agricultural tract as described in the original 1852 grant and the grazing tract should be restricted to one square league.

The Court confirmed the agricultural tract to the Corporation of Refugio in trust for the eighty-three original grantees and their heirs and assigns and the pastoral tract to the Corporation of Refugio. A great deal of debate followed regarding the boundaries, which were amended several times. A 1903 survey found the agricultural tract contained 7,184.02 acres and the pastoral tract 3,450.38 acres. **This survey was protested by the grant's commission but was rejected by the Court**. A separate 1911 settlement allowed persons who had settled on lands not included within the patent to "make an entry" and receive title. A further reduction of the grant occurred as a result of a boundary dispute between New Mexico and Texas and was resolved in 1928 in favor Texas, with all grant lands on the Texas side of the dispute being excluded from the grant.

Significant federal impacts: This grant was not surveyed to its full extent.

46) * **San Antonio de las Huertas**, SG 144, CPLC 90, 269, Type C

Confirmed as a tenancy in common.

This grant has a very complicated history. The original petition was made by Juan Gutierrez, who had lost his ranch on Santa Ana Pueblo because of debt in 1765. The petition was made on behalf of himself and eight families of *peones,* who had been Gutierrez' tenants at Santa Ana. However, Governor Velez Cachupin died before he could act upon the petition. In the meantime, twenty-one families settled on the tract and petitioned Velez Cachupin's successor, Pedro Fermin de Mendinueta in 1767 for the same grant. Mendinueta made the grant with the provision that the alcalde extend the boundary to the east (the grant was limited in the south, north, and west by the established grants to the Pueblos of Santa Ana, San Felipe, and the Town of Bernalillo) for future settlement, and that he also allocate agricultural allotments to the current settlers.

The subsequent adjudication of this grant was complicated by the fact that the original grant papers were mutilated, and the critical designation of the eastern boundary torn from the document. The town was continuously inhabited from that time on and, according to Bowden, contained about 200 families in 1848. The original grant papers were filed in the Surveyor General's office in 1862, but no formal investigation of the claim's legitimacy was undertaken until 1881 when SG Atkinson took the testimony of three interested parties who gave widely disparate descriptions of the boundaries. As a result, **Atkinson did not act upon the claim**, and the decision was ultimately made by SG **Julian, who recommended its rejection for several reasons**: 1) the grant papers were not among the Archives received from Mexico; 2) the great variance in the witness' description of the boundaries; and 3) 12,801.46 acres (the majority of the claim) had already been confirmed and patented to the Town of Tejon. As a result, several residents of the grant filed claims before **the CPLC, which consolidated them, and in 1897 confirmed the validity of the grant.** It took another two years to resolve the issue of the Town of Tejon, which the plaintiffs, intervenors, and the government ultimately stipulated had been an allotment under the San Antonio de las Huertas grant. However, the resulting stipulated description of the boundaries was appealed by one of the plaintiffs to the Supreme Court, which dismissed the appeal because it had not been properly filed

and docketed. The grant was therefore surveyed according to the stipulated boundaries and **found to contain 4,763.85 acres**.
Significant federal impacts: This grant was drastically reduced by the adjudications of the Tejon and San Pedro claims.

47) ** **San Antonio del Rio Colorado**, SG 76, CPLC 4, Type C, **rejected**

This grant was made in 1842 to 35 colonists by the Prefect of the First District of the Department of New Mexico. The alcalde who delivered possession also allotted agricultural lands and designated a commons. Further allotments were subsequently made, and by 1848 there were approximately 300 families. Sixty-two residents of the Town of San Antonio del Rio Colorado filed a petition for confirmation in the Office of the Surveyor General in 1872. In 1874 it was reviewed **by SG Proudfit, who recommended it be confirmed as a community grant. An 1879 preliminary survey showed it contained 18,955.22 acres.** It was reexamined in 1886 by SG Julian, who asserted that although the governor was the only one authorized to make grants after 1828, the settlers had established equitable title and deserved confirmation of their agricultural allotments. Congress failed to act on either recommendation, and a claim was filed on behalf of all the colonists by Francisco A Montoya in the CPLC. Montoya asserted that the settlers had established equitable title, which under the Treaty the government was bound to recognize. **The government countered by asserting the Prefect had no authority to make the grant and the settlers had trespassed on the land and thus hadn't established an equitable title to the land. The CPLC rejected the claim for want of authority**, and an appeal to the Supreme Court was withdrawn before it was heard. **This grant was unjustly rejected based on the Hayes/Vigil precedent.**

48) ** **San Clemente**, SG 67, CPLC 64, Type OI
Confirmed as a private grant.

This grant was made in 1716 by Governor Felix Martinez to Ana Sandoval y Manzanares. Manzanares was the daughter of the original owner of the tract who had fled during the Pueblo Revolt. So in essence this tract was regranted as compensation to a woman whose family had been dispossessed and who had herself become a widow since her return to New Mexico with numerous dependent children. Thereafter, Manzanares, her heirs and assigns remained in continuous possession of the grant. The petition was originally submitted to SG Pelham in 1855, but for unknown reasons was not acted upon till it was resubmitted to **SG Spencer, who acknowledged the existence of several "small towns" and "at least three thousand inhabitants" in his recommendation for confirmation. A preliminary survey showed the grant contained 80,403.4, but that survey included much disputed land, including parts of the Pueblo of Isleta and the Joaquin Sedillo and Antonio Gutierrez land grants**. SG Atkinson, however, ignored the formal protest of the Pueblo and a request for the amendment of the boundaries by other interested parties and approved the preliminary survey in 1878.

A bill for confirmation of the grant was introduced in the House of Representatives and was twice recommended for passage by the House Committee on Private Land Claims (in 1882 and 1886), but Congress failed to take action on either recommendation. As a result, the claim was reexamined by SG Julian, who recommended

its rejection for two specious reasons: 1) he asserted that the grant could only be confirmed to the heirs and assigns of the original grantee, and the plaintiffs, who were the thousands of residents who had subsequently settled the grant, could not demonstrate a clear chain of title; and 2) he asserted that there was no evidence that the original grantee had complied with the residency requirement necessary to perfect title. The claim was therefore resubmitted to the CPLC, which did not dispute the genuiness of the grant but contested the location of the boundaries. The issue was critical because the grant contained some of the richest farmlands in the Rio Abajo. After much debate involving the Pueblo of Isleta and the archives of the other previously mentioned grants**, the CPLC provided a new description of the grant's northern boundary, which the U.S. Attorney asserted was a "substantial victory for the government." The grant was resurveyed in 1898 and found to contain 37,099.29 acres**.
Significant federal impacts: This grant clearly should have been confirmed as a community grant based on the existence of towns and numerous residents. The survey probably unjustly reduced the total acreage.

