Testimony
Lorenzo Valdez
Resident Rio Arriba County, New Mexico
United States House of Representatives
Committee on Natural Resources
October 29, 2013

Honorable Committee Chair Representative Hastings, Subcommittee Chair Bishop and all the Members of this Committee. I want to thank the Committee for this opportunity to present testimony on a very serious matter that will take Congressional and Presidential action to remedy. The management of the National Forests and Grasslands falls on shoulders of the staff of the United States Forest Service, who have the very important charge of keeping our public lands productive. The ecosystem services produced by those lands meet the needs of life in a concentric circle, or connectivity, the closer you are to the land, the more dependent you are on the land. Human needs or services are generally grouped into three categories economic, social and cultural. We all understand that the ability of the ecosystem to deliver services depends on the well-being of the whole, including all dependent species, humans included. There is no time in human existence when we have not managed the landscape to serve our needs; some critters do that also to a lesser extent. It has evolved into a very complex management task worldwide with important decisions to be made. Regardless of what stressors you believe or agree with, there is no doubt that to have those services in the future, we have to protect them now. And there lies the dilemma; power dictates management, and the constructs that emerge in the discourse affiliate closely with power emerge as specific actions on the ground. Power differentials in the United States are supposed to be tempered by Justice, a responsibility borne by all branches of our government.

I was asked to come here today to tell a story of how unjust acts in managing Forest lands push people closest to the landscape off of it and create scenarios that are replete with what the esteemed Economist and Nobel Laureate, Dr. Ronald Coase termed "negative externalities." "Mr. Coase's revolutionary insight was that you and I have a shared interest in minimizing the total harm suffered." "The Problem of Social Cost," Ronald Coase, a Pragmatic Voice for Government's Role; Robert H. Frank. Victimizing folks or creating unmanaged casualties is not an efficient option. That process is inefficient. The Government has a responsibility to mitigate the "negative externalities" to a federal action. On the ethical or moral plane, I turn to Pope John XXIII's Encyclical for Pacem in Terris, Establishing Universal Peace in Truth, Justice, Charity and Liberty; "when one reflects that it is quite impossible for political leaders to lay aside their natural dignity while acting in their country's name and in its interests they are still bound by the natural law, which is the rule that governs all moral conduct, and they have no authority to depart from its slightest precepts."

My livestock graze on lands in the Santa Fe National Forest, Coyote Ranger District which was titled originally as a Spanish Land Grant to Juan Bautista Valdez in 1807. I do not like the term "Permittee" when referring to indigenous Northern New Mexico Forest users. We were denied U.S. title by the Court of Private Land Claims. My family has been in the Jemez Mountains for thousands of years; I am descended

from southwest tribal ancestors as are most Northern New Mexico Villager commonly called Hispanic but most scholars refer to the group as indio-hispano. On the colonial side we have been grazing cattle since 1590; we are the first herders on US soil. We brought 3000 year old grazing culture to the new world. I run twenty pair and a bull, on an allotment that includes 15 relatives; some of them are near full blood Native American. Together we run 750 pair and 20 bulls. These historical and social elements also apply to the folks that are the focus of this tragic narrative. I agreed to bring their message to you because they couldn't be here. It is however my story as well, I was intimately involved with these folks as Rio Arriba County Manager. The message is that the "government" has a duty to hold its managers accountable, just like I was as County Manager. All the constitutional protections should be available to those on public lands including the courts as appropriate. There are many good managers in the Forest Service ranks, we have such managers "this year" on the district I'm in; they carried us through to rainfall this year, and they could have done what was done in this story. I have supplied for the record a research document by Dr. David Correa that provides a more painful look at the history of the Vallecitos lands that are at the basis of this story.

Jarita Mesa and Alamosa Grazing Association Ranchers

The Jarita Mesa and Alamosa Grazing Associations' members are Hispanic stockmen who graze cattle on the Jarita Mesa and Alamosa Forest Service livestock grazing allotments, both of which lie within the El Rito Ranger District of the Carson National Forest. The two allotments also are part of the Vallecitos Federal Sustained Yield Unit ("Unit"), an area of the Carson National Forest designated by an act of Congress for special treatment because of its mix of intermingled private and federal lands and its particularized use, dating back to before the Guadalupe-Hidalgo Treaty between Mexico and the United States. The ancestors of the rancher members of the Jarita Mesa and Alamosa Grazing Associations have been grazing livestock on these lands for generations, and, in fact, most of these families were grazing stock in this area before the United States Forest Service existed.

Beginning in the 1920s and accelerating in the 1940s, the Forest Service instituted "management" practices that were calculated to and did result in a drastic decline in the number of livestock the Hispanic residents within the communities located in or near the Carson National Forest and the Santa Fe National Forest were allowed to graze. These reductions continued into the mid-1960s. Unlike the predominantly Anglo ranchers in other areas of New Mexico and Arizona, the Hispanic ranchers in Northern New Mexico generally ran small herds of livestock and were dependent on the availability of their former common lands (common lands designated by the King of Spain or Mexico prior to the creation of the National Forest) for survival.

Over the past 7 or 8 years, the permittees and grazing associations in the Jarita Mesa and Alamosa Allotments have repeatedly exercised their First Amendment rights to petition their Congressional delegation and other elected officials for the purpose of protesting what they believe have been unlawful actions by Forest Service officials that have served to destabilize and degrade the private property rights and cultural/social

fabric of the communities where these ranchers reside. The lawful conduct of the ranchers has been met by punitive acts by Forest Service officials, particularly Forest Service District Ranger Diana Trujillo, including the reduction of their grazing permits. These ranchers believe that they can prove that many of the decisions by the Forest Service District Ranger were motivated by a desire to punish them for engaging in speech critical of Forest Service practices and by racial animus and a bias against traditional Hispanic culture and its traditional agro-pastoral way of life[1]. Based upon such animus, the Forest Service has made it nearly impossible for these ranchers to sustain their grazing permits which results not only in a loss of their private property but in the slow destruction of their cultural fabric.

For example, the Forest Service understands that wild horses are eliminating forage and damaging the soil, and that any significant increase in the size of the wild horse herds in this area could significantly impact the local Hispanic communities in an adverse manner because it eliminates forage needed for the permitted cattle. Despite this knowledge and the existence of the Forest Service Region 3 Policy, the District Ranger decided to increase the wild horse herd beyond the numbers authorized in its 1982 Management Plan from the 12-14 head to between 20 and 70 head. However, the Forest Service 2002 Decision Notice expressly provided for measures to be taken to reduce the herd if it ever exceeded that number, recognizing that allowing the wild horse herd to increase to even 120 head "may cause some permittees to be forced out of the livestock business by competition for forage from the wild horses." However, in disregard for the needs of these local ranchers who live within the Vallecitos Federal Sustained Yield Unit, the Forest Service has now allowed the wild horse herd to increase far beyond the number permitted by the Forest Service's 2002 decision. In fact, Forest Ranger Trujillo has chosen to allow the wild horse herd to grow to over 150 head, rather than attempt to alleviate this problem so as to be responsive to the needs of the Hispanic people in the area.

To deal with these problems, the ranchers sought the assistance of then-U.S. Senator Pete Dominici in May 2006. Senator Dominici took up the issue with one of Ranger Trujillo's supervisor. Upset with ranchers for their having exercised their right to petition the government for redress of grievances, on July 5, 2006, Ranger Trujillo issued a decision ordering all cattle removed from the Jarita Mesa Allotment by July 31, 2006. Her decision was purportedly based on a reported June 22, 2006 inspection of range conditions that found the ocular estimate of forage stubble height was less than 1-2 inches at each of the key areas visited by Forest Service. On July 20, 2006, ranchers

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[1] This bias has subtly existed against this land use and the relationship of these ranchers to the land for many years. For example, in 1935, Roger Morris, a Forest Service grazing assistant, issued a report concerning grazing issues entitled "A Dependency Study of Northern New Mexico," wherein it was stated that "[Hispanos] are sedentary in character living in the present and with no thought for the future. They accept conditions as they are and make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extinction by starvation and disease before they would migrate."

Sebedeo Chacon, Gabriel Aldaz, and others appealed Ranger Trujillo's decision based upon the significant rains since June 22, 2006 which greatly improved conditions on the range. In light of these changed circumstances, the ranchers implored the Forest Service to recognize that there was no justification for forcing them to go through the significant economic harm that would accrue as a result of having to remove all their cattle prior to the end of the permitted grazing season in October, 2006. Ranger Trujillo refused but, after Congressional inquiry, was forced to reverse her position.

Ranger Trujillo then tried to force an end to the grazing season in September 2006, instead of on October 31, 2006, based on an allegation that the permittees had failed to meet certain conditions she had imposed. At the end of the grazing season, rancher Chacon was having difficulty locating a small number of cattle that had strayed in the forest. This is a common problem and is due, in part, to the number of hunters and wood haulers who come onto the allotments and leave gates open and the fact that these allotments cover thousands of acres in the mountains. According to Ranger Trujillo, on October 5, Mr. Chacon had 17 cows that needed to be located and removed. On October 6, 2006, only four days after her arbitrarily imposed removal "deadline," Ranger Trujillo issued a decision suspending 20% of Mr. Chacon's authorized grazing for two years, a decision which had a profound economic impact on Mr. Chacon and his family, costing him tens of thousands of dollars. Mr. Chacon believes that he was singled out for disparately harsh punishment by Ranger Trujillo because she perceived him, correctly, as a leader of the permittees in the area due to the letters he had written to government officials protesting Ranger Trujillo's conduct.

On June 1, 2009, Mr. Chacon and Thomas Griego responded to Ranger Trujillo with a letter signed by 26 permittees which criticized her poor management style and her mismanagement of the two allotments. The letter was also sent to the New Mexico Congressional Delegation, Governor Richardson, and Ranger Trujillo's immediate supervisor, Kendall Clark. In the letter, the ranchers' stated that they were insulted by Ranger Trujillo's past letters and accused her of attempting to intimidate them. The ranchers pointed to Ranger Trujillo's unsuccessful effort to force them to remove their cattle from the allotments during July 2006. The ranchers also alleged that Ranger Trujillo and her staff had continually failed to install needed cattle guards or to fix plugged ones, and that Ranger Trujillo then used the fact that cattle would drift from one allotment to another, as a basis to threaten and/or sanction the permittees.

According to the ranchers, in retaliation for these letters, in 2010, District Ranger Trujillo made a decision to reduce the ranchers' use of their allotments by 18%–a decision that ignored the scientific analysis in a Forest Service environmental assessment ("EA") that such a reduction was not necessary. Despite the fact that it was a well-established practice and policy of the District Rangers in the different ranger districts within the Carson and Santa Fe National Forests (as well as in other Forests) to adopt the Proposed Action in the EA (the proposed action would have maintained the *status quo* with regard to permitted use), Ranger Trujillo disregarded the analysis contained in the EA and, making good on her predetermined decision to punish the ranchers by selecting an alternative calling for a substantial reduction in grazing. The decision of the Forest Service's Interdisciplinary Team contained in the EA did not

support the action of Ranger Trujillo. However, Ranger Trujillo was angry with and determined to retaliate against Plaintiffs for having the temerity to point out her errors and criticize her mismanagement of the two allotments and the entire Sustained Yield Unit.[2]

Although the ranchers had availed themselves of all known administrative and other remedies, on January 20, 2012, they filed a case in the Federal District Court for the District of New Mexico alleging, among other things, that they were being singled out through harassment and intimidation by Ranger Trujillo under color of law in retaliation for the ranchers' exercise of their First Amendment right of free speech and the right to petition the government for a redress of grievance. The Federal District Court, in a 115 page ruling on January 24, 2013, found that the ranchers had pled sufficient facts to show a possible retaliatory motive against them. However, citing to ***Wilkie v. Robbins***, 551 U.S. 537, 550, the court held that the ranchers could not sustain a ***Bivens*** cause of action against Ranger Trujillo personally for damages sustained due to her acts of intimidation and harassment allegedly undertaken in retaliation for the ranchers exercise of rights guaranteed to them by the First and Fifth Amendment guaranteed rights. See Jarita Mesa Livestock Grazing Association, et al. v. United States Forest Service, et al., Civ. No. 12-69-JB (Memorandum Opinion and Order, Docket 49, filed January 24, 2013). In essence, this meant that the district ranger remains free to engage in further acts of retaliation and the ranchers have no way of deterring her unconstitutional conduct.

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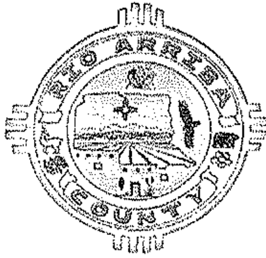
[2] In order to create the appearance that her decision was based on science rather than an arbitrary determination to punish Plaintiffs for having engaged in conduct protected by the First Amendment, Ranger Trujillo falsely stated that the Forest Service had determined the current level of permitted livestock to be "unsustainable." In fact, the EA had not concluded that the current level of livestock grazing was unsustainable but had proposed that grazing continue at current numbers under Alternative 2. Furthermore, despite the fact that the 2002 Decision Notice on the wild horse herd required the Ranger to attempt to reduce the wild horse herd by taking certain measures set forth in that decision, Ranger Trujillo failed even to consider any alternative that would achieve the required reduction in the wild horse herd prior to reducing the number of Plaintiffs' livestock permits. Instead, Ranger Trujillo claimed the herd contained only 67 horses when 2010 Forest Service documents showed the herd was over estimated the herd was over 100 and, as a 2011 Forest Service survey showed, was close to 150. Ranger Trujillo had to know that the herd had grown well beyond 67, figure from a 2008 estimate, because almost no horses had been removed in the two and a half years since the study. In sum, although the EA proposed action was Alternative 2 (status quo) Ranger Trujillo selected Alternative 3.



