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San Miguel del Bado and the Loss of the Common Lands of New Mexico Community Land Grants

G. Emlen Hall
University of New Mexico - School of Law

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No United States governmental action has so rankled revisionist New Mexico land grant scholars as the Supreme Court *Sandoval* decision in 1897. In that ruling the court held that Spanish and Mexican law had not vested in New Mexico's extensive community land grants a sufficient title to the unallotted common lands within the grant boundaries to bring those lands within the property guarantees of the Treaty of Guadalupe Hidalgo in 1848.¹ The Supreme Court employed at best opaque Spanish and Mexican legal authority to justify its decision; the historical legal analysis has been roundly, if not universally, criticized

Figure I shows the location of the outer boundaries of the San Miguel del Bado grant before the Sandoval decision finally determined its much more limited extent. The original grant contained approximately 315,000 acres on both sides of the Pecos River just below the Los Trigos and Pecos Pueblo grants immediately to the north. The exterior boundaries shown here were last fixed in 1896–1897, just before Sandoval reduced the grant from 315,000 acres to 5,000 acres.

On that basis, but no one could fail to see the decision’s effect: those New Mexico community land grants not fortunate enough to have secured prior United States confirmation found themselves stripped of title to their unallotted common lands.

Among many other similar cases, United States v. Sandoval involved

the San Miguel del Bado grant. Before the Supreme Court decision, the grant contained 315,000 acres of New Mexico uplands on both sides of the Pecos River, but the ruling reduced the grant to 5,000 acres and placed the balance of the grant acreage, almost 310,000 acres, in the United States public domain. Recent historians either have stated or assumed that this reduction instantly killed the San Miguel del Bado grant and other community grants subject to the Sandoval rule and made them all uninhabitable for New Mexico’s indigenous and subsistence Hispanic people. After the Sandoval decision, the San Miguel del Bado grant disappeared.

In this analysis, the United States walked off with the common


3. Prior to the Sandoval decision the United States had confirmed to non-Indian community grants the community lands of those grants including, among others, the common lands of the towns of Las Vegas, Tecolote, Tome, Atrisco, Chilili, and Manzano. See Bowden, Private Land Claims in the Southwest, 6 vols. (master of laws thesis, Southern Methodist University, 1969). After Sandoval the government considered the possibility of making the ruling retroactive—e.g., of attempting to re-take as public domain the common lands of those already confirmed community grants—but decided against it. See Bond v. Barelas Heirs, 229 U.S. 492 (1914); Ebright, "New Mexican Land Grants: The Legal Background," in Briggs and Van Ness, eds., Land, Water and Culture, 62n.

4. The government had surveyed the exterior boundaries of the grant a couple of times since the establishment of the Office of the Surveyor General for New Mexico in 1854, the most recent having been done in 1896-1897. Retracement and Resurvey Boundary of the San Miguel del Bado, New Mexico, Miscellaneous Item Number 743, RG 49, Administrative Records of the General Land Office, 1785-1953 (Washington, D.C.). In response to the 1897 decision, the Court of Private Land Claims ordered Deputy Surveyor Wendell V. Hall to segregate the land within the San Miguel del Bado grant that grant residents had reduced to actual possession and occupancy. Hall filed his survey December 31, 1903, showing five tracts totaling 5,024 acres as meeting that test. San Miguel del Bado grant, Report 19, File 49 at Reel 24, Frames 105-6, Records of the New Mexico Surveyor General (NMSG).

5. On San Miguel del Bado specifically, see Westphall, Mercedes, 265n; Leonard, The Role of the Land Grant, 49-50n.
lands of New Mexico's community land grants as the real spoils of the despicable Mexican war. Since the Forest Service administered these lands as a conquering army, local residents who suddenly found themselves living under United States rule were left with an insufficient land base to maintain their elaborate subsistence economies. By the time New Deal officials discovered these peoples in the 1930s, they were destitute and on the edge of extinction.\(^6\)

There is a gap in this sad history running from United States adjudication to community destitution. The new history skips the period from the formal decision that stripped the community land grants of title to their common lands to its later effects. In general, and in dealing with the San Miguel del Bado in particular, the community grant specifically involved in the Sandoval litigation, no one has detailed the immediate effects of the Supreme Court's decision.\(^7\)

Those events show that the response to the probably erroneous decision was more complex on the part of all interested parties—land grant heirs, the United States government, the General Land Office, and the nascent Forest Service—than historians have suggested thus far. The United States did not so much expropriate the common lands of the San Miguel del Bado grant as alter the nature of their ownership from municipally owned commons to individually owned private tracts. In the process, those private tracts were not delivered into the hands of outsiders so much as they were taken over as the private property of insiders. In San Miguel del Bado those newly privatized tracts remain the property of the original insiders; in other community grants affected by the Sandoval decision, the newly privatized tracts were subsequently lost to outsiders. In either case, the initial step in the process was not so much land loss as a redefinition of the legal interest in it.