49) ** **San Joaquin del Nacimiento**, SG 66, CPLC 144, 203, 213, 252, Type C, **rejected**

This grant has a complex history and as a result its adjudication presented many problems. It was originally granted to Joaquin de Luna and thirty-five associates in 1768 by Governnor Pedro Fermin de Mendinueta. These thirty-six families had already established a settlement on the tract, and the grant formalized the claim, allocating private agricultural allotments and designated common lands. According to Bowden, however, the grantees remained in possession of the grant for only a generation, after which the settlement was overpowered by Indians and was abandoned. The heirs of the original settlers presented a claim to SG Spencer in 1871, and in an 1872 rough, unsigned draft of an opinion made shortly before his death, **Spencer recommended its approval. His successor, SG Proudfit, reexamined the claim that same year and also recommended its approval. An 1879 preliminary survey found it contained 131,725.87 acres.**

That survey, however, was protested by a group of more than one hundred settlers who had subsequently homesteaded the area. As a result, the claim **was reexamined in 1886 by SG Julian, who sent his assistant Will Tipton to investigate the boundaries of the preliminary survey. Tipton agreed with the homesteaders that the survey mislocated and exaggerated the claim, which he asserted, based on commentary in the grant papers, amounted to only 58,000 acres**. Tipton's opinion not withstanding, Julian recommended the complete rejection of the claim, asserting there was insufficient evidence of the grantees continuous occupation of the grant and that the claimants failed to adequately link themselves to the original grantees. Congress failed to act on any of these recommendations, and in 1893 two conflicting claims, based on two different grants, were filed before the CPLC. One claim was predicated on the original 1768 concession and the other on an 1815 concession by Governor Alberto Maynez to twenty-five families who sought to resettle the grant after its abandonment. The Court did not consolidate the claims but heard them at the same time.

In a 1900 decision **the Court ruled that the 1768 concession was invalidated by the 1815 concession, but that the 1815 concession was itself invalid because it specifically stipulated that the grantees were only entitled to what they could personally cultivate and the grant made no individual allotments.** The Court therefore

reasoned that title vested in the sovereign, thus relieving the government from compensating 765 people who had settled on the grant prior to 1872 under public land laws.
Significant federal impacts: This grant was the victim of a specious line of reasoning based on legal technicalities.

50) ** **San Marco Pueblo**, SG 102, CPLC 22, Type OI
Confirmed as a private grant.

This grant was made to an elite resident of Santa Fe, Antonio Urban Montaño, in 1754 by Goverrnor Velez Cachupin and was a private grant that shared an interest in a common pasturage with the Presidio of Santa Fe. A claim for its confirmation was presented to SG Proudfit in 1873 by the "legal representatives" of the original grantee**. Proudfit found the grant papers valid and recommended the claim's confirmation. An 1877 preliminary survey found it contained 1,890.62 acres.** Congress didn't act upon this recommendation, and the claim was reexamined in 1888 by SG Julian, who recommended its rejection because there was no proof that the original grantee had complied with the residency requirement. He also felt that if there was a valid claim the preliminary survey erroneously enlarged the tract. As a result, Lehman Spielegberg, a well-known land speculator, who had purchased the interests of the heirs, applied to the CPLC for confirmation of the claim. **The CPLC found the grant papers genuine, and in direct contradiction to Julian's opinion found the plaintiff's proof of occupation satisfactory.** An initial attempt to survey the claim was thwarted by the surveyor's inability to locate three of the boundaries. The government and the plaintiffs therefore entered into a stipulation, which resulted in **a survey that contained 1,895.44 acres.**

51) ** **San Miguel del Vado**, SG 119, CPLC 25, 60, 198, Type C
Confirmed as a community grant.

This grant was made in 1794 by Governor Fernando Chacon to fifty-two heads of households with the provision that land be made available for future settlers as well. It became an important port of entry for the Santa Fe Trail, and at least eight settlements developed on the grant. Although the claim was originally submitted to the SG in 1857, it was not acted upon until 1879 **when SG Atkinson reviewed it and recommended its confirmation. However, in an effort to make the grant available to land speculators, Atkinson stipulated that it be confirmed only to the heirs and assigns of the *poblador principal*, Lorenzo Marquez**, who was the only settler actually named in the 1794 grant papers. **A preliminary survey showed it contained 315,300.8 acres.**

Congress failed to act on Atkinson's recommendation, and the claim was reviewed in 1886 by SG Julian. In contrast to Atkinson, Julian acknowledged that this was a true community grant and recommended confirmation to the heirs and assigns of all the grantees. However, in conjunction with the Land Commissioner A.J. Sparks, they reported to the Secretary of the Interior that the preliminary survey was grossly exaggerated and should only include the agricultural allotments of the original grantees. No further action was taken until three conflicting claims were filed before the CPLC: one on behalf of the residents of the grant; a second on behalf of Levi Morton, a powerful politician and businessman who had purchased the majority of the Marquez family interests in an effort to assert control over the common lands under Atkinson's theory that

only the Marquez family could demonstrate legitimate ownership; and a third on behalf of the Marquez heirs, who belatedly realized they had been cheated by Morton. The claims were consolidated, and in 1894 the CPLC determined the grant was legitimate and that all of the heirs named in an 1803 document that evidenced the distribution of agricultural allotments were the legitimate owners. The government appealed the CPLC decision to **the Supreme Court, which ruled in the precedent setting *Sandoval* case that the settlers only obtained title from the Spanish government to their individual agricultural allotments and that title to the common lands was retained by government, which upon the change of sovereignty passed to the United States government.**

Significant federal impacts: This adjudication established the unsubstantiated legal theory that title to the common lands did not vest in the community with which they were associated. It led to the denial of at least 1.5 million acres of legitimate community common lands.

52) **Santa Barbara**, SG 114, CPLC 96, Type C

Confirmed as tenancy in common.

This grant, made in 1796, was actually the regranting of a tract that had earlier been abandoned. Although the original petition included forty-one families, Governor Fernando Chacon stipulated that the settlement must include at least fifty families and the Act of Possession and distribution of agricultural allotments ultimately included seventy-seven families. These settlers, along with more than one hundred-thirty other families who joined them, remained in continuous possession of the grant and formed several communities. **The settlers petitioned SG Atkinson in 1878 for confirmation of their claim, and in 1879 he recommended the confirmation of the claim** despite the fact that the grant documents were not among the papers included by the Mexican government in their archive of Spanish and Mexican grants but were in the possession of the settlers themselves. Those documents also failed to establish an eastern boundary, but substantial testimony satisfied Atkinson that it was the Angostura del Caballo. **An 1879 preliminary survey using the three boundary calls indicated in the grant documents and the stipulated eastern boundary showed the grant contained 18,489.23 acres.**

Congress failed to act on the SG's recommendation, and the claim was resubmitted to **the CPLC, which in 1894 confirmed its legitimacy. The grant was resurveyed in 1895 and found to contain 30,638.28 acres, making it one of the few grants that was confirmed for significantly more acreage than its preliminary survey.** However, much of this additional acreage was taken from an illegal and dubious resurvey of the neighboring Las Trampas grant, which after being confirmed and having its survey approved was resurveyed in the mid 1880s and reduced from approximately 46,000 acres to 28,000 acres.

53) **Santa Fe**, SG 88, CPLC 19, 80, Type C**, rejected**

Despite being the historic capitol of New Mexico since the 16th Century, the Villa of Santa Fe was not evidenced by a specific grant other than a 1715 document that granted the disputed lands of the cienega west of the Palace of the Governors to the Villa. Moreover, there was archival evidence of several private grants within what the inhabitants considered the city's boundaries. The claim was first considered in 1874 by

SG Proudfit, who acknowledged the legitimacy of the city attorney's (Judge Gaspar Ortiz y Alarid) claim, that by operation of Spanish law the town was entitled to four square leagues of land (17,361.11 acres), and an 1877 preliminary survey determined the actual boundaries of that acreage.