Rio Arriba County
Board of County Commissioners
Espanola Branch Office

COMMISSIONERS
Elias Coriz
Chairman
District I

Andrew J. Chavez
District II

Felipe D. Martinez
District III

COUNTY MANAGER
Lorenzo J. Valdez

RESOLUTION No. 2007- 0___

IN SUPPORT OF DEVELOPING FEDERAL LEGISLATION TO ENABLE A PILOT PROJECT FOR THE COMMUNITY-BASED MANAGEMENT OF THE GRAZING RESOURCE BY THE RANCHER ON HISTORICAL LAND GRANT LANDS OF NEW MEXICO IN THE JURISDICTION OF FEDERAL LAND MANAGEMENT AGENCIES

WHEREAS, the Northern New Mexican Rancher of Spanish, Mestizo and Genizaro descent is the direct successor of the beginning of the ranching tradition in the United States, which began with the settlement of San Gabriel del Yunge, near present day Espanola in 1598 by Don Juan de Onate and 500 original settlers;

(Marc Simmons, THE LAST CONQUISTADOR, at page 93)

WHEREAS, the livestock industry of the United States owes its origins, practices and legal and regulatory basis to these original settlers who brought with them 7,000 "head of livestock – beef cattle, spare oxen, horses, pack mules, donkeys, sheep, and goats" in a caravan of ox-drawn carts that stretched over 2 miles, from end to end;

(Angus McIntosh, Ph.D. and John M. Fowler, Ph.D., New Mexico State University / Range Improvement Task Force, "Property Rights on Western Ranches: Federal Rangeland Policy and a Model for Valuation, Draft RITF Report No. 56", Unpublished report), (Michael C. Meyer with Michael M. Brescia, Unpublished report, "The Contemporary Significance of the Treaty of Guadalupe Hidalgo to Land Use Issues in Northern New Mexico", Taos, N.M.: Northern New Mexico Stockman's Association and the Institute of Hispanic American Culture, 1998), (Simmons, THE LAST CONQUISTADOR, pages 93-96)

WHEREAS, It is back to this first historic livestock drive in 1598 from the outpost of Santa Barbara, Chihuahua into the vast "nuevo mejico" that many present day Northern New Mexico ranchers trace their present day livestock industry and tradition;

(Simmons, THE LAST CONQUISTADOR, preface at xiii), (U.S. Forest Service Report entitled "Economic, Social, and Cultural Aspects of Livestock Ranching on the Espanola and Canjilon Ranger District of the Santa Fe and Carson National Forests: A Pilot Study" by Carol Raish and Alice M. McSweeney at page 49, Appendix C, Table 2, Family Length of residence (09) "...family came in with Onate)

WHEREAS, the Hispano rancher has a long history of proper management of the grazing, watering and timber resources, which include customs and practices to protect the sustainability of the resources;

(Michael C. Meyer with Michael M. Brescia, Unpublished report, "The Contemporary Significance of the Treaty of Guadalupe Hidalgo to Land Use Issues in Northern New Mexico", Taos, N.M.: Northern New Mexico Stockman's Association and the Institute of Hispanic American Culture, 1998) at pages 13-42)

WHEREAS, the Spanish and Mexican period practices, customs and traditions are protected by the Treaty of Guadalupe Hidalgo between the United States and Mexico which has been adopted into the Constitution of the State of New Mexico of Article II, Bill of Rights, Section 5, "Rights under Treaty of Guadalupe Hidalgo preserved", reading as follows:

> The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.

and which thus, makes the Treaty of Guadalupe Hidalgo controlling law in New Mexico.

WHEREAS, the Hispano rancher had rights in the common lands of the sovereign for the use of its grazing, timber and water resources, including access, which vested before the United States War with Mexico;

WHEREAS, the United States government has failed to recognize these vested rights to access, grazing, timber and water resources, and has deprived the Hispano rancher of millions of acres of land which are now under the control of the federal government, the effect of which was socially and economically devastating to the Hispano community for decades;

(Suzanne Forrest, <u>The Preservation of the Village / New Mexico's Hispanics and the New Deal</u>, (University of New Mexico Press, 1989), at pages 19-24), (Marta Weigle, <u>Hispanic Villages of Northern New Mexico / A Reprint of Volume II of The 1935 Tewa Basin Study, with Supplementary Materials</u>, (The Lightning Tree – Jene Lyon, Publisher, 1975), at page 96), (GAO Report to Congressional Requesters, <u>TREATY OF GUADALUPE HIDALGO / Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico</u>, (United States General Accounting Office, 2004)

WHEREAS, the condition of the forests and range lands in the control of the federal government have declined in their health for numerous reasons, including the lack of an effective relationship between the state and federal governments and the ranchers who are using these lands and whose joint decisions have negatively impacted vested rights;

(U.S. Forest Service Report entitled "Economic, Social, and Cultural Aspects of Livestock Ranching on the Española and Canjilon Ranger District of the Santa Fe and Carson National Forests: A Pilot Study" by Carol Raish and Alice M. McSweeney)

WHEREAS, the Hispano rancher has managed to persevere, in spite of his loss of land and ineffective working relationship with the federal and state governments, as evident in the Rio Arriba County livestock production of nearly $10 million in income in 2003 for area families;

(2003 New Mexico Agricultural Statistics)

WHEREAS, the inter-relationship between the use of privately owned irrigated pasture lands, hay production and the use of public land grazing in Rio Arriba County are absolutely inter-dependent and the unavailability of one component will erode the other;

WHEREAS, the ability of the Hispano community to retain billions of dollars in real estate, water rights, equipment investments, acequia infrastructure and to remain in the region as a distinct and economically viable culture is dependent on the improvement and continue use of the public land resource; and

WHEREAS, the improvement of the working relationship with the state and federal government is an important key to the improvement of the health of the forest and range lands under the control of local, state and federal government, including the sustainable yield and use of the grazing, timber and water resources, the protection and enhancement of the water sheds and fire suppression capacity and the protection of game, fish and other wildlife, soil, water and air quality resources;

NOW, THEREFORE LET IT BE RESOLVED BY THE COUNTY COMMISSION, THE GOVERNING BODY OF THE COUNTY OF RIO ARRIBA:

Section 1. That the County of Rio Arriba through its officials, administration, staff and other expertise available to it, contact the grazing associations in Rio Arriba County, the Northern New Mexico Stockman's Association, the New Mexico Cattleman's Association, the New Mexico State University Range Improvement Task Force, the County Commissions of Sandoval, Santa Fe, San Miguel, Guadalupe, Mora, Taos and Colfax Counties, the New Mexico Game and Fish Commission, the acequia community and all other organizations and persons as deemed appropriate, in order to inform and engage all concerned in this project;

Section 2. That the community-based management of the grazing use of the federal lands in New Mexico include and be based upon the best practices, customs and traditions of the Hispano ranching community, the input, support and guidance of range historians and scientists, timber management expertise, game and fish commission and expertise and water resource and conservation expertise.

Section 3. That a task force be developed to research and develop the outline of a community based management system from which federal legislation may follow in support of and to enable a pilot project to be implemented among the traditional land grant based ranching community of Northern New Mexico;

Section 4. That a series of public hearing be conducted at such locations as necessary to propose, discuss and develop the content of said pilot project;

Section 5. That the New Mexico Congressional Delegation be advised and keep informed of this proposal BLM directly engage the traditional livestock grazing community in order to assure the sustainability of that surface use and resource.

Section 6. That the proposal for legislation be completed for presentation to the New Mexico Congressional Delegation within four months of the date of this Resolution, or at such time soon thereafter as may be deemed appropriate;

PASSED, ADOPTED AND APPROVED THIS 25th DAY OF January, 2007.

BOARD OF COUNTY COMMISSONERS
RIO ARRIBA COUNTY, NEW MEXICO

____
Felipe D. Martinez, Chairman
Commissioner District III

Alfredo Montoya
Commissioner, District II

Elias Coriz
Commissioner District I

ATTEST: ______________________
J. Fred Vigil, County Clerk

The Theft of Petaca: Fraud, Collusion, and Speculation in the Adjudication of a Mexican Land Grant Following the Mexican-American War

A Report for the Rio Arriba County Oñate Center November 2006 by

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The Theft of Petaca: Fraud, Collusion, and Speculation in the Adjudication of a Mexican Land Grant Following the Mexican-American War

David Correia

Abstract

Following the Mexican-American War in 1848, the U.S acquired over 50% of Mexico's territory in what is today the American Southwest. The Treaty ending the war required the United States to inviolably respect the many land grants in the region. The adjudication process imposed in New Mexico, however, proved nearly impossible for subsistence settlers to navigate. This paper offers a case study of the U.S. adjudication of the Petaca land grant made by Mexico in 1836. Previous research on New Mexico land grants has documented a region-wide enclosure of common-property following the adjudication period in New Mexico. The waves of enclosures were due to a complex adjudication procedure that proved conducive to commercial speculation. In Petaca, an army of lawyers in the Territory pursued acquisition through legal and extra-legal means that overwhelmed the meager resources of legitimate settlers and the equally meager efforts of federal officials to guarantee fairness in grant adjudication. In addition, throughout the period of adjudication between 1875 and 1899, two Surveyors General and numerous territorial officials owned interests in Petaca, or colluded with those that did, while also holding authority over grant adjudication. Despite claims by the U.S. Congress through the General Accounting Office that adjudication of Spanish and Mexican land grants did not violate Treaty language, this study suggests that, under any criteria, the U.S. violated the terms of the Treaty of Guadalupe Hidalgo in such a way that accommodated the loss of common-property resources throughout the region.

Introduction

In 1848 the United States and Mexico signed the Treaty of Guadalupe Hidalgo thus ending the Mexican-American War. Treaty language required the United States to *inviolably respect* the many Spanish and Mexican private and common-property land grants made prior to US control. Throughout Spanish and Mexican control of what is today the state of New Mexico grants of land to individuals and communities compelled settlement and defined legal and cultural relations in the region. The US-designed adjudication process to evaluate land grant claims proved difficult for subsistence settlers to navigate. Scholarly research has focused on the

problems that confronted land grant settlers seeking patent to grants given under Spain or Mexico (Westphall 1974; Sunseri 1979; Van Ness and Van Ness 1980; Hall 1987; Ebright 1994; Lamar 2000; Montoya 2002). The 1971 Land Title Study conducted by the New Mexico state planning office documented the extent of wide-ranging fraud and speculation in adjudication (White et al. 1971). Westphall (1965, 49) concluded that more than 80% of all legitimate Spanish and Mexican grants were lost. Ebright (1994) calculated only 24% of grants that appeared for adjudication were confirmed.

Land grants remain an important issue in New Mexico, sustained by heirs who remain politically active around the issue. From the organized guerrilla resistance to speculators in the 19th and early 20th centuries (Rosenbaum 1986), to the political and social activism in the 1960s and 70s (Nabokov 1969), direct and occasionally violent opposition to the dispossession of Spanish and Mexican land grants has forced the issue into the national consciousness (Gonzalez 2003).

In 2001, the General Accounting Office (GAO), the research arm of the U.S. Congress, began a study of grant adjudication in New Mexico with an eye toward finally resolving the issue (Poling and Kasdan 2001). In 2004, the GAO concluded "any concerns about the specific procedures that Congress, the Surveyor General, or the [Court of Private Land Claims] adopted cannot be addressed under the Treaty or international law, but only under U.S. legal requirements such as the Constitution's procedural due process requirements… we conclude that these requirements were satisfied" (Sawtelle et al. 2004, 10). Despite the GAO recognition that community land grants were conceived within the rubric of local custom and practice, and not intended to be bought or sold, the GAO concluded that "Congress had discretion in how it implemented the Treaty provisions… Thus the fact that Congress established different standards

for grant confirmation at different times did not indicate any violation of shortcoming" (Sawtelle et al. 2004, 9).

This paper offers a case study of one of the more than 295 land grants made in New Mexico. The Petaca land grant was made to a community of subsistence settlers by the government of Mexico in 1836. The study examines the adjudication process for Petaca between 1854 when the Office of Surveyor General began to evaluate grant claims and 1899 when the Supreme Court ruled on the Petaca case. The study illustrates the barriers to due process that confronted subsistence communities and the effectiveness of commercial speculators, lawyers, and federal and territorial officials in pursuing legal and extra-legal means to acquire Petaca. The study focuses on the events and struggles inside *and* outside the courtroom to illustrate the particular practices of land grant adjudication and speculation. The history of Petaca offered in this study suggests, contra the GAO report, that the United States violated the terms of the Treaty of Guadalupe Hidalgo by failing to provide due process for legitimate claimants. As discussed in this paper, due process violations included willful acts of fraud by territorial and federal officials in an adjudication procedure fraught with unnecessary complexity accommodating the chicanery of commercial speculators.