By the time the United States courts had finished with the adjudication of the San Miguel del Bado grant in 1897, it had celebrated its 100-year anniversary. In the century since its founding in 1794, the grant had emerged as a classic example of what a New Mexico community grant was supposed to have been. Legally, its archival documents were in order. These records made clear from the beginning that individual residents took title only to those small tracts of land in the

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settled communities located in the bends of the Pecos River where families had their homes and their irrigated tracts. The balance of the grant, the documents showed, were held for future settlement where possible but, where not, for the common grazing of all (and only) the grant residents.\textsuperscript{8}

This combination of individually held irrigated tracts and communally held grazing lands suits the ecology of the upland terrain where San Miguel del Bado was located and the subsistence economy local residents built on it. In that terrain land could be intensively and individually used only where irrigation was possible near the bountiful surface water source that the Pecos River provided. In that terrain the sparse desert above the irrigation ditches could be used only by many people grazing small herds over very wide areas. In turn, the mixed subsistence economy that northern New Mexicans had adapted involving appropriate and necessary parts of intense irrigated farming and wide-ranging, small-scale stock-raising dovetailed with both the requirements of Spanish law and the demands of the pinched land.\textsuperscript{9}

Even before the \textit{Sandoval} decision in 1897, holes had appeared in this bucolic idyll. Legally, there was an internal debate in the grant, spurred on to be sure by outside speculators, whether the grant’s vast common belonged to the heirs of the original grantees of 1794 or to the corporate San Miguel del Bado community made up of whoever happened to reside there, whether or not connected to the original grantees.\textsuperscript{10} Into that internal debate the United States government had inserted its own concern with the legitimacy of community landholdings in any form.\textsuperscript{11}

In addition to those legal concerns was the ecological fact that San Miguel del Bado had never had the complete range of grasses necessary

\begin{itemize}
\item \textsuperscript{8} G. Emlen Hall, \textit{Four Leagues of Pecos: A Legal History of the Pecos Grant} (Albuquerque: University of New Mexico Press, 1984), 307; Dan Tyler, “Ejido Lands in New Mexico,” \textit{Journal of the West} 27 (July 1988), 24–35.
\item \textsuperscript{10} A companion case to United States v. Sandoval, United States v. Morton, 167 U.S. 278 (1897), involved the assertion that the San Miguel del Bado grant belonged not to the corporate community, as the Court of Private Land Claims decided, but to the heirs of the original grantees in 1794. The Supreme Court rejected both views. For nineteenth-century speculation in the lands of San Miguel del Bado, see Kent H. Gompert, “The San Miguel del Bado Grant: Corruption and Bribery in Northern New Mexico” (master’s thesis, University of New Mexico, 1986).
\end{itemize}
to support even the subsistence stock-raising enterprises on which the grant's existence depended. San Miguel del Bado residents had always had to take their herds outside the grant's boundaries, up to the cool mountain grasses of the Rowe Mesa or the Sangre de Cristos above Pecos, across to the rich grama grass stands that did not begin until the Las Vegas area, again outside the San Miguel del Bado boundaries. But these legal debates and ecological limitations that had emerged in the first hundred years of the grant's history paled next to the effect of the Sandoval decision.

Suddenly in 1904, the grant consisted of only 5,000 acres in five tracts, principally along the Pecos River, representing the intensively settled series of communities in the grant. The balance of the grant, the 310,000 acres above the towns, the village commons, became overnight the public domain of the United States, subject to its public land laws as of 1897 and not subject to the grant's determination of its use.

Under those laws of 1904, the public domain of the United States was open for private acquisition by citizens under either the applicable homesteading laws or mining laws of the federal Congress, but only after the United States had thrown open the area to settlement. The first step in that process involved extending the public land surveys into the region. But for the 310,000 acres between the excepted communities and the surveyed exterior boundaries of the grant, no public land survey had yet carved the terrain into rectangular sections that public land laws required. In effect, the common lands of the San Miguel del Bado grant had become public domain but had not yet been opened to private acquisition pending completion of the necessary surveys.

In the meantime, the rejected common lands of the San Miguel del Bado grant got caught up in the early politics of the creation of national forests. Beginning in the 1890s, first the executive branch of the federal government and then the Congress began "withdrawing" public domain lands from private acquisition and "reserving" them

12. Generally, see A. W. Kuchler, "Manual to Accompany the Map: Potential Natural Vegetation of the Conterminous United States, Vegetation Zone 53" (Bureau of Land Management and National Geographic Society, 1964); deBuys, Enchantment and Exploitation, 225. Contemporaneous evidence suggests that the Town of Las Vegas grant in 1821 was granted to prevent residents of the San Miguel del Bado grant from taking their herds east from San Miguel to the Las Vegas area to forage for grass there. Protest to Town of Las Vegas grant, August 6, 1821 in Report 41, Frame 224, NMSG.

from forms of private acquisition for federal purposes including national forests. The federal government had begun the controversial process in New Mexico; one of the first areas to be "withdrawn" and "reserved" was located just north of the San Miguel del Bado grant in what was then known as the Pecos River National Forest.  