However, no action was taken by Congress and the town was forced to submit two claims, the second following the town's incorporation after the Court's initial determination that the unincorporated town had no authority to prosecute the claim. The second claim was beset by a great deal of controversy including adverse claimants, possession of Fort Marcy and other federal buildings by the U.S.Government, and the denial by the government that under operation of Spanish law the town was entitled to four square leagues of land. In a divided opinion, three members of **the CPLC, constituting a quorum, found the grant valid under the four square leagues theory**, which also formed the basis for the rejection of the adverse claims that fell within that area. **The decision was appealed to the Supreme Court, which reversed the CPLC decision in all matters. The city, therefore, went directly to Congress, which in 1900 passed an act that granted the city the four square leagues but exempted all federal land and buildings located therein and all private grants that had already been confirmed within those boundaries.**

54) **Town of Albuquerque**, SG 130, CPLC 8, Type C, **rejected**

Town of Albuquerque is included here with the Santa Fe grant because their adjudications followed the same pattern. Founded in 1706, there are numerous archival references substantiating the legitimacy of the grant. However, the actually grant papers were lost, and when, in 1881, the commissioners of the city on behalf of themselves and all other residents of the city applied to SG Atkinson for confirmation of the grant, they did so based upon the same legal theory as Santa Fe: that under operation of Spanish law the town was entitled to four square leagues of land. **Atkinson acknowledged the legitimacy of the argument and recommended the claim for confirmation.** An 1883 preliminary survey contained 17,361.06 acres, a portion of which was located on the west side of the Rio Grande. No action was taken by Congress, and the city was forced to resubmit its claim to the CPLC. Although the government opposed the claim, the CPLC confirmed it in 1892. The government therefore appealed the case to the Supreme Court, which, **citing the City of Santa Fe precedent, overturned the CPLC confirmation. As with the City of Santa Fe, the Albuquerque City Commission took its claim to Congress and in 1901 Congress confirmed the four square league claim.**

55) ** **Santo Tomás de Yturbide**, SG 139, CPLC 137, Type C
Confirmed as a tenancy in common.

This is the third of the grants that were made by the Mexican government following the Treaty of Guadalupe Hidalgo for New Mexico residents who wanted to be repatriated following the change in sovereignty. Like the Mesilla Civil Colony grant and the Refugio Civil Colony grant, it became part of the Gadsden Purchase. The original settlement of Santo Tomás was considered part of the Mesilla grant, but in 1853, upon a change in government, the Mexican authorities granted Santo Tomás autonomous status with an agricultural tract that was divided into individual allotments and a tract of common pasturage. A petition for confirmation of the claim was submitted to SG Pullen

at the beginning of 1885 (Bowden states the year was 1855, but this was obviously a typo) by Mariano Barela, who had purchased the agricultural allotments of a large number of the original grantees, and twelve other interested parties.

Pullen acknowledged the legitimacy of the grant and recommended it for confirmation. However, shortly thereafter SG Julian assumed office and reviewed the claim and recommended it be rejected for a number of purely technical reasons. Barela responded to Julian's concerns, and in 1886 Julian conceded in a letter to the Commissioner of the General Land Office that the documents Barela provided "cured" his objections to the claim. No preliminary survey was undertaken, however, and Congress did not act upon the claim. Barela's mother (Barela had died in the interim) and Ramon Gonzales, who had also purchased the agricultural allotments of a number of original grantees, therefore filed a petition for confirmation of the claim before the CPLC. **The CPLC found the grant was valid** and, over the objection of the U.S. Attorney, that the petitioners had standing to bring the claim before the Court on behalf of all other grantees. Title to the agricultural tract was confirmed to the individual grantees and title to the pastoral tract to the "bona fide" residents of the Colony on December 30, 1853. The survey was a complicated matter that was protested twice and took several years. **The CPLC ultimately approved and patented a survey that showed the agricultural and pastoral lands combined contained a total of 9,622.34 acres**

56) **Sevilleta**, SG 95, CPLC 55, Type C
Confirmed as a tenancy in common.

The Sevilleta grant, like the neighboring Socorro grant, was founded on the ruins of a deserted Indian Pueblo. Although the area was resettled in 1810 by sixty-seven Indo-Hispano families, it was not officially granted until 1819 by Governor Facundo Melgares. By 1846 two permanent settlements, Sevilleta and La Joya, had been established on the grant. The inhabitants of the Town of Sevilleta petitioned SG Proudfit in 1874 for confirmation of their claim**. Proudfit found the grant papers in the official Archive and recommended confirmation. A preliminary survey showed it contained 224,770.13 acres**. Congress failed to act upon Proudfit's recommendation, and the residents were forced to resubmit a claim to the CPLC in 1892. The government mounted no special defense, and the **CPLC confirmed the grant in 1893**. This decision preceded the *Sandoval* case, so the common lands and agricultural allotments were both included in the original survey. That survey, however, was protested by the members of the already confirmed Belen grant, who asserted that the Sevilleta's northern boundary, as surveyed, overlapped the Belen grant's southern boundary by two miles.

The tract was subsequently resurveyed and found to contain 272,193.88 acres, and although the grant was patented for that amount the boundary dispute did not end there. The owners of the Sevilleta initiated an ejection suit against the owners of the Belen grant over 11,005.98 acres that remained in dispute. In 1917 the Supreme Court found the CPLC had no authority to confirm the disputed area, and the Sevilleta was subsequently reduced to 261,187.9 acres. This grant was lost because of unpaid taxes.

57) ** **Socorro**, SG 107, CPLC 13, 127, Type C

Confirmed as a community grant.

This grant had a contentious and unique adjudication. According to Bowden, the Socorro area was originally inhabited by a group of Pueblo Indians known as the Piros, who refused to be part of the Pueblo Revolt and joined the Hispano refugees who fled to El Paso. Socorro was resettled in the 19th Century in compliance with an order from the Spanish Crown to establish or reestablish settlements along the Camino Real in order to lessen the dangers to travelers. In 1800 Pedro de Nava, Commandant General of the Internal Provinces of New Spain, ordered the governor of New Mexico to reestablish settlements at Alamillo, Sevilleta, and Socorro and expressly directed that they be granted four square leagues of land. Socorro being the most dangerously isolated was not settled until 1815. In 1818 the colonists petitioned Governor Facundo Melgares for proof of their title. Melgares, in turn, directed the colonists to the Alcalde of Peña Blanca, who supposedly issued a title that was lost when the office of the Alcalde of Socorro burned. Another copy of the grant, in the Archive at Santa Fe, was supposedly lost during the Rebellion of 1836 when Governor Albino Perez was killed.

In desperation the colonists applied to Governor Manuel Armijo in 1845 for confirmation of their title, and a document, which gave a new description of the boundaries, was issued. In 1875 the residents of the grant petitioned SG Proudfit for confirmation of their claim as described in the Armijo document. **Proudfit examined the papers and recommended the grant for confirmation as outlined in Armijo's regrant. A preliminary survey showed that the grant contained 843,259.59 acres.** In 1882 Commissioner of the General Land Office, N.C. McFarland, made another investigation of the claim and he too found it valid but suggested that the preliminary survey not be adopted and all questions regarding the location of the boundaries be resolved by the Interior Department.