Methods

Following research related to common-property enclosures in Europe (e.g., Polanyi 1957; Aston and Philpin 1985; Thompson 1993; Hilton 1992) and similar studies focusing on the experience in North America (e.g., Kulikoff 1989; Robbins 1994; Dunaway 1996), this study examines the mechanisms of land tenure changes in New Mexico unleashed following the Mexican-American War. Understanding how legitimate land grants like Petaca were rejected by US Courts requires

careful scrutiny not only of legal frameworks and political networks, but also of the practices and tactics of dispossession. How did lawyers, politicians and speculators accomplish the region-wide dispossession of communal property? Speculating in land grants required placing Spanish-speaking people in the field to acquire titles, locate grant papers, or negotiate legal or purchase agreements with land grant communities. As adjudication procedures changed over time so too did speculation tactics and investment patterns.

The study is based on archival research conducted between December 2004 and January 2006. Extensive land grant collections housed at the New Mexico State Records Center and Archives (NMSRCA) in Santa Fe and the Center for Southwest Research at the University of New Mexico in Albuquerque provided material in this study. The Spanish Archives of New Mexico (SANM) in Santa Fe included official documents covering the granting and adjudication of Spanish and Mexican grants. Additional collections included the private papers of politicians and speculators, Surveyor General reports, Court of Private Land Claims transcripts, and U.S. Supreme Court reports. The story of Petaca reveals the grant was at the center of almost four decades of struggle for control of its extensive and valuable timber, grazing and mineral resources.

The Petaca Land Grant

On the morning of March 25th, 1836, 36 petitioners, led by Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio walked the boundary of the Petaca land grant with the *Alcalde,* or Mayor, of Abiquiu. The petitioners had requested the grant from Governor Albino Perez hoping to establish a community at the northern frontier of the territory.[1] As they walked, the *Alcalde* measured out small, private *solares* for individual home sites, providing each

[1] 29 January 1836 petition of Jose Julian Martinez, SANM 23:225-226

petitioner both access to the river for agriculture and the piñon-juniper uplands for access to the commons and grazing. The *Alcalde* stipulated that, "the pastures, forests, waters, and watering places are in common."[2] After measuring out each lot, the grantees "plucked up herbs, leaped, cast stones, and shouted with joy."[3] From deed transfers and testimony before the Surveyor General and the Court of Private Land Claims, Petaca was settled by this group of petitioners until 1844 when a sudden escalation in Mexican-Ute hostilities forced a region-wide evacuation.[4] As a settler testified later, "there had been a grant there in 1836, but that it was not settled because the Indians were killing always dozens of people at Servilleta."[5]

American military presence ended Ute hostilities by 1848. A group of Petaca settlers petitioned a local Prefect for permission to return to the grant. The Prefect directed the local *Alcalde* in a March 20, 1848 decree to, "go to the point of La Petaca to place in possession all the individuals who are noted down in the grant of said possession which ought to be in the archive under your charge giving the lots which are found vacant to those persons who ask for them."[6]

Grant Adjudication

In 1854 US Congress established the Office of Surveyor General office to investigate and make recommendations on land grants. On February 12th, 1875 Samuel Ellison submitted to Surveyor General James Proudfit a claim for the Petaca grant. Ellison claimed to represent the "heirs and legal representatives of the parties named as grantees."[7] On February 20th, Proudfit produced a sketch map of Petaca (figure 2), writing: "I have no doubt that the papers of original title are

[2] 25 March 1836 Alcalde report, SANM 23: 228
[3] Ibid
[4] 26 August 1896 Court of Private Land Claims testimony of Merejildo Martinez, SANM 48: 600
[5] Testimony of Juan Antonio Pena Court of Private Land Claims (CPLC), CSWR, Thomas Catron Collection reel 18: documents 821-878, University of New Mexico, Albuquerque, New Mexico.
[6] Translation of 20 March 1848 decree of Salvador Lucero, SANM 44: 238
[7] Transcript of 1875 Ellison petition, SANM 51-654-663

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."[8]

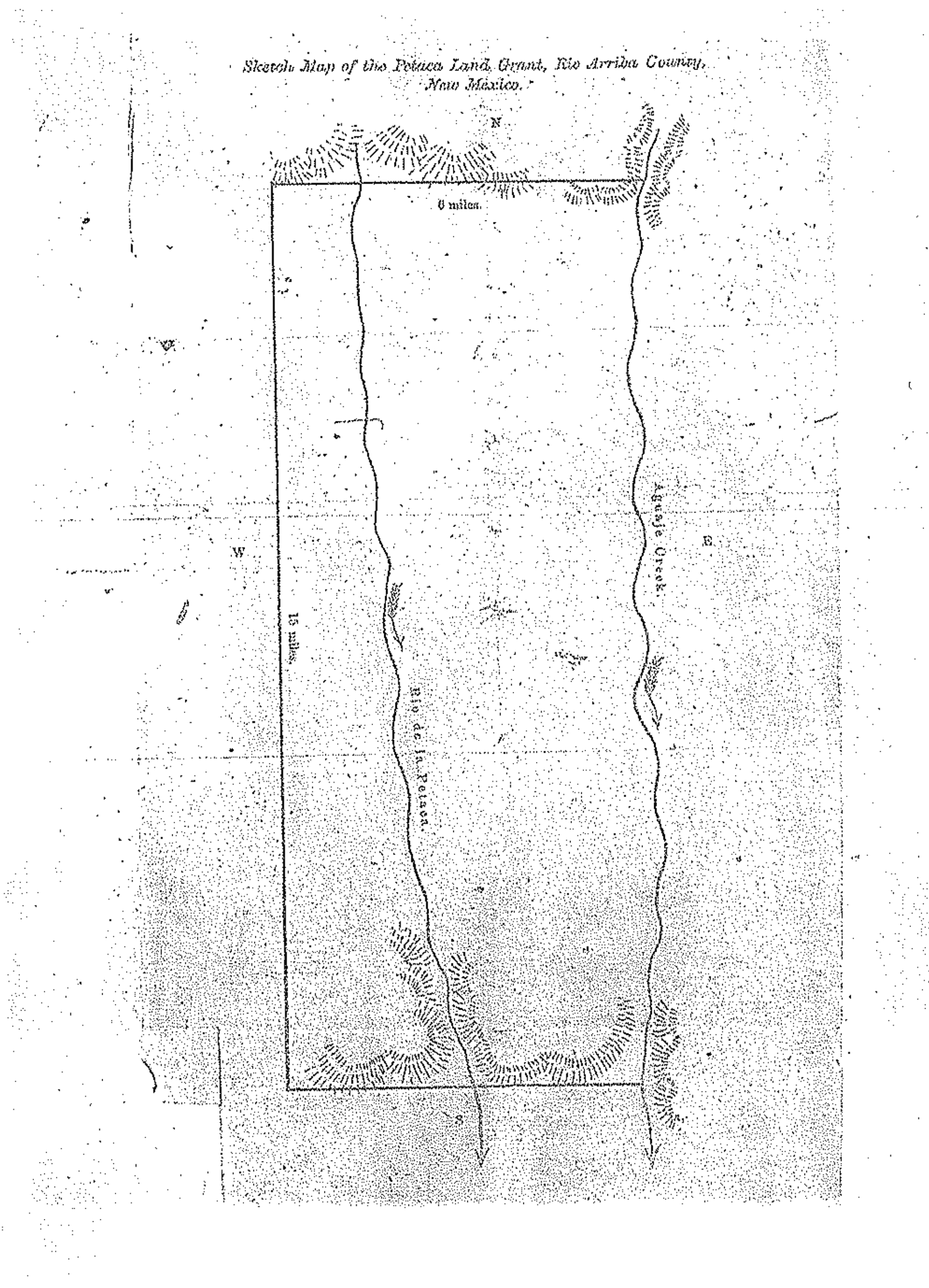

Figure 1. Surveyor General sketch map for the Petaca land grant.

[8] 13 October 1875 Proudfit report, SANM 51: 663

Congress took no action. It is possible Congress refused to act on Proudfit's recommendation based on suspicion of Ellison and Proudfit by the Interior Department.[9] Archival evidence suggests Ellison and Proudfit conspired to adjudicate grants unbeknownest to legitimate heirs. A May 11, 1877 letter to Ellison from a clerk in the office of Colorado Surveyor General Campbell described a similar strategy:

> The SG has rec'd the long looked for instructions in regard to the grant and he will soon be ready to take action… 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]

In correspondence between investors and lawyers in New Mexico, investors hesitated investing in grants without a pending recommendation. The Surveyor General, however, had no authority to consider claims until a petition was filed in his office. Ellison, who held financial interests in land grants, investigated investment opportunities for land grant speculators, and delivered affidavits to witnesses in support of claims,[11] likely posed as attorney to get the grants into adjudication. One indication of this possibility is the implausibility of a claim and a deposition occurring on the same time with a collusive agreement between Ellison and Prodfit. In addition, prior to Ellison's claim no grant deeds circulated. Following Proudfit's recommendation, an active market in Petaca began. An August 1874 letter from a land grant investor to Ellison suggests how Proudfit was able to depose two witnesses on the same day Ellison made his Petaca claim:

> 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

[9] Proudfit's successor, Henry Atkinson was chastised on a number of occasions for irregularities in reports and surveys regarding Spanish and Mexican land grants, and activities outside his office (Ebright 1994, 241). In addition, Proudfit was asked to resign in 1876, months after making his Petaca recommendation (Westphall 1965, 23)

[10] 11 May 1877 letter from the Office of Colorado Surveyor General to Ellison, CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, Folder 2

[11] See CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, folders 1 and 2,

> 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.[12]

In 1876, Proudfit resigned, under pressure from the General Land Office. Henry Atkinson, the most corrupt Surveyor General to hold the office, was selected to succeed Proudfit (Van Ness and Van Ness 1980; Ebright 1994).

On June 4, 1877 Atkinson, at Ellison's request, re-surveyed Petaca to more than 185,000 acres.[13] Prominent ranching and mining speculators, led by Santa Fe attorney Charles Gildersleeve, began purchasing deeds. Ignoring the 36 unnamed settlers, Gildersleeve bought deeds from the heirs of Jose Julian Martinez, Antonio Martinez, and Francisco Antonio Atencio. Gildersleeve sold the Jose Julian Martinez claim to mining speculator William Stout.[14] On August 27th, 1878 Atkinson, at Gildersleeve's request, re-surveyed and enlarged Petaca.[15] On March 22, 1883, the Commissioner of the General Land Office (GLO) in the U.S. Department of Interior chastised Atkinson:

> 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.[16]

Despite these concerns, Atkinson 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, a partner with Atkinson in a firm that traded in land

[12] 11 August 1874, letter from Elder to Ellison, CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, folder 2
[13] 4 June 1877 letter from Ellison to Atkinson, SANM 23: 264-265
[14] Petaca deeds, SANM 49: 284-371
[15] 27 August 1878 letter from Gildersleeve to Atkinson, SANM 23: 280
[16] 22 March 1883 letter from Commission N.C. McFarland, Department of Interior, General Land Office Atkinson, SANM 23: 282-283

grants throughout the territory.[17] Thomson sold to Assistant Surveyor General William McBroom, a man later convicted of land fraud. Gildersleeve acquired the remaining interests of Antonio Martinez from Jose Maria Lucero, a prominent land speculator.[18] In 1883, with the deeds consolidated, Atkinson solicited Chicago investor S.S. Farwell to purchase the Petaca land grant. Farwell's son, M. Z. Farwell, who later acquired the grant from his father, described Atkinson's role in the sale of the land: "[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."[19] In 1883, Farwell hired L. Bradford Prince, a judge and territorial Governor, to investigate the Petaca claim.[20] It's not clear whether Prince was in collusion with Atkinson regarding the Petaca land grant, or in fact, independently offered an opinion on Petaca. Prince was, however, an active speculator, working often with an attorney named Amado Chavez. In 1899 Chavez solicited Governor Prince's assistance in a scheme similar to Petaca:

> 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… 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... If this experiment is successful he will at once organize a company that will be ready to handle any good grant… suggested to him.[21]

[17] Petaca deeds, SANM 49: 284-371
[18] Petaca deeds, SANM 49: 284-371
[19] 7 June 1895 transcript of CPLC testimony. SANM 44: 153
[20] L. Bradford Prince collection, NMSRCA 13988: 4
[21] Letter from Amado Chavez to L. Bradford Prince (nd), NMSRCA, L. Bradford Prince file, 13980: 10

In 1883, Farwell purchased deeds from McBroom and Gildersleeve. In 1887, Farwell purchased deeds from an investor named Hitchcock, who had acquired an interest from Gildersleeve.[22] In an April 25, 1883 letter Farwell informed Prince 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."[23]

On July 28, 1883 Farwell petitioned Atkinson to re-evaluate Proudfit's recommendation recommending the grant to all settlers."[24] On August 1st, 1883, Atkinson supported Farwell's claims, arguing that the named representatives were the sole recipients 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... [i]t 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...[25]

Though no federal authority had yet to rule on the Petaca adjudication, Farwell began to sell use rights for the grant. In 1885 Farwell sold Petaca timber rights to Lowell and Henry Bacheldor, local timber operators. The Bacheldors paid $5,000 to cut 100,000 narrow-gauge railroad ties on the grant. Three years later, the Bacheldors entered into a contract for 100,000 more ties. In 1891 and again in 1892, they contracted to cut 15,000 ties.[26]

In February of 1893, Farwell's attorney requested an injunction against the Bacheldors claiming that: "against the consent of Farwell and without his knowledge, [the Bacheldors]

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

[23] 25 April 1883 letter from LZ Farwell letter to L.B. Prince. NMSRCA, L. Bradford Prince file, 13988

[24] 28 July 1883 letter from S.S. Farwell to Atkinson, SANM 23: 282 and 355

[25] 1 August 1883 report by Atkinson, SANM 23: 287-294

[26] 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

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."[27] In 1894 Farwell sent investigators to the grant who found crews cutting trees throughout the grant.[28] In a November 12, 1895 letter to his lawyer, Farwell complained that "(i)t seems that a man who is inflicted with a land grant is always in trouble… Bacheldor has been slaughtering timber ever since the case was tried last June."[29]

In July of 1895 Farwell sold a ten-year grazing lease on Petaca. The contract allowed a commercial rancher to run a 27,000-head herd of cattle.[30] Farwell sold nearly 4,000 acres in the Petaca for $5,000 to the St. Anthony Crystal Mica Mining Company in October of 1899.[31] Mica mining activity was extensive on Petaca as Gildersleeve and Farwell actively mined throughout the 1890s.[32]

In 1885, the Land Office sought to end rampant speculation in the Territory with the appointment of George Julian as Surveyor General. In a *The North American Review* article, Julian described the influence of speculators:

> They have hovered over the territory [of New Mexico] like a pestilence. To a fearful extent they have dominated governors, judges, district attorneys, legislatures, surveyors general and their deputies, marshals, treasurers, county commissioners, and the controlling business interests of the people. They have confounded political distinctions and subordinated everything to the greed for land. The continuous and unchecked ascendancy of one political party for a quarter of a century has wrought demoralization in the other. [Thomas] Catron is a leading Republican, and [Charles] Gildersleeve, an equally prominent Democrat, but no political nomenclature fits them. They are simply traffickers in land grants, and recognized captains of this controlling New Mexican industry. This tells the whole story. They have a diversity of gifts, but the same spirit. They are politicians for revenue only. (Julian 1887, 25).

[27] 1893 New Mexico District Court petition by Edward Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[28] 7 December 1895 affidavit of Jose Sena, NMSRA, Bartlett collection, Box 2, folder 28
[29] 12 November 1895 letter from Farwell to Bartlett, NMSRA, Bartlett collection, Box 2, folder 28
[30] 3 July 1895 letter from MZ Farwell to Edward Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20
[31] 14 October 1899 letter from Farwell to Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20
[32] 2 March 1898 letter from Farwell to Bartlett, NMSRCA, Bartlett collection, Box 2, folder 20

On December 11, 1885, the General Land Office directed Julian to undertake a review of Proudfit and Atkinson grant recommendations. In an April 17, 1886 report Julian suggested that any strict reading of the Mexican Colonization law of 1824, and the regulations of 1828 suggested that, "the grant cannot be held legally valid." [33] Given the validity of the documents, however, and the importance of local custom in grant making, Julian concluded "justice will be best served by recognizing an equitable title to the land granted." [34]

In January of 1887 GLO Commissioner Sparks "recommended the confirmation of the claim as a community grant for an area not to exceed four square leagues."[35] Despite a fourth official recommendation for confirmation, Congress took no action on the claim. In 1891 the U.S. Congress created the Court of Private Land Claims, charged with the task of adjudicating all Spanish and Mexican land grants made in the new territories. The 1891 Act transferring adjudication authority to the Court of Private Land Claims deleted language that had directed the Surveyor General to consider "the laws, usages, and customs of Spain and Mexico" when offering Congress a recommendation. With this language deleted, The U.S. Attorney for the CPL, Matt Reynolds, adopted a more stringent set of criteria when evaluating grants (Reynolds 1895). The result was an interpretation of Spanish and Mexican law that construed common property systems not as grants of land but as temporary possession permits.

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.[36] On March 3rd, 1893 L.Z. Farwell filed a claim for Petaca. A third claim was filed

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[33] 17 April 1886 report by Julian, SANM 23: 296-305
[34] Ibid
[35] 30 June 1887 report of the Secretary of Interior (as cited in Bowden 1969, 1040-1041)
[36] 17 February 1893 petition, SANM 44: 7-17

two days later by Jose Garcia. The court consolidated the three claims and heard the case in June of 1895.[37] The claim filed by Howard on behalf of Peña, et al., was the first occasion residents of Petaca made an official claim for the land grant. In the winter of 1892 and 1893, Petaca residents had entered into a contract with Howard. In the contract, the attorney received, "*una tercera parte indivisa de su derecho e interes, en y a la dicha merced o sitio, e recompense a dicho Howard por sus servicios* (one-third part to the rights and interests of the grant of land as compensation to Howard for his services)."[38] Howard, along with Amado Chavez, had entered into similar contracts with petitioners on the Piedra Lumbre land grant. After securing a confirmation, Hill filed a partition suit in New Mexico district court.[39] Partition suits, used frequently by attorneys such as Howard and Catron, alienated significant land grant property from grant heirs. While Spanish and Mexican law prohibited the sale of common lands, an 1876 New Mexico Territorial statue established an attorney's right for partition and allowed for the sale of common property at auction. In July 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.[40]

The Court heard testimony in the Petaca case in 1895 and 1896. During the case, Reynolds attacked the claims using a strict interpretation of the Mexican Colonization laws:

> It is contended on behalf of the United States, that if the Governor had any power to make the grant at all, which it denies, still it is an imperfect grant, not having been confirmed by the Territorial Deputation, or proper authority, and that in no

[37] SANM 44: 99-236

[38] 14 January 1893 legal contract for George Hill Howard and Petaca claimants, NMSRCA, L. Bradford Prince collection

[39] NMSRCA, Amado Chavez collection, box 2, folder 17

[40] July 21, 1903 letter from Amado Chaves to George Hill Howard, NMSRCA, Amado Chavez collection

> event, if it be confirmed at all, can it be confirmed for more than eleven leagues. Next, that it was one of the conditions and terms of the grant, that they should settle it within five years, that this grant was not settled until after the occupation of this country by the United States.[41]

Reynolds also claimed that Spain and Mexico never intended to provide title to the common lands. As he argued at trial, "the persons placed in possession are entitled only to the allotments which they received and are not entitled to the lands within the out-boundaries, the disposition of which was retained by the authorities of Mexico, and passed to the United States." Finally, Reynolds challenged the survey, relying on evidence of forgery that, he argued, explained why the boundaries expanded following requests for re-surveys by Ellison, Gildersleeve, and Farwell: "it is contended that the boundaries in this case have been changed. Next, it is further contended that there has been a forgery in this case, than an erasure has been made in the title papers, and that alteration has been made in one of the boundaries, which may be plainly seen by anyone."[42]

The September 5th, 1896 majority opinion found for the residents of Petaca.[43] The court rejected Reynolds' arguments and confirmed Petaca as a community grant. The Justices concluded that "[t]he testimony… shows that Jose Julian Martinez and Francisco Antonio Atencio were a committee on behalf of the proposed settlers to petition for the grant on their behalf. It was not an unusual thing in Spanish and Mexican custom."[44]

Reynolds argued that the grant had not been continuously settled and as such failed to meet Mexican legal standards; however, the court found that:

> The condition of Indian hostilities during all that period necessarily precluded the continuous occupation and cultivation of the land. But there is nothing in the case to show that the settlers did not take the land in good faith, and make every

[41] Transcript of 1896 CPLC trial, SANMI, 44: 99-236
[42] Ibid.
[43] 5 September 1896 Opinion authored by Justice Sluss, SANM I, 44: 54- 67
[44] Ibid

> reasonable effort to occupy and cultivate it, and the fact that there is now found upon the tract a considerable community, in part at least descended from those same original settlers ought to remove any doubt upon that subject.[45]

Reynolds disputed the location of all four boundaries in the Surveyor General sketch map and survey. Again the court disagreed with Reynolds. It found no reasonable dispute, save for the northern boundary. During the Court proceedings, expert witnesses proved the forgery that had occurred during Atkinson's term. Proudfit's sketch map listed Kiowa Mountain, known then as Tio Ortiz Hill, as the northern boundary. Atkinson extended the northern boundary more than 15 miles north to Cerro Colorado, a small hill near the San Antonio Mountain, which Farwell claimed was the real Tio Ortiz Hill. In an 1895 letter to his attorney, Edward Bartlett, Farwell noted that "[a]ll the timber cut since we owned the grant has been cut north of this [Kiowa] mountain, and I would not give $25.00 for the entire portion of the grant lying south of that point."[46]

The Court of Private Land Claims confirmed the grant to the claimants as a community grant to be re-surveyed according to the original sketch map using the lower hill as the northern boundary. Reynolds had six months to appeal the decision. When six months elapsed and Reynolds had not appealed, the claimants assumed possession of the grant. According to the Supreme Court, however, the six-month window during which Reynolds retained the right of appeal commenced only following his office's filing of the CPL decision, despite the obvious conflict of interest such an arrangement created.[47] Nearly three years after the CPL decision, the US Attorney's office finally appealed the decision. It seems plausible Reynolds delayed filing the Petaca decision in the hope that a pending Supreme Court case might offer case law useful to

[45] 5 September 1896 Opinion authored by Justice Sluss, SANM I, 44: 54- 67
[46] 20 February 1895 letter from Farwell to Bartlett, NMSRCA, Bartlett collection, box 2, folder 28
[47] U.S. v Pena, 175 U.S. 500 (1899)

support his common-property theory. In the 1897 Sandoval decision, the court fully adopted his theory related to Spanish and Mexican common land property arrangements.[48] Shortly after the Sandoval decision, Reynolds filed the 1896 CPL decision and officially appealed the case.

The Petaca appeal appeared before the Supreme Court in 1899. The Court reversed the CPL decision based largely on case law that would have been unavailable had Reynolds filed the Petaca decision within the six month window. The Court rejected all claims based on the 1848 petition and ordered the CPL to determine which claimants held title to private allotments in Petaca based only on the 1836 petition. The result was a grant reduced to 1,392.1 acres.[49] The entire Petaca commons fell into the public domain. CPL Justice Wilbur Stone described the consequences of the Petaca decision in a 1904 article:

> [Petaca] had been brought by one of the Farwells of Chicago, who established sawmills and lumber camps in the pineries and for ten years shipped lumber by rail from Tres Piedras to the markets of Colorado and New Mexico, but had reserved the best portion of the pineries for future use. The [Supreme] court found that the original grant comprised only a paltry strip about five miles long and a few rods wide, embracing the little garden patches on the Cañon of Petaca Creek, belonging to some poor Mexicans, who were made all the poorer by having the ownership decreed to them by the court. The great pineries yet untouched were turned over to the Public Domain of Uncle Sam, to be gobbled up by lumber poachers, who will take care that they cut off the best part first (Bowden 1969, 1045)

Conclusion

In the 2004 GAO report, the authors claimed due process had been afforded all land grant claimants before any adjudication decisions were rendered (Sawtelle et al. 2004, 9). The scheming of Ellison and Proudfit and the active speculation by Atkinson in Petaca call this claim into question. By the time the Supreme Court ruled in 1899, grazing, timber and mining speculators had been operating for more than fifteen years, exploiting natural and human

[48] See Ebright (1994) for a discussion of the impact of the Sandoval decision on subsequent community land grant cases.
[49] U.S. v. Peña, 175 U.S. 500 (1899)

resources on the grant. The settlers, with few choices available given the complexities of grant adjudication, entered into legal contracts with George Hill Howard, 18 years after official adjudication proceedings had begun. Had their claims been confirmed, Howard, as in Piedra Lumbre, likely would have filed a partition suit alienating the entire land grant—common and private property alike.

This paper examined the tactics employed by attorneys, federal officials, field agents, and speculators in their efforts to acquire the Petaca land grant. In this study, I focused on the role of territorial attorneys in the dispossession of the Petaca land grant. Historians have so far overlooked their role in land grant dispossession, focusing instead on more prominent speculators. Though prominent figures played key roles in the dispossession of Petaca, it was the job of obscure field attorneys like Gildersleeve and Ellison to manipulate deed transfers, establish onerous legal contracts with claimants, and acquire or shape critical testimony that, in the end, overwhelmed the legitimate claims made by heirs. As this study documents, the spatial tactics of field attorneys guaranteed that legitimate claims could not prevail.

Adjudication procedures offered a conducive legal framework for speculation. The Act establishing the Court of Private Land Claims deleted language requiring the Surveyor General to consider local custom and tradition in grant adjudication, a standard on which Julian relied in recommending confirmation. The change provided US Attorney Matt Reynolds room to strictly interpret Mexican law, establish case law with the Sandoval decision, and argue against confirmation in Petaca. Given irregularities described in this case study regarding due process, adjudication proceedings, and the illegal activities of federal and territorial officials in owning property while, at the same time, holding authority over adjudication decisions, the Petaca land

grant case illustrates how US-designed grant adjudication procedures, using any criteria, failed to 'inviolably respect' the property of Mexican and Spanish grant heirs.