The claim was investigated for a third time by SG Julian, who disagreed with the previous investigations, denounced the Armijo papers as a forgery, and asserted that the 850 families on the grant could only claim an equitable title to the lands they actually occupied. Congress took no action on any of these recommendations, and in 1893 Entimio Montoya, for himself and the heirs and assigns of all original grantees, filed a petition before the CPLC for recognition of the claim as evidenced by the Armijo documents. In an 1899 decision the Court ruled the Armijo papers were a forgery and that under the Mexican Colonization laws Armijo did not have the authority to regrant the land. However, at the same time another claim, **based on the 1800 Pedro d Nava order to resettle Socorro and grant it four square leagues of land, was also filed before the CPLC by the City of Socorro and Candelario Garcia. The CPLC upheld the validity of that claim and ordered a survey be made in the form of a square measuring one league in each of the cardinal directions from the center of the city's Catholic Church. Thus, a patent was issued for 17,371.18 acres predicated on the Court's directions.**

58) ** **Vallecito de Lovato (Town of),** SG 108, CPLC 142, 204, 236, Type C, **rejected**

José Rafael Samora petitioned the Alcalde of Abiquiu in 1824 on behalf of himself and twenty-five other residents of Santa Cruz for a tract of land called Vallectio de Lovato. The alcalde referred the petition to Governor Bartolome Baca, who, in an unsigned decree, directed the alcalde to place the petitioners in possession of the grant

immediately so they would not lose time in establishing a colony, with the understanding that the formal verification of the grant be postponed until the Territorial Deputation was in session. The alcalde placed the petitioners in possession and officially designated agricultural allotments and common pasturage and watering places.

No further action appears to have been taken by the Mexican government, but a settlement was in existence when the United States took possession and the expediente of the grant was among the papers contained in the official Mexican archive. The inhabitants of the Town of Vallecitos **petitioned SG Proudfit in 1875 for confirmation of their claim, and based on the archival evidence and oral testimony regarding continual occupation, he recommended it for confirmation. A preliminary survey found it contained 114,400.54 acres**.

The recommendation was not acted upon, and the claim was reexamined by SG Julian in 1886. **Julian recommended the rejection of the claim because the grant papers had never been signed by the governor and, he believed, the alleged grant amounted to no more than a license to occupy the area until it could be formally granted. Curiously, Julian, according to Bowden, asserted the claimants had not even established an equitable title to the land through continuous occupation.** Congress failed to act on either recommendation, and three conflicting claims were filed before the CPLC. They were consolidated into one claim. **The government, using Julian's argument and the precedent established by the *Hayes* case, asserted that there was no actual grant and that the Governor, according to the Supreme Court's interpretation of the 1824 Mexican Colonization Law, did not at that time have the authority to make one. The case was appealed to the Supreme Court, which upheld the CPLC's decision.**

Significant federal impacts: This was a legitimate claim evidenced by continuous occupation that was unjustly rejected based on legal technicalities.

APPENDIX B:

Land Speculation in New Mexico During the Territorial Period

Land Grant Speculation in New Mexico During the Territorial Period

A Report Prepared by David Correia[1]

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 unresolvable 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 "The main reason for [land loss] was that the land grants were established under one legal system and adjudicated under another."[2] Likewise, Montoya made a similar argument in her discussion of the Maxwell land grant: "The 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."[3]

---

[1] This report was prepared for and funded by Rio Arriba County in order to add to the research being conducted in response to the 2004 Congressional GAO Report on New Mexico land grants.
[2] Ebright, M. (1994a) *Land Grants and Lawsuits,* Albuquerque: University of New Mexico Press. 4
[3] Montoya, M. (2002) *Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840-1900,* Berkeley: University of California Press. 75

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

In this study, I want to think about the 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, "When English common law, a work of English centuries, was relocated overseas, a framework for the transplantation of English society had been introduced."[4] 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 US imperialism 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

[4] Harris, C. (2004) How Did Colonialism Dispossess? Comments from an Edge of Empire. *Annals of the Association of American Geographers,* 94**,** 165-182. 177

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 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 Santa Fe Ring members to locate investors and acquire controlling interests in land grants were a process that happened out in the open. Democrats and Republicans alike, united in their drive for New

Mexican statehood, agreed that higher and better uses for the land than subsistence 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 to household production and in reaction to the political challenges of peopling the arid northern reaches of Mexico posed 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. Different though it 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, 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.[5]

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 1854-1899) 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

[5] Ebright, M. (Ed.) (1989) *Spanish and Mexican Land Grants and the Law,* Manhattan, KS: Sunflower Press. See in particular, Daniel Tyler's chapter "Ejido Lands in New Mexico."

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. 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 report 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 report identifies the primary strategies of dispossession. In these methods, speculators conspired and colluded behind the backs of legitimate settlers and out of view of the courts and administrators 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.

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. One of the tasks of the Surveyor General was to receive claims on Spanish and Mexican grants, offering 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. Beginning in the late 1850s, the Surveyor General began to receive petitions for individual land grant claims.

Tactic of Dispossession under the Surveyor General:

The adjudication procedures under the SG lacked a mechanism whereby claimants could make adversarial claims. As a result, given the lack of investigative resources in the SG office, the lack of knowledge of Spanish and Mexican land grants, and the lack of transparency in the SG 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 SG period wore on and, in fact, was the central motivating factor driving the creation of the CPLC).

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 SG 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 SG to distinguish private and community grants. Second, SG 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/Mexican private grants and Anglo fee-simple tenure arrangements. Many scholars have described this tactic (see particularly Ebright's discussion of the Tierra Amarilla grant). 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 SG system of adjudication. Perhaps most important, the collusion of three Surveyor Generals in this tactic made this process easier. The following section offers documentary evidence illustrating this process.

1. Getting the Grant into Adjudication

Throughout the late 19th century, speculators considered land grants investment-worthy once the Surveyor General offered Congress a recommendation for confirmation. During the Proudfit and Atkinson period, intense speculation followed recommendations for approval. Following SG recommendations, deeds were acquired and, regardless of their legitimacy, investors launched commercial activity on the land grant, 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 that any other attorney. 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 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. In both cases Samuel Ellison delivered to James Proudfit a petition *and* a series of witnesses. This pattern was suspicious (Julian noted the unusual patterns of Ellison's petitions in a series of reports to the General Land Office) and 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.

1.a. Example: Vallecito

On May 20th, 1875, almost twenty 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. In the application, Ellison claimed to represent "the inhabitants of the town of Vallecito in the County of Rio Arriba."[6] 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 13th, 1875, Proudfit forwarded his sketch map and a half-page recommendation for approval to the U.S. Congress.[7] The report was entirely based on Ellison's claim and the testimony of the witnesses deposed that same day.

[6] 20 May 1875 Ellison petition, SANM 23: 536-540
[7] 13 October 1875 Proudfit report, SANM 23: 577-578

1.b. Example: Petaca

On February 12th, 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."[8] 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."[9]

1.c. 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 SG 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.[10]

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

---

[8] Transcript of 1875 Ellison petition, SANM 51-654-663, NMSRCA.
[9] 13 October 1875 Proudfit report, SANM 51: 663, NMSRCA.
[10] 11 May 1877 letter from the Office of Colorado Surveyor General to Ellison, Catron File, Ellison Papers, MSS 29 BC, Series 715, Folder 2, CSWR.

> 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.[11]

2. 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 19th 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.

2.a. Example: William Blackmore

William Blackmore, as with Catron, was one of the first to employ the 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 Maxwell, Mora, Cebolla and Los Luceros land grants. In the his sales pitch, he described unusual investment potential that New Mexico offered British investors:

> "An interest in either of these properties can no 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

[11] 11 August 1874 letter from Elder to Ellison, Catron File, Ellison Papers, MSS 29 BC, Series 715, folder 2, CSWR.

French, Spanish or Mexican Grant made prior to the acquisition of these portions of the territory by the United States Government"[12]

2.b. 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.[13] In 1886, 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 entries.[14] These holding companies allowed Santa Fe Ring attorneys to pool resources and thus afford the upfront costs of "proving up 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.