Gildersleeve and Howard, Surveyors General Proudfit and Atkinson, and speculators such as Farwell manipulated land grant adjudication procedures in the decades following the Mexican-American War. The transformation of the land-grant commons from a village-level, subsistence resource to a commercial and industrial reserve is a direct result of the failure of the United States to live up to its Treaty obligations. The adjudication procedures in New Mexico resulted in a wave of enclosures throughout the region. These enclosures were imposed by economic, legal, political, and military structures and established the conditions necessary for commercial timber and livestock production in New Mexico. Fundamental for this transition was the need by Anglo and Hispano elites to wrest control of Spanish and Mexican land grants, as most of the important mineral and timber resources had been granted as common lands during the Spanish and Mexican period. The actions of speculators laid the groundwork for the expansion of industrial development in the region.

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THE TOWN OF VALLECITO DE LOVATO LAND GRANT: A CASE STUDY IN LAND GRANT SPECULATION IN NEW MEXICO

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THE TOWN OF VALLECITO DE LOVATO LAND GRANT: A CASE STUDY IN LAND GRANT SPECULATION IN NEW MEXICO

Introduction

Examining the origins of the dispossession of the commons in northern New Mexico requires understanding not only the political and legal structures that governed the adjudication process during the U.S. territorial period in which common-property land tenure arrangements were adjudicated in U.S. courts, but also it requires understanding the political and economic context of the incorporation of *Nuevo México* into the U.S. following the U.S—Mexican War. This paper examines the particular path of New Mexican social and economic development prior to and following the continental expansion of the United States in the mid 19th century. I do so by examining the political and economic pressures placed on subsistence settlers by commercial speculators. The experience of one such community, the Town of Vallecito de Lovato, a Mexican-period community land grant, serves as a case study illustrating the patterns of speculation that dispossessed legitimate land claims in the region.

The Spanish and Mexican Period, 1598-1848

When Juan de Oñate established the first permanent Spanish settlement in New Mexico in 1598, he marched north from the City of Zacatecas leading a long wagon train of 600 soldiers, settlers and Franciscans followed by a herd of cattle, sheep, and horses sufficient to serve the colony. The Spanish established settlements along the Rio Grande supported by a militarily enforced *encomienda* system of obligatory labor in which Spanish elites extracted labor from Pueblo Indians as a mandatory tribute to the colony. Oñate sent out

small parties of soldiers in a search for the expected riches of gold and silver that motivated settlement. The exaggerated claims of riches by previous Spanish expeditions failed to materialize. The colony and colonization measures began to unravel.

This period of settlement is marked by the harsh treatment Oñate meted out to the indigenous population of Rio Grande Pueblo communities, particularly to villages not accommodating to the Spanish colony. By 1680, the combination of Spanish brutality begun by Oñate, region-wide drought conditions, and smallpox, reduced by half the number of occupied Pueblos in the region (Barrett 2002). In 1680, The Pueblo Revolt, an organized rebellion staged by a coalition of Pueblos, expelled the Spanish colonists from New Mexico until 1692, when Diego de Vargas reconquered the region for Spain. While the promise of riches that compelled Oñate in the 16th century failed to materialize, the region remained strategic to the Spanish as a buffer for more important mineral producing regions in what is today northern Mexico. The failure of *encomienda* practices, however, led the Spanish to alter colonial policies. The Spanish strategy of colonization now included land grants for agricultural communities willing to establish self-sustaining villages in the northern, semi-arid, mountainous regions of New Mexico.

Many of these settlements established after 1692 were organized around communal land uses. The harshness of the climate and frequent conflict with nomadic Indian tribes forced Spanish and Pueblo communities to cooperate in economic and social activities. Throughout northern New Spain, settlers relied on an agro-silvo-pastoral subsistence strategy characterized by the integration of small household agricultural fields irrigated by a system of community-managed *acequias*, or gravity-fed irrigation ditches, along with the grazing of livestock on upland rangelands and forests. The semi-

arid conditions in northern New Mexico made dry land farming nearly impossible. As a result, uplands managed collectively by villages served as important rangelands for sheep, goats and cattle, as well as for collecting fuel wood and building materials, and hunting and gathering. A large body of scholarly research has documented the social networks and reciprocity of the rural villages in the remote regions of what is now the state of New Mexico (Swadesh 1974; Van Ness 1987; Ebright 1987; Rodriguez 1987; Rivera 1998; Jones 1979; Kutsche and Van Ness 1981).

In 1821, Mexico declared its independence from Spain. For the Territory of New Mexico, the new independence created both political and economic difficulties in administering the territory. After having intermittent local control and authority under Spanish rule, local authorities throughout the territory differed in their ability to govern, lacking necessary bureaucratic infrastructure and financial resources. In addition, continued conflict between subsistence land-grant communities and nomadic Indians threatened any colonization strategy for a Mexican northern frontier.

The most pressing issue for the territory after independence related to the shift in legal and administrative function to a newly constructed Mexican system. Despite independence in 1821, it was not until 1824 that the structure of political authority in Mexican States and Territories regarding the disposal of public lands was codified with the promulgation of the Mexican Colonization laws. The period between 1821 and 1824 was a transition period for political and legal functioning in New Mexico. Though few grants of land were made in these first years of Mexican independence, those that were made, such as the Town of Vallecito de Lovato, reflected the laws and practices of the 1812 Constitution under Spain. Augustin Iturbide, the former Spanish military officer and

author of the Plan of Iguala declaring Mexico's independence from Spain, retained portions of the 1812 Constitution as a transitional measure. In New Mexico, local authorities continued to offer grants of land under the stipulations of Spanish law that vested authority in local *ayuntamientos,* or village mayors, and *disputaciones provincials,* regional legislative bodies, to entertain requests for grants and distribute land to citizens. The Vallecitos de Lovato land grant of 1824 is one such example.

Throughout Mexico's short period of governance in Nuevo Mexico, territorial officials struggled to protect the territory from nomadic Indian tribes. Beginning in 1818, Navajo raids on the agricultural land-grant communities along the Rio Grande and Rio Chama increased. Hostilities became a particular problem for the territory. By 1836, New Mexican Territorial Governor Albino Perez noted that the region struggled against "a ferocious war" with the Navajo (Weber 1982, 92). Rather than seek peaceful options for resolving frontier conflict as the Spanish had done (Kessell 2004), Mexican officials pursued military options. Perez led an attack on the Navajo in 1836 with an army of 800 soldiers that killed twenty Navajo and seized more than 5,000 sheep (Hernandez 2003, 162). In addition to Navajo, hostilities with the Apache peaked in the late 1830s, and included slave-taking raids conducted by both sides (Hernandez 2003, 155-157). Weber has argued that the increase in hostilities between Mexican villagers and the Ute, Navajo and Apache in the Rio Arriba region during the waning years of Mexican control stemmed, in part, from rapidly westward-moving U.S. settlement pressures in the early and middle part of the 19th century. These demographic pressures collapsed Indian territory on two sides. In addition, aggressive American traders and merchants at the Mexican-American frontier sought to profit from hostilities by trading arms to nomadic

tribes for pelts and slaves captured in conflict with Mexican villages. "American traders had settled at places like Pueblo, Hardscrabble, and Greenhorn in the Upper Arkansas Valley on the eastern edge of the Front Range of the Rockies, and wantonly exchanged firearms for stolen Mexican livestock" (Weber 1982, 100).

Political turmoil threatened the Territorial Government as hostilities with the Navajo escalated to include also a war with the Ute. Ute conflict intensified after American mercantilists, arrayed along the U.S.-Mexican border, established particularly close trading relationship with the Ute Nation. The intensification in the Ute conflict, which threatened the entire northern frontier in 1844, was the result of bungled Mexican militia efforts to quell the nomadic Indian threat. In an 1844 retaliation raid on a Navajo party suspected of raiding communities along the Rio Grande, a Mexican militia mistakenly killed two members of the Ute tribe. After a failed attempt to negotiate a settlement, a skirmish set the stage for a bloody region-wide conflict. As a result, between 1844 and 1846, the entire Rio Chama valley was abandoned.

The U.S. Territorial Period and Land Grant Adjudication

By 1846, Spain and Mexico, despite political, financial, and military obstacles to settlement, had disposed of the most valuable forest and rangeland reserves in northern New Mexico. Unlike the U.S. settlements that bordered the territory, most of the grants included large village-level commons. In addition, the land grant practices during the Spanish (1598-1821) and Mexican (1821-1848) period of control in northern New Mexico varied according to a constantly shifting set of legal and administrative rubrics covering the disposal of land and resources in the northern territory of New Mexico. The

large land grants in New Mexico and the legal and social frameworks governing their use and distribution would figure prominently in conflicts between the United States and land grant settlers.

Upon declaring war on Mexico in 1846, President James Polk ordered Colonel Steven Kearney to conquer first the northern Mexican territory of New Mexico. During the summer of 1846, Kearney's 1,600-man Army of the West camped along the Arkansas River north of Mexico's northern border awaiting instructions for the invasion. On July 31st, 1846 Kearney issued a proclamation explaining to the Mexican citizens of *Nuevo México* that the coming invasion was "for the purpose of seeking union with and ameliorating the condition if its inhabitants." After an invasion that saw little resistance, Kearney camped briefly in Santa Fe before continuing west. On August 22nd, Kearney signed a proclamation promising, "to protect the persons and property of all quiet and peaceable inhabitants." This proclamation, known also as the Kearney Code, was codified on October 7 as the Organic Law of the Territory of New Mexico. The Code, along with a Bill of Rights drafted by Kearney himself offered legal protections to citizens and their property.

In 1848, the signing of the Treaty of Guadalupe Hidalgo officially ended the Mexican-American War and ceded 50 percent of Mexico's territory, including the Territory of New Mexico, to the United States. Most important in negotiations over the treaty language was the question of the recognition of land grants. Though the treaty of Guadalupe-Hidalgo established that these grants would be "inviolably respected" by the United States, the U.S. Congress and President Polk deleted Article X from the treaty. Article X would have required the United States to recognize, a priori, the property rights

of the recipients of Spanish and Mexican land grants. Yet, United States war boosters had envisioned a moral economy of production in the territory dominated by freehold yeoman farmers rather than what they viewed as feudal arrangements under Mexico. The granting of land, the U.S. argued, supported a patron/peon system in Mexico, based on elite control of property via land grants and control of labor via *partido* production contracts. This argument, however, relied on a conflation of community and private land grants. Furthermore, considering all land grants to be n of feudal arrangements rationalized an adjudication system that offered little legal protection for communal Spanish or Mexican property claims. Given the expansionist motives that fueled the Mexican-American War, it should come as no surprise that the system Congress established privileged fee-simple, private property relations, rather than communal arrangements.

Adjudication and Speculation of New Mexico's Land Grants

Following annexation, the New Mexican territory was not a critical resource in an expanding and soon-to-be continental United Sates. In the six years following the Treaty of Guadalupe Hidalgo (1848-1854), no effort was made resolve the question of land ownership in the territory. In 1854, the U.S. Congress established the office of Surveyor General of New Mexico and charged it with, among other duties, offering a recommendation to Congress regarding the adjudication of Spanish and Mexican land grants as per the stipulations agreed to in the Treaty of Guadalupe Hidalgo. The office of Surveyor General was overburdened, understaffed, and lacked funding for investigation. The process for adjudication under the Surveyor General proved at best onerous, and for

most, impossible. During the 37 years of the Surveyor General, only those most politically connected succeeded in receiving patents to land grants.

The complications confronting the territorial Surveyors General stemmed largely from the lack of resources provided the office and the equal lack of criteria offered as a means to evaluate claims. The office was not provided staff or resources to take depositions. The office could not survey land grants until the Congress had approved claims. An array of legal, cultural, financial, and geographic barriers to accessing the adjudication process led to difficulty for nearly all legitimate community grants. As a result, only recipients of the large, patronage grants, made to commercial interests in the waning years of Mexican control in the territory, had the financial and political capital required to navigate the complex adjudication process of the Office of Surveyor General (Ebright 1993; Montoya 2002). In 1891 Congress transferred adjudication authority to the Court of Private Land Claims. The court, with far more stringent criteria to evaluate land claims, proved to be an even more ideal vehicle through which to impose the political, moral and economic configurations of fee-simple land tenure arrangements in the territory of New Mexico.

A number of scholars have argued that the legal and political incompatibilities between Mexican and U.S. land use law explains the inability of U.S. courts to confirm legitimate Spanish and Mexican grants (Montoya 2002; Lamar 2000). As Montoya (2002, 4) has argued, the failures of U.S. officials and courts to fairly adjudicate land grant claims was a result of an effort "to wrest control of the land and resources." Others have sought the origins of injustice in the machinations of a cabal of lawyers, politicians, judges and federal and territorial officials known as the Santa Fe Ring (Ebright 1993;

Ebright 1987; Westphall 1974; Lamar 2000). Less explored in the context of New Mexico is the regional character of U.S. commercial development at the time.

Following the U.S. invasion, a series of global economic and technological transformations contributed to land speculation in New Mexico in which the Spanish and Mexican community land grants, with their extensive reserves of timber, minerals and grasslands for grazing, came within the reach of land and timber speculators.

At first, the arrival of U.S. military power provided specific protections for rural, land grant communities that Mexican authorities had been unable to provide. Indian hostilities, the greatest threat to frontier settlements, subsided as U.S. military power established and maintained control of the newly acquired territory. Yet, these same protections also opened up the region to speculators. A flood of investment in New Mexico, accommodated by railroad extensions, 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. This speculation, fueled by economic uncertainty in Britain and the eastern United States in the late 19th century, benefited from weak adjudication procedures, and aggressive speculation tactics in New Mexico.

Overwhelmingly, the extension of rail lines, what Robbins (1994, 77) called the "great agencies of change in the interior west" made possible the investment speculation and resource exploitation that characterized 1890s New Mexico. The rail road construction boom of the 1870s and 1880s was accomplished, in large part, with British money pouring into the American West as investors sought a solution to the economic crises confronting European investors (Robbins 1994, 87). Between 1870 and 1890, railway mileage in North America nearly doubled from 560,000 miles to 1, 006,000 miles

of track (Hobsbawm 1975, 54). The investments extending Western rail lines were made profitable by speculation of available, merchantable timber in regions such as northern New

The early 1880s marked an era of speculation in New Mexico that exposed the isolated rural villages in New Mexico to aggressive speculative investment. These economic forces transformed social relations, cultural traditions and production practices. Between 1879 and 1888, four railroads constructed lines connecting the region to wider markets. The Atchison, Topeka, and Santa Fe constructed more than 690 miles of rail connecting Santa Fe to the East Coast and the important mining regions in southern New Mexico. The Atlantic and Pacific laid nearly 200 miles of lines in the early 1880s. The 167 miles of the Southern Pacific crossed through New Mexico along the 32nd parallel and connected southern New Mexico to West Coast markets, through important resource regions in Arizona. The Denver and Rio Grande became the key connection in the north, connecting the Mexican land grant communities, and Ponderosa pine forests, in the Tusas Mountains to Colorado beginning in 1880. By the end of the 19th century, a network of transportation linkages served potential investors intent on acquiring the valuable resources controlled by subsistence land grant communities.

As important as transportation and infrastructure in understanding land grant speculation, perhaps as important was the weak legal structure initially established to adjudicate land grants and the extensive political and economic networks established by territorial lawyers and politicos. An organization known as the Santa Fe ring laid the groundwork for the legal and political access investors required in wresting control of land in the territory.

Stealing Land Grant in New Mexico

Spanish and Mexican land grants, provided they could be confirmed, proved attractive investments, with their extensive resources in timber, minerals, and grazing. The character of investment and land grant adjudication followed a similar procedure. Investors sought out, or were themselves sought out by, New Mexico brokers. These brokers, usually attorneys, handled the administrative requirements to establish commercial operations in the Territory. Once incorporated as a New Mexico investment firm, a local broker consolidated deeds and quieted title to land grants for investors. Often the same brokers that brokered land sales served also as business agents for investment firms, finding timber and mining operators and grazing operations to lease land grant properties.

The brokers were connected to the loose syndicate of land speculators that operated at all levels of political and economic functions in the State. The Santa Fe Ring pursued Eastern U.S. and British investors with brochures touting the rich resources and prime investment potential available in New Mexico (Lamar 2000, 130). The ring scoured their networks and connections in pursuit of capital to purchase timber, mining and grazing lands. Amado Chavez, a mayor of Santa Fe during the territorial period and the first secretary of Education for New Mexico after statehood, was one such broker. 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.

In 1901, Chavez prepared a prospectus of dispossessed 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 offered the Cebolleta grant, exaggerated as "about 30,000 acres of fine pine timber and the balance is excellent for grazing and farming. Great quantities of coal crop out on all sides of the grant." On the 818,000 acre Mora grant, Chavez offered "from 50,000 to 100,000 acres of this grant without having to pay the same for proving it up." Chavez described the scheme in detail to the investors:

> If you will get your friends to employ me with a salary of one hundred and fifty dollars per month and actual traveling expenses I will at once start and secure the interests and get them under contract. I can secure one third of all the interests for proving them up. And will secure contracts to buy the other two thirds very cheap, not to exceed fifty cents per acre. I can in this way secure not less than one hundred thousand acres the work of proving up would be done through Mr. A. B. McMillan as atty. When the work is done I would agree first to have all the money advanced returned to the party who advanced the same and then divide profits as follows. One third to the parties who furnished the money, one third to McMillan for his services in doing the legal work and one third to A C [Amado Chavez] for doing the field 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.[1]

As the above example illustrates, brokers such as Chavez served as the cultural and financial translators for wealthy speculative investors. They rendered the complex legal, cultural, and political matrix of Iberian/Mexican property relations legible to British and East Coast investors, and through their control of the courts and federal officials the translation of Iberian-derived legal structures adopted by the courts contributed to dispossession. Their efforts exposed communal, land grant communities to the predatory efforts of speculative investors. More importantly, they manipulated legal

[1] NMSRCA , Amado Chaves Papers, 1698-1931, Box 1

and political structures so that in many cases, as the following chapter illustrates, land grants were lost before the courts ever had a chance to consider legitimate claims.

Following the Treaty of Guadalupe Hidalgo ending the Mexican-American War, the United States undertook a lengthy adjudication process of Spanish and Mexican property arrangements throughout the newly acquired territory. Scholarly research has focused on the problems that confronted both U.S. officials and land grant settlers seeking patent to grants given under Spain or Mexico (Ebright 1989, 9; Westphall 1974; Hall 1987; Ebright 1994; Sunseri 1979; Lamar 2000; Forrest 1996; Barrett 2002; Montoya 2002; Van Ness and Van Ness 1980). Montoya's (2002) research on the large, Mexican-period Maxwell land grant concentrated on legal frameworks of property rights that characterizes most land grant studies. In the study, she focused on the legal disjuncture between Mexican common property systems and U.S. private property systems that, she argued, explains the dispossession of common resources. The failure of U.S. courts to properly translate Spanish or Mexican land policies stems from the commercial, colonialist motivations of United States intervention in the region seeking to "establish a conquered, colonized, and dependent region" (Montoya 2002, 9). This commercial focus required fee-simple, private property arrangements. U.S. law reflected the property relations of capitalist production and, as such, explained why U.S. courts rendered unfair decisions.

The weakness in treaty language, the subsequent failure of U.S. courts to render fair adjudication decisions, and the continued refusal to reconsider claims of injustice related to land grant adjudication are all closely linked themes well explored in land grant research. Ebright (1994), more than any scholar, has maintained a pointed focus on the

U.S. abrogation of treaty obligations. Similar to Montoya, Ebright argued that the failure of the United States to meet its treaty obligations regarding Spanish and Mexican land grants emerged from the collision of two legal and judicial systems (Mexico and the United States) with vastly different forms of property relations and patterns. "The main reason for [land loss]" he argued, "was that the land grants were established under one legal system and adjudicated under another" (Ebright 1994, 3).

In addition to legal explanations of dispossession related to this collision of Spanish and Mexican communal property relations versus U.S. private, fee-simple property relations, most land grant research emphasized the role of the Santa Fe Ring in the dispossession of land grants. The Ring was a potent political and economic force in New Mexico throughout the 19th century. Historians have paid particular attention to the careers of two prominent attorneys, speculators, and politicians, T.B Catron and Stephen Elkins, in analyses of the Ring and land grant adjudication (Lamar 2000; Westphall 1973; Ebright 1993). Catron and Elkins began legal and political careers in New Mexico in the 1860s. Both held prominent political positions in New Mexico, later becoming U.S. Senators. Catron became the largest landowner in the United States in the late 19th century as a result of his ability to navigate and manipulate the adjudication process for his own personal gain. Both men cultivated an extensive network of territorial attorneys, speculators, and local, regional and national politicians through which to extend land grant acquisitions. Catron, as many Santa Fe ring lawyers and speculators, established and joined numerous corporate entities in the territory as a vehicle for investment in land speculation. 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 (Ebright 1994). In 1886, Catron joined once again 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 exemption claims through fraudulent entries (Westphall 1965).

Uncovering the legal problems of adjudication and Santa Fe Ring political activities provides important insights into the context of land and water dispossession in the region. Understanding how individual land grants were lost to speculators, however, requires careful scrutiny not only of legal frameworks and political networks, but also careful scrutiny of the practices and tactics of dispossession. How did the army of Santa Fe Ring lawyers accomplish the region-wide dispossession of communal property? Despite the importance of political and economic connections and networks cultivated by prominent Anglo arrivals to the territory, speculating in land grants required placing Spanish-speaking people in the field to acquire titles, locate grant papers, or to negotiate legal or purchase agreements with land grant communities. In addition, as this paper documents, speculators confronted two separate adjudication frameworks, the Office of Surveyor General between 1854 and 1891, and the Court of Private Land Claims beginning in 1891. As adjudication changed, so too did the tactics employed by attorneys, federal officials, field agents, and speculators in their efforts to acquire land grants, such as the Town of Vallecito de Lovato land grant.

The Town of Vallecito de Lovato Land Grant

Much can be gleaned regarding the injustices of land grant adjudication by carefully scrutinizing the tactics and practices of a group of largely unknown and overlooked subordinates I refer to as *field attorneys*. In this case study, I focus on the role of field attorneys such as Samuel Ellison, Charles Gildersleeve, Amado Chavez, and George Hill Howard in the dispossession of the Town of Vallecito de Lovato land grant. Historians have so far overlooked their role in land grant dispossession, focusing instead on better-known Ring members. Though prominent figures such as Thomas Catron, Governor L. Bradford Prince, General Edward Bartlett, and Surveyors General James Proudfit and Henry Atkinson played key roles in the dispossession of Vallecito, it was Ellison, Gildersleeve, Howard and other field attorneys who did the day-to-day, field work necessary to speculate in land grants. They manipulated deed transfers, established onerous legal contracts with claimants, and acquired or shaped critical testimony that, in the end, did in the legitimate claims of the actual heirs in both land grants. As this study documents, the tactics of field attorneys working for more prominent Ring members guaranteed that legitimate claims could not prevail.

The question of fairness in land grant adjudication remains an important issue in New Mexico, sustained by land grant heirs who remain politically organized around the issue of land-grant loss in New Mexico. Calls for protection for, or the return of, land grants in New Mexico have a long history in the region. Organized opposition to land speculation began first during the 19th century, when organized peasant resistance to enclosures thwarted the large-scale efforts of commercial grazing interests to appropriate

Spanish and Mexican land grants (Rosenbaum 1986). Renewed activism in the 20th century forced the issue into the national consciousness through direct action and civil disobedience (Nabokov 1969; Gonzalez 2003; Gardner 1971). In the early-1960s, Chicano activists, led by Reies Lopez Tijerina, concerned about the erosion in resource access for forest-dependent Hispano communities, established *La Alianza Federal de las Mercedes*. *La Alianza* organized land grant heirs throughout northern New Mexico through political rhetoric and acts of civil disobedience to intensify protests against the loss of land grants following the Treaty of Guadalupe Hidalgo. Their rhetorical challenges and public demonstrations brought wide attention to the plight of land grant heirs in New Mexico (Kosek 2004), and was successful in establishing the position of the Hispano land grant heir as "a political category representing a cross-referencing of tradition, history, and culture in New Mexico" (Gonzalez 2003, 315).

Prior to the land grant movement of the 1960s, little was known, whether by academics or policy makers, regarding the extent and scope of land grant adjudication injustices. A number of studies of the larger legal and political context of adjudication in territorial New Mexico had concluded that fraud may have been widespread surrounding the adjudication procedures in New Mexico (Westphall 1965; Bowden 1969). Yet it was not until the political pressure of activists in the 1960s that a careful study of land grant decisions explored the details of adjudication. The 1971 Land Title Study conducted by the New Mexico state planning office documented the extent and effect of wide-ranging fraud, speculation, and due process violations in the 19th century adjudication of land grants (White et al. 1971). After the land title study, careful historical scholarship of Spanish and Mexican land grant adjudication following the Treaty of Guadalupe Hidalgo

further explored the adjudication and speculation of specific land grants in adjudication. Ebright (1994) explored Westphall's (1965, 49) claim that more than 80% of all Spanish and Mexican grants were lost to legitimate claimants, by methodically researching a number of individual land grants. Ebright's careful empirical studies found that only 24% of grants that appeared for adjudication were confirmed, with only 6% receiving confirmation before the Court of Private Land Claims. The overwhelming majority of acreage approved by Congress under recommendation by the Office of Surveyor General—more than 2.5 million acres—went to two private grants, the Maxwell and Sangre de Cristo. The amount confirmed to these two private land grants exceeded the total acreage confirmed to all community land grants by the Court of Private Land Claims.

Despite the clear record of injustice, both inside and outside the courtrooms of 19th century New Mexico, only a handful of the nearly 300 land grants in the territory have received careful examination. This paper contributes to this important, but understudied, moment in Southwestern history by investigating the loss of the commons in the Town of Vallecito de Lovato land grant made in 1824. Few previous studies offer an inquiry into land grant adjudication in New Mexico that venture outside legal procedures and treaty obligations in search of answers. Unfortunately, the dearth of historical knowledge on the practices and tactics of land dispossession in New Mexico continues to obscure the full story of how the land grants were lost. A focus on legal explanations alone simply cannot explain why and how some Mexican land grant communities navigated the adjudication process preserving the commons where, for others, common property was lost entirely.