---

[12] 14 February 1872 letter from William Blackmore to L.H. Lloyd, Esq. NMSRCA, William Blackmore collection #77
[13] Ebright, M. (1994a) *Land Grants and Lawsuits,* Albuquerque: University of New Mexico Press.
[14] Westphall, V. (1965) *The Public Domain in New Mexico, 1854-1891,* Albuquerque: University of New Mexico Press.

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." 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.[15]

2.c. 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 related 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.[16] 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

[15] Ebright, M. (1994b) *Land Grants and Lawsuits in Northern New Mexico,* Albuquerque: University of New Mexico Press, Westphall, V. (1965) *The Public Domain in New Mexico, 1854-1891,* Albuquerque: University of New Mexico Press.
[16] 4 June 1877 letter from Ellison to Atkinson, SANM 23: 264-265

claim to mining speculator William Stout.[17] On August 27th, 1878 Gildersleeve wrote Atkinson requesting another re-survey, this time of the western boundary.[18] Atkinson re-surveyed Petaca for a second time, increasing the size of the land grant once again. The resulting resurveys, 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 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 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.[19]

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

[17] Petaca deeds, SANM 49: 284-371
[18] 27 August 1878 letter from Gildersleeve to Atkinson, SANM 23: 280
[19] 22 March 1883 letter from Commission N.C. McFarland, Department of Interior, General Land Office Atkinson, SANM 23: 282-283

sometime land speculator.[20] 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."[21] 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.[22] 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 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

[20] Petaca deeds, SANM 49: 284-371
[21] 7 June 1895 transcript of CPLC testimony. SANM 44: 153
[22] L. Bradford Prince collection, NMSRCA 13988: 4

number of heirs. I also found that Maria Juana, instead of being the only…[NO SECOND PAGE TO LETTER]"[23]

It's 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 25th, 1883, Farwell purchased deeds from Gildersleeve. On January 12th, 1887, Farwell purchased deeds originally from Gildersleeve, transferred to Farwell through an investor named Hitchcock.[24] 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."[25] 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

[23] 4/23/1883 L. Bradford Prince to S.S. Farwell (Prince File 13988, folder #4)—2

[24] Petaca deed transfer records, SANM 44: 38-52

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

whole grant be vested in the said nine persons, instead of the three persons who made application for the grant and were directed to be placed in possession by the civil and [illegible] Governor of New Mexico."[26] For the third time, Atkinson undertook a review. On August 1st, 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… 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 recommend that the same be confirmed to them, as the grant is undoubtedly valid.[27]

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 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 had 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 [unreadable] confer with you and Genl Bartlett about the matter."[28]

[26] 28 July 1883 letter from S.S. Farwell to Atkinson, SANM 23: 282 and 355
[27] 1 August 1883 report by Atkinson, SANM 23: 287-294
[28] 11 May 1883 letter from Farwell to Bartlett

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 rail road ties on the grant. Three years later, Farwell and the Bacheldor Brothers again entered in a contract for 100,000 ties, this time at $.04 per tie. In 1891 and again in 1892, the Bacheldor Brothers paid $.04 per tie for a contract to cut an addition 15,000 ties.[29]

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.[30] 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… Destroying the value of land, committing waste thereon."[31] 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.[32] In a letter to his lawyer, Edward Bartlett, on November 12, 1895, Farwell complained that "It seems that a man who is inflicted with a land grant is

[29] 1895 and 1896 letters from Farwell to Bartlett, CSWR, Bartlett collection, MSS 153 BC, Box 1, folder 4 and NMSRCA, Bartlett collection, Box 2, folder 28
[30] 1893 New Mexico District Court petition by Edward Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[31] 1893 New Mexico District Court petition by Edward Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[32] 7 December 1895 affidavit of Jose Sena, NMSRA, Bartlett collection, Box 2, folder 28

always in trouble… Bacheldor has been slaughtering timber ever since the case was tried last June."[33] The Denver and Rio Grande Railroad (D&RG) constructed and operated tracks throughout the Petaca land grant. Farwell's investigators found Bacheldor's 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.[34] In December of 1885, Farwell considered suing the D&RG, as legal proceedings had thus far failed to stop Bacheldor Brothers. On Jan 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."[35] The Denver and Rio Grande Railroad had been given right-of-way through the Petaca and Vallecito de Lovato land grant beginning on March 3rd, 1877. The grant included access to resources in the right-of-way one hundred feet on either side of the tracks, for the development of the rail road. 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."[36] In the court case, it was revealed that the rail road 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.

[33] 12 November 1895 letter from Farwell to Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[34] 19 February 1895 letter Edward Wolcott, general counsel for the D&RG, to Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[35] 13 January 1896 letter from Farwell to Bartlett, CSWR, Bartlett collection, MSS 153, Box 1, folder4
[36] 1896 New Mexico Supreme Court, U.S. v E. M. Biggs, NMSRCA, Box 66, #702

In July of 1895 Farwell sold a ten-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.[37] 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.[38] 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.[39]

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.

2.d. 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

[37] 3 July 1895 letter from MZ Farwell to Edward Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20
[38] 14 October 1899 letter from Farwell to Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20
[39] 2 March 1898 letter from Farwell to Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20

Ojo del Espiritu del Santo, and the Town of Vallecito de Lovato.[40] 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.[41] 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 23rd, 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.[42] Atkinson recommended the grant as a private land grant, now owned in total by Endicott Peabody. Following these recommendations, commercial activity began on the grant. An 1896 case before the New Mexico Supreme Court involving a timber operator and the Denver and Rio Grande Railroad (DRGRR) reveals that active timber harvesting occurred on the Vallecito grant throughout the early 1880s.[43] In addition, a series of conflicts between the Monero Coal and Coke Company, a mining firm operated by Thomas Catron, and the Denver and Rio Grande Railroad reveals that extensive coal mining occurred on the grant.[44]

ADJUDICATION AFTER 1891: THE COURT OF PRIVATE LAND CLAIMS

The operation and administration of the Court of Private Land Claims (CPLC) made the obfuscation strategy detailed above almost impossible. The opportunity the Court

[40] Proceedings of the Rio Grande Irrigation and Colonization Company v. Charles Gildersleeve, New Mexico Supreme Court Archives (NMSRCA): Box 59, Folder 643
[41] Peabody, the founder of Groton, the elite preparatory school in Massachusetts and a partner of J.P. Morgan, 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.
[42] Vallecito de Lovato deeds, SANM 51: 676-681
[43] NMSRCA. New Mexico Supreme Court Archives. U.S versus E.M. Briggs. Box 66, Folder #702.
[44] NMSRCA. New Mexico Supreme Court Archives. Box 59, Folder #643.

afforded claimants to make an adversarial claim, impossible under the SG 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 Court of Private Land Claims 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, the Act creating the CPLC was bound by no such standard. This change was consistent with the efforts of 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 though the work of Reynolds, who complied an interpretation of Spanish and Mexican property law that became the standard for the Court.[45] 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.

3. 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.

[45] Reynolds, Spanish and Mexican Land Law, 1895.

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."[46]

3.a. 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)."[47] 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. 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."[48] 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

[46] J Van Ness and C Van Ness, (Eds), Spanish and Mexican Land Grants in New Mexico and Colorado, 1980, 10.
[47] 14 January 1893 legal contract for George Hill Howard and Petaca claimants, L. Bradford Prince collection, NMSRCA.
[48] Ebright, M. (1994a) *Land Grants and Lawsuits,* Albuquerque: University of New Mexico Press.