The barriers to due process and equity in land grant adjudication that led to the dispossession of Mexican community land grants are often found not in the legal details and procedures of U.S. courts and adjudication measures, but rather in events and struggles that occurred outside the courtroom. For the Town of Vallecito de Lovato, for example, unscrupulous land speculators, an army of Anglo lawyers adept at manipulating legal adjudication procedures, and two Surveyors General, the Territorial official representing the United States in land grant matters, pursued legal and extra-legal means to acquire titles and legal contracts from heirs. Their actions established the conditions of dispossession of the common lands from the communities dependent on upland resources before legitimate grant members ever had a chance to access the courts. Given such a record, legal histories of U.S. adjudication procedures offer only a limited view of the process of land dispossession and the transformation of Hispano villages in northern New Mexico, and offer a limited view of how and why the land grants were lost.

On February 23rd, 1824, just three years after Mexico's independence from Spain and months before Mexico would codify land laws governing the disposal of the public domain, Jose Raphael Samora, and a group of unnamed settlers submitted a request to the Territorial Governor for a grant of land in the Tusas Mountains north of Santa Fe. The request read as follows:

> I, Jose Rafael Samora, citizen and resident of the district of Ojo Caliente, together with twenty-five individuals of the same district, appear before you with the greatest respect and humility and in due form of law, and state, sir, that there being sufficient land in the Vallecito de Lovato to give us in possession we now ask that in the goodness of your heart you grant us the same, for we have not any place wherein to plant grain for harvesting, whereby we think the others, the residents of said district, will receive no injury.[2]

[2] 23 February 1824 petition by Jose Raphael Samora, Spanish Archives of New Mexico (SANM), roll 23: document 533. New Mexico State Records and Archives Center (NMSRCA), Santa Fe, New Mexico

On February 27th, after a favorable report by local *Alcalde* Francisco Trujillo, Governor Bartolome Baca issued a decree—left unsigned by Baca—granting the Vallecito de Lovato land grant to "Jose Rafael Samora, together with the twenty-five individuals in his petition."[3] On September 22, 1824, Trujillo, "by virtue of the decree of Bartolome Baca" officially placed the petitioners in juridical possession of the grant, measuring out *solares*, or private home sites along the Rio Ojo Caliente were the village would be established. Trujillo,

> measured off to each one fifty *varas* to some, in conformity with the extent of the land; to others one hundred *varas*, and one hundred and twenty-five *varas* to the said Jose Rafael Samora, as principle petitioner, with which distribution they remained well contented and satisfied, there remaining free the so-called *Badito* and *cuestecito* for a common watering place.[4]

In the same document, Trujillo described the boundaries as "on the east, the mesa of the Zorita; on the west the *cuchilla* called *del Valle do los Caballos*; on the north, the source of the said river, and on the south, the *Badito*, where the grant joins Juan Galbis." Appended to the granting documents was a list of the twenty-five settlers placed, along with Zamora, in possession, indicating the amount of land each settler received in *solares*.[5] According to Spanish law, title to private *solares* in community land grants could not be transferred until after a period of five years of continuous settlement. Beginning in 1830, after meeting the requirements of Spanish settlement, a series of land transfers were filed in Rio Arriba County. These land transfers indicate the community established and continuously maintained the community in the years following the

[3] 27 February 1824 order of Governor Bartolome Baca, Santa Fe, SANM 21: 535
[4] 22 September 1824 decree of Alcalde Trujillo, SANM 21: 544
[5] List of Town of Vallecito de Lovato grant recipients (nd), SANM 21: 548

request.[6] In addition, the deed transfers provide further proof that the community was organized around communal management of the uplands, as each conveyance transferred not only private property, but also the rights and obligations for access to the common lands.[7]

Further proof of constant settlement in Vallecito can be found in the granting of the Petaca land grant. Twelve years after the granting of Town of Vallecito de Lovato, the adjacent valley to the east of Vallecito was granted to a group of settlers. On the morning of March 25th, 1836, The *Alcalde* of Abiquiu conveyed the Petaca grant to a group of settlers and described the grant as abutting the Town of Vallecito de Lovato land grant.[8]

The pattern of settlement from the granting of the Town of Vallecito de Lovato in 1824 until the arrival of U.S. troops in 1846 is not entirely clear. From deed transfers and testimony before the Surveyor General, and later the Court of Private Land Claims, the Vallecito de Lovato maintained a continuously settled community from the date of possession in 1824 up until 1844, when Vallecito settlers fled the Tusas Mountains to escape a region-wide escalation of Mexican-Ute hostilities precipitated by a Mexican militia attack on a party of Ute and Navajo.[9] The abandonment, however, was temporary, region-wide, evacuation rather than an abandonment of land rights.

Following the Ute war, Vallecito residents returned to the grant. In December of 1846, however, months before Vallecito was resettled, Jose Rafael Samora, the named representative in the grant papers, died near Ojo Caliente. His wife Maria de Jesus did not

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[6] September 1897 Court of Private Land Claims filing, SANM 48: 587-588
[7] Vallecito de Lovato deed transfers, SANM 48: 635-678
[8] 29 January 1836 petition of Jose Julian Martinez, SANM23:225-226
[9] 26 August 1896 Court of Private Land Claims testimony of Merejildo Martinez, SANM 48: 600

return to Vallecito after the death of her husband. Their daughter, Maria de Jesus, married prior to the return and left having never lived on the grant.[10]

In 1854, the U.S. Congress established the 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 no resources for investigation. The procedure was even more difficult for the heirs to land grants, as the process provided no due process protection regarding adverse claims. Beginning in the late 1850s, the Office of Surveyor General began to receive petitions for individual land grant claims.

On May 20th, 1875, more than 20 years after the Office of Surveyor General was first established, attorney Samuel Ellison submitted to Surveyor General James Proudfit a claim for 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."[11] On the same day the application was made, Ellison and Proudfit took depositions 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 to the U.S. Congress his sketch map (figure 3) and a half-page recommendation for approval.[12]

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[10] Abstract of title to the Vallecito de Lovato grant, CPLC. SANM 51: 676-681
[11] 20 May 1875 Ellison petition, SANM 23: 536-540
[12] 13 October 1875 Proudfit report, SANM 23: 577-578

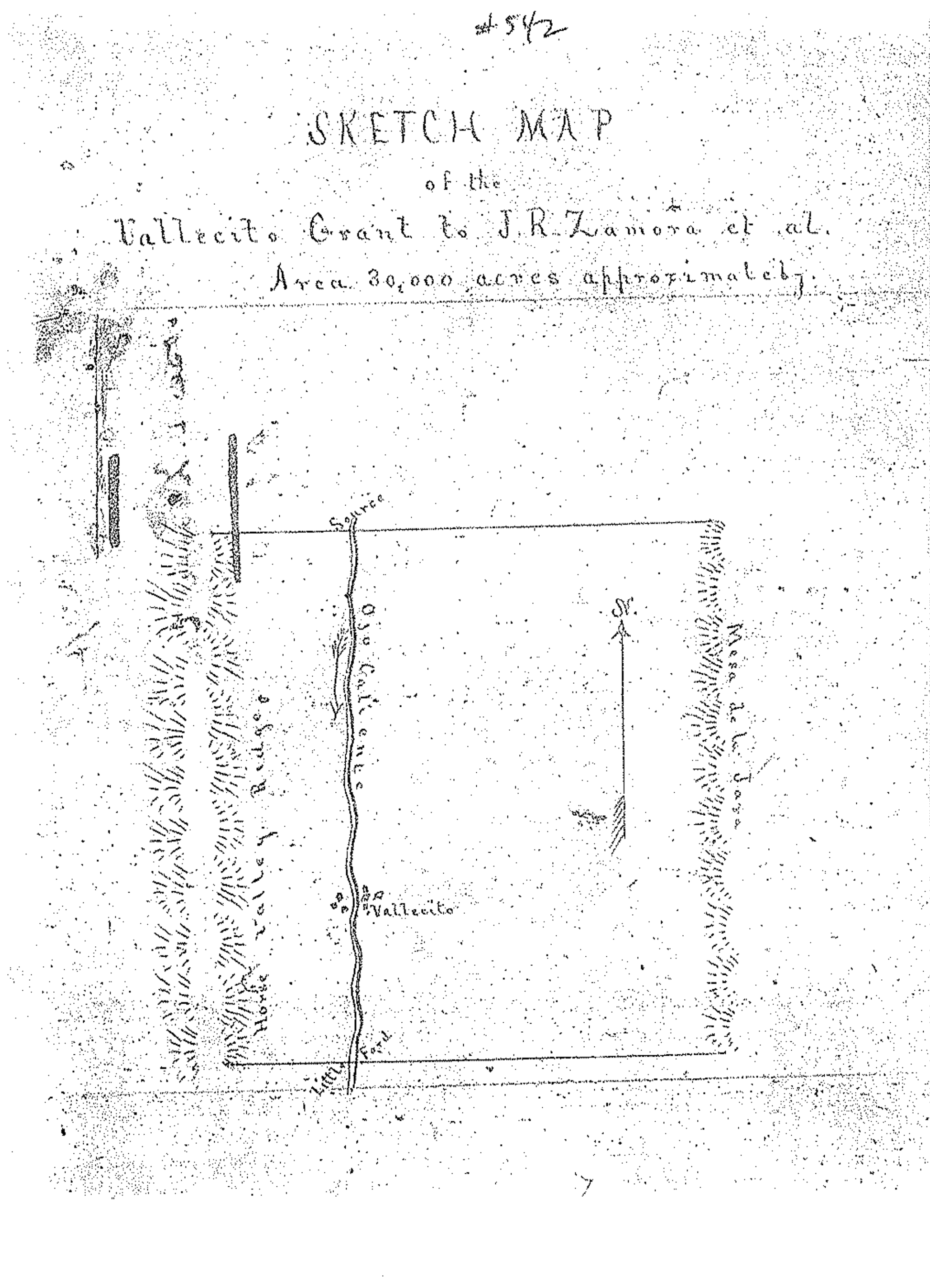

Figure 1. Surveyor General sketch map for the Town of Vallecito de Lovato land grant

Congress took no action. After a series of problematic confirmations, the U.S. Congress had become reluctant to take action on claims with thin supporting

documentation (Montoya 2002; Ebright 1994). In previous cases, the Congress had confirmed claims that later proved fraudulent. It is possible suspicion by the Land Office of Ellison and Proudfit contributed to the lack of action on Proudfit's recommendations.[13] Though Samuel Ellison has escaped careful scrutiny by land grant researchers regarding his role in land grant dispossession, his role in Vallecito—particularly in light of the intense speculation that followed shortly after Proudfit's recommendation—is worth exploring more deeply. Ellison represented unnamed clients, claiming to represent the interests of land grant settlers. In the subsequent legal battles for a number of land grants, Ellison's name never appeared as lawyer for any claimant or claimants. In Vallecito, Ellison made an anonymous claim; Proudfit filed affidavits of witnesses, and followed with a recommendation for confirmation. Following Proudfit's recommendation, speculators began purchasing deeds. In a May 11, 1877 letter to Samuel Ellison from a clerk in the office of Colorado Surveyor General William Campbell, the process is spelled out. 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.[14]

In correspondence between potential investors and territorial lawyers in New Mexico, time and time again, investors hesitated investing in grants that were not, at the very least, recommended for confirmation. Indeed, prior to Ellison's Vallecito claim no

[13] Proudfit's successor, Henry Atkinson was chastised on a number of occasions for irregularities in reports and surveys regarding Spanish and Mexican land grants, and activities outside his office (Ebright 1994, 241). In addition, Proudfit was asked to resign in 1876, months after making his Petaca and Vallecito de Lovato recommendations (Westphall 1965, 23)

[14] 11 May 1877 letter from the Office of Colorado Surveyor General to Ellison, CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, Folder 2

deeds changed hands, following Ellison's application and Proudfit's recommendation, an active market in deeds began. In New Mexico, as in Colorado, the Surveyor General had no authority to consider claims without first a petition filed in the office; therefore no market in land grants could exist without claims being made in his office. Ellison, who held financial interests in land grants, investigated investment opportunities for land grant speculators, and delivered affidavits to witnesses in support of claims[15], filled this critical role in speculation acting as attorney as a means to get the grants into the official adjudication procedures. In an August 11, 1874 letter from a land grant investor named C.P. Elder who corresponded with Ellison regarding land investments, the tactic is further spelled out:

> 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.[16]

In 1876, Proudfit resigned, under pressure from the General Land Office. Congress had yet to act on Vallecito. Despite concerns over the Office of Surveyor General maintaining connections to commercial grazing interests and land grant speculators under Proudfit, Henry Atkinson was selected to succeed Proudfit. Atkinson proved to be the most corrupt Surveyor General to hold the office (Ebright 1994; Van Ness and Van Ness 1980).