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 in 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 getting initial retainers to continue to pay the costs of all this costly 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.[49] On March 3rd, 1893 L.Z. Farwell filed a claim for Petaca. A third claim was filed two days following Farwell's claim by Jose Garcia.[50] 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* (one-third

[49] 17 February 1893 petition, SANM 44: 7-17
[50] SANM 44: 99-236

part to the rights and interests of the grant of land as compensation to Howard for his services)."[51]

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 court.[52] 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.[53]

3.b. 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, rejected by the Court of Private Land Claims, in an auction he suggested he could fix to guarantee at $.25/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

[51] 14 January 1893 legal contract for George Hill Howard and Petaca claimants, NMSRCA, L. Bradford Prince collection
[52] Amado Chavez collection, box 2, folder 17, NMSRCA.
[53] July 21, 1903 letter from Amado Chaves to George Hill Howard, Amado Chavez collection, NMSRCA.

> 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 word. 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.[54]

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 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 be 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

[54] Amado Chaves Papers, 1698-1931, Box 1, NMSRCA.

> successful he will at once organize a company that will be ready to handle any good grant that may be suggested to him.[55]

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. One 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 US property law. Surveyors General and the US 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.

[55] Letter from Amado Chavez to L. Bradford Prince (nd), NMSRCA; L. Bradford Prince file, 13980: 10, NMSRCA.

Appendix 1: The Petaca Papers

4/23/1883 L. Bradford Prince to S.S. Farwell (Prince File 13988, folder #4)—2
"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 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. He 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…[NO SECOND PAGE TO LETTER]"

4/25/1883 SS Farwell to Prince (Prince file)—2
"The Drafts to pay for the Petaca Grant were forwarded to Genl Atkinson last Saturday. I trust Mr. Gildersleeve will take measures to perfect the title he assured me he had at once as the amount of money involved is so large it is attended with considerable loss to have it remain idle. I am glad you are making the investigation so exhaustive, so there may be no [unreadable]about it hereafter whatever may be the result."

5/11/1883 MZ Farwell to Prince—2
"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 had 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 [unreadable] confer with you and Genl Bartlett about the matter."

6/23/1893 Farwell to Bartlett—7
"In a letter from TP rece'd this morning, I am informed that the Bacheldor Bros are loading and shipping ties and piling as fast as can be had. They ship from No Agua. Also that they say that the… restraining them from shipping ties piling etx. From the Petaca Grant the east line of which is the Petaca creek.Now the Petaca Creek is … of the east line: the east line being the canon de la aguague de la Petaca."

***1/28/1894 Farwell to Bartlett—7**
"I have your favor of the 27th inst. and have refered (sic) the whole matter to my father. **Of course our decision will depend wholly upon the proposition made by Genl. Earle. I think that rather than agree to give them a considerable part of the property we would go in for the whole thing. On thing is sure and that is that we thought we were buying the whole property whn the money was invested there. Please advise me when you hear from Genl. Earle again."**

***2/2/1894 Farwell to Bartlet—7**
"…fully agree with you that our best course now is to **fight it out** as fist proposed. I return herewith Genl. Earle's letter as requested."

***4/16/1894 Farwell to Bartlett—7**
"I notice that the Morton interest in the San Miguel de Bado grant was knocked out, and the grant declared a community grant. Governor Prince told me two years ago that this grant was very similar to the Petaca, and from what he said I inferred that it would serve as a precident (sic) to our case should it be tried first. I beg to inquire if that is the case, also what you think of the prospects of our grant before the court. When do you think the case will be tried?"

***4/27/1894 Farwell to Bartlett—7**
"I still hope that the grant will be confirmed to us, and trust there is enough difference between the **San Miguel del Bado** grant and the Petac that the decision on the former will not act as precident (sic) for the latter."

5/2/1894 Farwell to Bartlett—7
"…have written to Mr. Catron about the arrangement I made with Mr. Coons last spring. I wish to see both you and Mr. Catron when I come to Santa Fe…"

***6/25/1894 Farwell to Bartlett—7**
"in the abstract which I herewith return I note that you have omitted the deed from S.S. to L.Z. Farwell conveying an undivided two-thirds interest in the Grant."

9/10/1894 Farwell to Bartlett—7
Planning for witnesses in CPLC case.

9/20/1894 Farwell to Bartlett—7
Planning for witnesses in CPLC case.

9/26/1894 Farwell to Bartlett—7
Preparing for the trial—concerned mostly with proving genealogy of title.

***10/1/1894 Farwell to Bartlett—7**
"in regard to your request for $100 I regret to say that it is utterly impossible for me to advance this at this time. The revenue from the Petaca has been a great deal less than the expenses of looking after it and the cost of litigation for the past two years and as I am little more than agent for the property I do not feel authorized to borrow money on its account unless it is imperative to do so. **Defeat is staring us in the face, and the loss of a fortune goes with it. Under our contract if we get but a small portion of the grant we will own you nothing more than we have paid you.'**

1/18/1895 Farwell to Bartlett—7

Discusses getting witnesses to affirm the genealogy of title: Agapito Atencio of Walsenberg and Jose Anicito (sic) Martinez of Conejos.

2/9/1895 Farwell to Bartlett—7
letter about travel arrangements to NM for the CPLC trial.

2/11/1895 Farwell to Bartlett—7
Letter about picking up Agapito Atencio in Walsenberg to bring to trial.

***2/20/1895 Farwell to Bartlett—7**
"In regard to the Tio Ortiz location that question has been pretty freely investigated by Attorney generals and some valuable affidavits are on file with the other docuemtns and monuments of title in the office in Santa Fe. If you think there will be much of a fight on that question I would suggest that you see **Mr. Howard** and have him procure the evidence on the location of the Tio Ortiz Hill. Of course it is to the contesting claimant's interest as well as our own to have the grant confirmed for as large an acreage as possible. **The hill the government will try to prove to be the Tio Ortiz hill is called Kiowa Mountain by all the natives and was the stronghold of the Kiowa Indians sixty years ago. The map you have shows its location. All the timber cut since we owned the grant has been cut north of this mountain, and I would not give $25.00 for the entire portion of the grant lying south of that point."**

***5/2/1895 Farwell to Bartlett—7**
"Mr. **H.S. Buckman of TP NM** who has been **cutting timber on the Petaca Grant** in former years is taking an active interest in this case in our behalf. There may be things occur that it could be well for him to know about, and he may write to your for information about some points in the case… He is thoroughly reliable. Is **Geo. Hill Howard** still active in the Petaca case?"

5/11/1895 Farwell to Bartlett—7
Agapito Atencio knows nothing about the grant. "Fro mhim I learned that his father lived on the grant but a short time and that he knew nothing definite about the boundaries but is willing so swear to the locationof Tio Ortiz hill."

5/22/1895 farwell to Bartlett—7
Witnesses regarding Tio Ortiz Hill.

5/29/1895 farwell to Bartlett—7
Court planning.

6/19/1895 farwell to Bartlett—7
"I am glad to see that you take such a sanguine view of the case."

6/24/1895 Farwell to Bartlett—7
"I wish to request that you write to Mr. Buckman and give him what information you may have about the time when we may expect to receive the decision of the Court. Of

course his is getting anxious as he expected the decision would be made before this. From you letter I infer that the Court will adjourn immediately after our case is submitted…"

***7/3/1895 MZ Farwell to E Bartlett—7**
"Can you send me the transcript of the evidence… I hope that we will not be disappointed when the decision is rendered. It would seem very hard to lose the grant after having worked so hard and spent so much money to save it.

7/9/1895 Farwell to Bartlett—7
""The transcript of the evidence in the Petaca case came duly to hand. Parker has not sent in his bill yet and when he does I will make the claims you suggest. I condier this transcript the rottenest piece of work that I ever saw. A great many questions and answers are entirely omitted and if we had to go to the Supreme Court with it we would not have the case that we would have had the evidence been properly reported."

9/7/1895 Farwell to Bartlett—7
"Will you kindly inform me whether the case of the Vallicito (sic) grant was reached before the adjounment of the Land Court? Mr. Buckman is very anxious to know and I promised to find out for him. We will know the result oin the Petaca case in a month if nothing happens. Please wire the result when announced. I saw Burkhardt about a month ago, and he said the whole thing would be thrown out. I hope it will not be as bad as that."

***10/25/1895 Farwell to Bartlett—7**
"I must express my deep regret at the turn th e case has taken as I think it is very hazardous to have it reopened. If the evidence that is now wanted is of great importance it should have been seen to when the rest of the evidence was procured. I think there is not the slightest chance to get any satisfactory evidence on the point desired. I take it that we would have to show that the document was brought or sent to Santa Fe by the person who was the last Alcalde up there under the Mexican Government. It is an impossibility for me to take a trip to New Mexico now, and I have written to Mr. Berry to find out what he cad and he has instructions to wire you not later than Tuesday what he has done and to take witnesses to Santa Fe if he finds any. If we cannot find witnesses I should think that the presumption would be that the instrument reached the Surveyor Generals office in the regular way."

***11/12/1895 Farwell to Bartlett—7**
"It seems that a man who is inflicted with a land grant is always in trouble. At least we are. Bacheldor has been slaughtering timber ever since the case was tried last June, and not content with that he has commenced to take Buckmans men away from him bey offering more wages for hauling ties than they can get for hauling lumber and the result is that Buckman is in the soup and cannot get his lumber to the track. Now what can be done to bring those fellows to time in short order? I dislike the idea of any more trouble expecially at this time and will not want to spend much money but something must be done. I think it would be well to write to Mr. Gildersleeve and see if he can give us any

information about the whereabouts of the grant document prior to the time it was filed with the Surveyor General.

11/23/1895 Farwell to Bartlett—7
"I can not got to TP and work up this matter. Yet it must be atteneded to. Is there not some one in Santa Fe whom you can get to tgo the TP and get the necessary affidavits?"

12/2/1895 Farwell to Bartlett—7
Letter regarding Sena. "The only advantage to be gained in that would be to get something tangible, on which we could prosecute ouor case against the D. & R. G., as the Bacheldors are worth nothing."

***12/11/1895 Farwell to Bartlett—7**
"[I] herewith return the affidavit of Serna and others. I also send a letter from Buckman from which it seems that the Bacheldors are trying to use him as a shield to protect them from the pending proceedings. If you think necessary you had better write him for a full account of his dealings with the Bacheldors in the tie business, and heave him give his affidavit. When you get ready send the sheriff from Santa Fe to TP and draw on me for the necessary expenses."

1/13/1896 Farwell to Bartlett—1
""Now that the Bacheldors have refusted to get out of the matter wit hteh least trouble I hope the matter will be pushed and the heaviest punishment to e insisted upond. I wish you would 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 reimubursment of the stumpage we have lost through the Bacheldors."

***2/3/1896 Farwell to Bartlett—1**
"The enclosed letter from Berry explains how things are going on around Tres Piedras, also that the contempt proceedings have failed of their purpose so far. I hope you can get a hearing on this case during the present term of court, and I think you can by showing the Court the importance of it. As to the matter of testimony in the suit for title, perhaps you can find out what Tipton is doing. I also suggest that you write to Benigno Hernandez and urge him to go himself or send Chves to Petaca and Vallectio and see what has been done."

2/24/1896 Farwell to Bartlett—1
"I am disappointed in the result of our efforts, but one must get used to such things especially in New Mexico… I hope to hear in a few days what the Mexicans have found out and will let you know. I think with you that the bsest way is to close the case and learn the result as soon as possible."

3/4/1896 Farwell to Bartlett—1
"I wish you would see the US Attorney and find out if they will consent to have our case go the o Court without further testimony. If so lets get the case off our hands as speedily as possibly. I have found that the attorneys—Tipton expecially—has been getting new

evidence in regard to the location of Ortiz hill and I am willing to drop the case and levae it where it was left last June if the US Attorneys will consent to the proposition."

3/6/1896 Bartlett to Farwell (CSWR Bartlett file , box 1)—1
"I write to inform you that [bartlett] will prepare to argue the case over again."

7/13/1896 Farwell to Bartlett—1
"I have your favor of recent date in regard to the report of the testimony taken at the last hearing of the Petaca case, and since receiving the same have received Mr. Parker's copy. I am willing to accept the same and will remit for it today. It is a much more satisfactory piece of work than the first. Mr. Parker writes a very encouraging letter ,but whether he is stringing me or not remains to be seen."

9/16/1896 Farwell to Bartlett—1
Farwell got news of court and paid Bartlett

10/30/1896 Farwell to Bartlett—1
"…we have not decided what to do in the Grant case. My father is inclined to accept the decision of the lower court and not appeal and Mr. L.Z. Farwell wished to see what the country does for McKinley before we go any further. I was coming down but family affairs have kept me at home… I hope t oget down to Sant Fe in November buy cant say that we will appeal the case and in any event we will not do so until toward the end of the six months given us in which to take an appeal. I have written to New Mexico parties about Mr. Catron and how essential it is that he be returned, and I hope he will be. He is having a hard race and if he is elected it will be due to the work of his managers."

12/2/1896 Farwell to Bartlett—1
"In regard to the understanding between ourselves in the Grant case I think we are of one mind as to that. I told Mr. Catron that you said you would give him what assistance he needed in getting the case ready for the Supreme Court, and he many have construed it to mean that you would do all the work, which ws not swo intended by me… I have written my father in you behalf. I do not suppose I can give you any information about Senator Allisons' attitude for some time as my father will probably wait until he sees him, and will not write to him about it. Senator Wolcott is now in the easts and I will write to hime after the holidays, as I think it would be better then than now."

1/18/1897 Farwell to Bartlett—7
Testimony in Monticello with LZ.

1/21/1897 Farwell to Bartlett—7
"I am surprised at the turn the government took in this case, as Mr. Catron assured me that we would have no cost whatever for printing. What do you think it will amount to?"

2/19/1897 Farwell to Bartlett—7
"I think you may feel assured that you will receive the recommendation of Senator Allison." [William B. Allison, Republican of Iowa]

***3/19/1897 Farwell to Bartlett—7**
"In conversation with you when I was last in Santa Fe I understood you to say that a suit brought against us by the government for the cutting of timber on the unconfirmed portion of the grant, would have to be brought within three years after the termination of our suit against the U.S. In other words the U.S. would be barred in that time by a statute of limitations. You were busy with other matters when I asked the question and I have thought perhaps that you did not understand it, so I take the liberty of again asking if there is a statute of limitation against the government which would apply to this case. It is necessary to clearly understand oour position as Mr. L.Z. Farwell is now very anxious to dismiss the case. Of course if there were not statute of limitations there would be no object in dismissing."