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[15] See CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, folders 1 and 2,

[16] 11 August 1874, letter from Elder to Ellison, CSWR, Catron File, Ellison Papers, MSS 29 BC, Series 715, folder 2

While Atkinson and a lawyer named Charles Gildersleeve conspired to acquire the Petaca land grant, they turned their attention also to the Town of Vallecito de Lovato land grant. Gildersleeve brokered a purchase of the Town of Vallecito de Lovato land grant to investor groups from the East Coast. On July 9, 1889, the Boston-based Rio Grande Irrigation and Colonization Company hired Gildersleeve to consolidate the deeds to two New Mexico land grants, the Ojo del Espiritu del Santo, and the Town of Vallecito de Lovato.[17] Gildersleeve was directed to obtain and transfer title for both grants to S. Endicott Peabody, an agent of the Boston firm. Gildersleeve worked quickly and in less than two months, on August 23rd, 1889, brokered the Vallecito de Lovato purchase between John O. A. Carper and Peabody. 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, who never lived on the grant, sold her claim in 1883 to John Pearce, a resident of Santa Fe.[18]

Gildersleeve and Atkinson's activities did not occur without suspicion. Gildersleeve's success in obtaining contracts from potential investors relied on official surveys of large tracts of land and recommendations of approval by federal officials. Atkinson provided these critical services for grant speculators like Gildersleeve. On March 22, 1883, however, 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

[17] Proceedings of the Rio Grande Irrigation and Colonization Company v. Charles Gildersleeve, NMSRCA, New Mexico Supreme Court Archives, Box 59, Folder 643
[18] Vallecito de Lovato deeds, SANM 51: 676-681

> 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 Vallecito survey, and Gildersleeve continued to broker land sales in Vallecito and Petaca. In 1883, Atkinson sold the Petaca land grant to S.S. Farwell, a Chicago-based investor. 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 schematic of the heirs of the three named petitioners, was favorable.[20] It's not clear whether Prince was in collusion with Atkinson regarding the Petaca land grant, or in fact, independently offered an opinion on the 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. In 1899 Chavez solicited then Governor Prince's legal assistance in selling land grants. In a letter between the two, Chavez describes in detail a pattern of speculation that mirrored the tactics that led to the loss of the Town of Vallecito de Lovato land grant:

> 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

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[19] 22 March 1883 letter from Commission N.C. McFarland, Department of Interior, General Land Office Atkinson, SANM 23: 282-283

[20] L. Bradford Prince collection, NMSRCA 13988: 4

> deposit in the bank here subject to your credit some money, say about $750, to be paid by you to his agent on duly certified vouchers for his traveling and other necessary expenses. That is if you accept the proposition and undertake to manage the suit for him. If this experiment is successful he will at once organize a company that will be ready to handle any good grant that may be suggested to him.[21]

In 1885, with the election of Democrat Grover Cleveland to the White House, Washington sought to end the Santa Fe Ring strangle hold in the Territory. Cleveland appointed George Julian as New Mexico surveyor general. Julian was expected to eradicate the influence of the Santa Fe Ring. Shortly after arriving in New Mexico, Julian published an article in *The North American Review*. In the article, Julian discussed the problem of land speculation in New Mexico:

> They have hovered over the territory [of New Mexico] like a pestilence. To a fearful extent they have dominated governors, judges, district attorneys, legislatures, surveyors general and their deputies, marshals, treasurers, county commissioners, and the controlling business interests of the people. They have confounded political distinctions and subordinated everything to the greed for land. The continuous and unchecked ascendancy of one political party for a quarter of a century has wrought demoralization in the other. [Thomas] Catron is a leading Republican, and [Charles] Gildersleeve, an equally prominent Democrat, but no political nomenclature fits them. They are simply traffickers in land grants, and recognized captains of this controlling New Mexican industry. This tells the whole story. They have a diversity of gifts, but the same spirit. They are politicians for revenue only. (Julian 1887, 25).

On December 11, 1885, the General Land Office of the Interior Department directed Julian to undertake a review of a number of grant recommendations made by previous Surveyors General now considered suspect, including the Town of Vallecito de Lovato. In May of 1886 Julian issued a supplementary report on the Town of Vallecitos de Lovato land grant claim.[22] In his report, Julian cast doubt on the veracity of the claims

[21] Letter from Amado Chavez to L. Bradford Prince (nd), NMSRCA, L. Bradford Prince file, 13980: 10
[22] 12 May 1886 report by Julian, SANM 23: 587-594

represented by Ellison and Proudfit. Julian noted that Ellison's petition was unusual in that the attorney did not identify his clients by name. The grant papers appeared suspect to Julian, the granting decree lacked the Governor's signature. "It seems hardly necessary to take time or space to show that a grant was never made in this case. The papers show the fact as plainly and nothing can be said to make it more apparent." Despite this argument, Julian could not overcome the fact that the Town of Vallecito de Lovato had been settled previous to, and during, the U.S. occupation of New Mexico. To overcome this fact, Julian advanced a theory in his report related to the Spanish and Mexican policies covering the common lands:

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

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

A likely reason for the reluctance of Congress to take action on Julian's recommendations lay in its plans to replace the adjudication procedures in place since 1854 with a special court to handle all Spanish and Mexican grant claims. In 1891 the U.S. Congress created the Court of Private Land Claims. The court was charged with the

task of adjudicating all Spanish and Mexican land grants made in the territories of New Mexico, Arizona, and Utah and the states of Nevada, Colorado, and Wyoming. The 1854 act establishing the office of Surveyor General directed the Surveyor General to consider "the laws, usages, and customs of Spain and Mexico" when offering Congress a recommendation as to the validity of grants. In 1891, the Act transferring adjudication authority to the Court of Private Land Claims, Congress deleted this language. As a result, U.S. Attorney Matthew Reynolds, following Julian's theories related to Spanish and Mexican policy related to the common lands, adopted a more stringent set of criteria (Reynolds 1895). The result was an interpretation of Spanish and Mexican law that construed common property systems not as grants of land but rather as temporary permits for possession. In a 1897 Supreme Court decision the Court referenced the adjusted criteria of 1891 and found in a case concerning the common lands of a Spanish land grant, San Miguel del Bado, that Spain offered only possession to settlers, and retained title to the common property of the grant (U. S. v. Sandoval 1897, 167 U.S. 278,). The decision transferred the common property of San Miguel de Bado to the United States public domain, and produced the same result in all Spanish and Mexican community land grants that subsequently came before the Court, including Supreme Court cases regarding the Vallecito de Lovato and Petaca land grant.

Before reaching the Supreme Court, however, the claims first traveled through the Court of Private Land Claims. On February 28, 1893, George Hill Howard filed a claim for the grant on behalf of the residents living on the grant. The selection of Howard proved a bad choice. Howard, along with Amado Chavez, had entered into exactly similar contracts with petitioners in 1894 on the Piedra Lumbre land grant. After securing

a confirmation, Hill filed a partition suit in New Mexico district court.[23] Partition suits, used frequently by attorneys such as Howard and Catron, alienated significant land grant property from grant heirs. While under Spanish and Mexican law, the common lands of a land grant could not be sold, an 1876 Territorial statute established an attorney's right for partition and allowed for the sale of common property at auction. As Ebright has discussed, after partition, "[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"(Ebright 1994, 43). 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."[24] Howard held the exact same contracts with Vallecito residents as he had held with Piedra Lumbre claimants.

On March 2, 1893, S. Endicott Peabody, represented by a team of attorneys that included Charles Gildersleeve, made a second claim for the grant. The day following Peabody's petition, a third claim was made for the grant by Jose Salazar y Ortiz. [25] The Court consolidated all the three claims to be heard together in one case. In addition, the Vallecito grant overlapped with the Tierra Amarilla grant to the Northwest. Catron, the owner of the Tierra Amarilla grant, joined the United States as a defendant against the three claims arguing that the claims of settlers in Vallecito threatened his Tierra Amarilla

[23] NMSRCA, Amado Chavez collection, box 2, folder 17
[24] July 21, 1903 letter from Amado Chaves to George Hill Howard, NMSRCA, Amado Chavez collection
[25] SANM I, 48: 554-560, 586

claim.[26] The Case was tried in October of 1897. In the case, U.S. Attorney Matthew Reynolds advanced a series of arguments regarding the granting of the Vallecito de Lovato and the common property claims to the land surrounding the village. Specifically, Reynolds argued that no authority in New Mexico existed to provide grants of land between 1821 and 1824. The Vallecito de Lovato grant was made after Mexican Independence, but before Mexico promulgated laws covering the disposal of the public domain. Even if the grant was judged valid, Reynolds argued that the language in the granting papers only provided possession, not title, of the grant. The commons, Reynolds argued, should fall into the United States public domain. On the same day as the hearing, the Court found for the United States and Thomas Catron, rejecting the claim and wholly adopting Reynolds' arguments.[27]

Peabody appealed the Vallecito de Lovato case to the Supreme Court. In 1899, the Supreme Court affirmed the decision of the Court of Private land claims. All claims, even those for small, private tracts in the villages on the grant were denied. The entire grant fell was lost to settlers and speculators alike and fell into the public domain.[28]

For Vallecito de Lovato, the Sandoval decision rendered two years earlier established the case law Reynolds needed to support his theory related to Spanish and Mexican common land property arrangements. The claims of the speculators like Farwell and Peabody, and the legitimate claims by residents living on both grants were knocked out.

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[26] SANM I, 48, 578-581
[27] SANM I, 48: 586-604
[28] S. Endicott Peabody v. U.S. 175 U.S. 546 (1899)

Conclusion

The vast resources in the New Mexico provided an almost infinite reservoir for commercial investment in the late 19th century. In his compelling account of the commercial transformation of the American West, William Robbins asserted the West "provided an investment arena for surplus capital, a source of raw materials for the industrial sectors, and a seemingly vast vacant lot to enter and occupy" (Robbins 1994, 62-3). New Mexico, however, posed unique challenges to those seeking its resources. With communal property relations, a limited, proto-mercantilist trade network, and a *partido*[29] agrarian arrangement in the Territory, the reach and development of specifically capitalist conditions of production were partial, dramatic, and to this day remain contested.

The vast federal forests of northern New Mexico, long managed for timber and mining extraction, owe their existence to the failure of the United States to meet its obligations to Mexican settlers under the Treaty of Guadalupe Hidalgo. The process began when the United States failed to fairly adjudicate Spanish and Mexican land grants. Following this wholesale dispossession, federal control of resources (both land and water), and the legal structures of natural resource distribution accommodated the capitalization of nature by commercial and industrial firms. In these ways, the subsistence economies in Northern New Mexico were set up as a dependent, peripheral resource extraction region populated by a potential reserve army of workers. With resources tightly controlled, timber and mining expanded in the region, despite a tendency to use

[29] *Partido* production arrangements in territorial New Mexico were a feudal-like livestock production system in which *partidarios* leased sheep from *patrons*. The system was feudal-like in that large sheep operators managed herds through contractual agreements with smallholders that transferred wealth to *patrons* through the control of rural labor.

nature in ways that generated ecological crises undermining long-term profitability. Industrial firms attempted to construct the political arrangements necessary to externalize social and ecological costs, maintain resource control, and establish a rural, labor market.

For many land grant communities, the enclosures transformed their village level commons into a fee simple, privately controlled commodity sold on European markets. For the residents of Vallecito de Lovato, the adjudication failures of the period placed them in a subservient relationship to federal land managers, such as the U.S. Forest Service. The actions and tactics of lawyers like Gildersleeve, and Howard, Surveyors General Proudfit and Atkinson, and speculators such as Peabody manipulated land grant adjudication procedures in the decades following the Mexican-American War. Despite treaty obligations, the procedures Congress constructed to adjudicate land grants failed to protect the rights and interests of land grant communities. The transformation of the land-grant commons from a village-level, subsistence resource to a commercial and industrial reserve is a direct result of the failure of the United States to honor its Treaty obligations.

From the Surveyor General reports in the 1870s, the Court of Private Land Claims cases in the late 1890s, and the U.S. Supreme Court decision in 1899, the Town of Vallecito de Lovato was at the center of almost four decades of struggle among the settlers, lawyers, politicians and businessmen vying for control of the extensive and valuable resources. The most prominent members of the Santa Fe Ring were involved. Thomas Catron, whose speculative efforts made him a rich and prominent man in the late 19th century and New Mexico's first U.S. Senator in the beginning of the 20th, opposed legitimate claims. L. Bradford Prince, a political opponent of Catron and a Territorial Governor of New Mexico, served as a lawyer representing speculative interests. George

Hill Howard, a prolific land grant attorney adept at manipulating the adjudication process in support of speculative commercial interests, represented settlers in an effort to partition the grant if confirmed. Amado Chavez, the Mayor of Santa Fe in the late 19th century and a member of New Mexico's most prominent family, sought control of Vallecitos as another in a long line of personal investments. Edward Bartlett, an associate of Catron and a lesser known but accomplished land grant attorney in the territory, represented the commercial interests seeking control of Vallecito. Charles Gildersleeve, an attorney specialized in acquiring grant deeds and consolidating titles for commercial timber interests and grazing operations, initiated the acquisition of titles for Vallecito.

Despite overwhelming evidence documenting the grant and evidence corroborating settlement of the land grant, intense speculation, which included the active participation of Territorial and Federal officials, resulted in the rejection of legitimate claims for the Town of Vallecito de Lovato.

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