***3/2/1898 Farwell to Bartlett—7**
"Perhaps my few dealings with Mr. Catron have caused me to be infected with procrastination in answering letters on Petaca matters. The dismissal of the appeal is satisfactory for us, as we are satisfied that we cannot save anything from the wreck. Do we owe you anything? In regard to the Mica mines Mr. Gildersleeve spoke to you about, it is my opinion that he excepted the Sisneros grant in his deed to my father. I shall be glad to assist him to make a sale if the opportunity comes."

***3/28/1898 Farwell to Bartlett—7**
"Am greatly surprised at the information contained [in your previous letter]" I had thought is most impossible for the government to now appeal, and that as we had dismissed the appeal the case was ended. I am unprepared to state what action, if any, I will take in the matter."

***4/28/1898 Farwell to Bartlett—7**
"There are many things I wish to consult you about in this Petaca case that it is most impossible to cover it by correspondence. You must appreciate how greatly I was surprised at the information you conveyed to me—that the Government had taken an appeal after we had dismissed the case before the Supreme Court. I infer from you former letter that there might be a question as to whether the Government can maintain its appeal; but I hardly think they would have taken the appeal, were they not satisfied that it could be maintained. I have become utterly disgusted with the case and as our present interest is so fractional that it will never amount to anything, I do not feel like spending any of my own money in defending the case in the Supreme Court; however, I have a contract with Mr. Buckman, by the terms of which I am Trustee of all the owners of the grant, and it might be, with the consent of some of the Mexicans residing on the grant, that I can arrange to have our interest defended before the Supreme Court of the United States.

[paragraph about Catron's rec that he should procure an eastern attorney for the Supreme Court]

"The way the case now appears to me is that of being utterly hopeless and our further defense simply means the expenditure of money which we might as well dispense with."

8/28/1898 Farwell to Bartlett—7
"I wish to compliment you on the very forcible way in which you have drawn your motion [to dismiss before the Supreme Court] and the arguments presented. The only thing that has raised a doubt in my mind is this. The U.S. Attonrey's time had not expired at the time we tood that appeal. And after we took the appeal he was in the case as much as we were. Now then after we dismissed the appeal sall his rights be abrogated because we dismissed the appeal or has he still the right to protect the interests of the government."

9/28/1898 Farwell to Bartlett—7
"hurry this motion…"

***2/10/1899 Farwell to Bartlett—7**
"I don't think it makes much difference to us how the thing ends, still I want a piece of the property if I can get it."

***2/14/1899 Farwell to Bartlett—7**
"I think perhaps that we both have taken too much for granted in the matter of appeal. I have supposed that there would be sufficient time for us to prepare our case fro trial before the Supreme Court, after the ruling on the motions was made, in case it went against us. **All that I want done in that case is to have a brief submitted to the court, in support of the lower court's findings with the exception of that which confirmed the grant to the multitude.** Our contention to be that the Court erred in confirming the grant to he settlers of 1848 or to anyone, but if they have the right to nominate the grantees then thy should have confirmed the grant to the original petitioners. I cannot afford to have you make an argument before the court, but think it best to have a brief submitted when the proper time comes if the motion do dismiss the appeal is overruled."

3/6/1899 Farwell to Bartlett—7
"I wish to inquire if it has been settled whether the Court of Private Land Claims has the authority nominate the grantees of a grant. That will be an important point for us unless the case goes wholly against us."

***10/14/1899 Farwell to Barlett—7**
"You perhaps noticed a dispatch in the papers last Wednesday to the effect that I had sold 5,000 acres of land in RA Cty NM for $50,000 to the St. Anthony Crystal Mica Mining Co. As such information can do me no good I wish you to deny it. You may state to any who inquire that I have written you that the report is untrue and that I have sold no such body of land. Also point out the improbability of it, as the final decision of the title is so near at hand. I will tell you what I did do, and I do not want it to go any farther. I sold 3,994 acres of that mica land, luying in a body west of Petaca for $5,000 cash. You will remember me telling you of my connection with the above named company, and that I had deeded them 500 acres. Afterwards they had 3,994 acres surveyed and wanted me to

sign a deed for it which I refused to do. Well they finally offered me $5,000 for a quit claim deed provided I would turn in my stock and I took them up mighty quick… what insane idea prompted them to make me that offer on the eve of the decision from the Supreme Court I cant ell and I don't care. You know my reasons for wishing the report denied, without my reciting them here. **I recently purchased the LZ Farwell interest in the grant. It may have been a foolish move, but his deal lets me out of it all right even if the grant is knocked out. I now have a great deal at stake before the Supreme Court and I feel that if the government's appeal is dismissed I have a good show to make a nice thing out of the grant. I still have mica land to burn, and if this company creates any excitement I will profit by it.**

11/15/1899 Farwell to Bartlett—7
"it is the first word about the Petaca case I have heard since R. Catron was here on his way to Washington… I am very glad to know that you feel so much encouraged about the case. The thing has dragged along so long I am getting mighty blue over it."

George Hill Howard
12/10/1892 deed with Jesus M Lucero—3
One-third part of La Petaca (Jeffries and Earle)

Notes of the Oral Argument of Geo. Hill Howard in La Petac Grant Case—3
"May it please the court, the La Petaca is a colonization community grant, the agricultural land was divided up or allotted in severalty to the named petitioners and to those who presented themselves at the act of judicial possession and a cerin tract with natural outboundaries given them at the same time in common for pasture, wood, etc.

L.Bradford Prince L.—Amado Chavez Collection
"I think it probable that Mr. Gildersleeve can obtain the other interests so as to be able to convey the full title of all parties except that of Francisco Antonio Atencio, which I understand was not in your contract, and as to which you did not desire me to report."

Amado Chaves—L. Bradford Prince Folder 10, #13980
"After the Santa Barbara Grant had been confirmed by the Land Court and the Survey of the same had been approved the claimants institutied a partition suit. When the ownership was proved up the District Court appointed a commission of three men to examine the grant and make partition of it. They reported that the grant could not be partitioned among the four hundred owners without manifest prejudice to the property, etc. Thereupon the court appointed General Easley as special Master to sell the property and to distribute the money amongst the owners. The title which he may give will be absolute and perfect."

Gildersleeve and Anton Chico—NM Supreme Ct. Records 1891 Box 40 #433
Anton Chico Grant Issues: Malcolm (41-42)

Gildersleeve versus Ada Atkinson—January 1891 term of the Supreme Court of New Mexico

"Gildersleeve's claim will be found on page 7 of the record, the disputed portion of which is the $10,000 alleged to be 'due on account of a balance due…as a part of the purchase price or consideration of an interest in the Anton Chico grant.' His evidence is to the effect that the deceased Atkinson agreed to pay him about $12,000 in cash, and in addition, when he sold the interest conveyed to him."

Page 5: "Lehman Spielgelberg testified that Atkinson told him Gildersleeve 'was interested with him in the Anton Chico grant.'"

Page 5: Henry Waldo: "Well, Mr. Gildersleeve, in a conversation with me, claimed that he had agreed with Gen. Atkinson, or Atkinson had agreed with him, to divide the profits—share the profits—with him on the sale of the grant, and I mentioned that circumstance to Gen. Atkinson and he laughed with that peculiar laugh which his acquaintances will remember, and said there would be mighty little left for Mr. Gildersleeve."

Page 6:
5 May 1883 Letter from Atkinson to Gildersleeve
C.H. Gildersleeve, Esq.:
Dear Sir: In the event of sale of Anton Chico Grant by me, as there is now a sale pending, I will from that, or any other sale, allow to the extent of my power all reasonable attorney fees in connection with the procuring of a patent.
Respectfully,
H.M. Atkinson