As soon as it became clear that the common lands of the San Miguel del Bado grant would become federal public domain, the federal government moved to slow the process by which those lands would be thrown open to homestead entry by any willing taker. First, the government took its time extending the public land surveys inside the San Miguel del Bado borders. Pending that decision, no one could perfect private rights in the new public lands.

Before the government finished, however, the General Land Office re-entered the picture and temporarily withdrew the land for "consideration as an addition to the Pecos River National Forest." Between 1897 and 1907, various federal officials toyed with the notion of including all or parts of the rejected lands of the San Miguel del Bado grant with the sometimes unclear, protean boundaries of the Pecos River National Forest. Finally, in 1906 the General Land Office, which still had jurisdiction over such matters, formally assigned the task of recommending further extensions of the forest service to Forest Assistant H. O. Stabler.

In a forty-seven-page report, filed with the chief inspector of the General Land Office in Albuquerque in July 1907, Stabler recommended three principal extensions of existing boundaries of the Pecos River National Forest. Two areas, one to the west toward Santa Fe, the other


15. A variety of acts and practices protected possession of federal public domain land prior to the rectangular surveys. The practices included allowing prior possessors a three-month grace period after the opening of the land for private entry in which the prior possessor had a preemptive right to claim the tract. The formal acts included the Small Claims Act in 1891, as amended in 1893, allowed actual possessors of land within rejected Spanish land grants to claim less than 160 acres based on actual possession. See Westphall, Mercedes Reales.

16. See Richards, Commissioner Government Land Office (GLO) to Registrar and Receiver, Santa Fe, May 2, 1905, Record Group (RG) 49 R-2 v. 150, p. 149, National Archives (NA); Acting Commissioner to Representative B. S. Rodey, August 25, 1904, RG 49 R.2 v. 125, pp. 390–91; Order of Withdrawal, General Land Office, November 14, 1907, RG 48 F. 2.5, Part I, NA. For the history of the creation and definition of the Pecos River National Forest, see Hermand, Commission to Work, September 23, 1902, RG 49 E-2 v. 87, pp. 53–54, NA, and Ballinger, Secretary of Interior, to President, April 20, 1910, in RG 48, 2.5, GLO Pecos National Forest, Part I, NA. In general see Pinchot, Breaking New Ground, 263–68.
to the east toward Las Vegas, did not involve the rejected lands of the San Miguel del Bado grant. The third area, however, proposed extending the boundaries of the Pecos River National Forest south, toward and onto the Glorieta and Rowe Mesas, some of which overlapped the western portion of the rejected common lands of the San Miguel del Bado grant.17

Stabler described these lands as containing commercial forest and timberland. Particularly at the higher elevations, the lands also contained good stands of grama grass. But, Stabler argued, since local graziers had badly overstocked these areas (primarily for goats) and local cutters had badly overcut available timber (for railroad ties), these areas would benefit from the added protection that inclusion in the Pecos River National Forest would bring. Although Stabler admitted that “much of the addition is unsurveyed land,” he still estimated that it included 843,900 acres, about 50,000 of which lay within the boundaries of the rejected San Miguel del Bado grant.18

Stabler carefully excluded from his recommendation “the Los Tri­gos as well as a few other small grants, and also the land surrounding the numerous Pueblos . . . along the Rio Pecos,” including the surviv­ing towns of the San Miguel del Bado grant. This land Stabler described as “low rolling hills with numerous deep arroyos” and without either much timber, water, or grass.19 The United States, he implied, need not reserve this public domain land because of the paucity of its resources.

Federal acceptance of the Stabler recommendations in 1909 had two effects on the land base of the San Miguel del Bado grant. When the United States placed the lands on the western edge of the grant under Forest Service control, the decision effectively removed local land grant control over the cool weather grasses growing on the mesa land, once in the grant and now in the forest. But at the same time, this decision ended the “temporary withdrawal” that had affected all the rejected lands of the San Miguel del Bado grant. The final decision to include some in the Forest Service dominion freed the rest for private acquisition under federal law applicable to “unreserved” public domain.20

17. “Proposed Addition to the Prescott [sic] National Forest, New Mexico” by H. O. Stabler, Forest Assistant, July 6, 1907 (Stabler Report) RG 48 F. 2.5, Part I, NA. The title of the report misidentifies the land to which it applies, but the report is filed under the correct national forest name.
20. Chief Inspector, Albuquerque, New Mexico, to the Forester, Washington, D.C., August 2, 1907, enclosing and explaining the Stabler Report. RG 48, F. 2.5, Part I, NA. See Map Accompanying Pecos National Forest Proclamation of Additions and Elimi-
With respect to these public domain lands, residents of the vastly reduced San Miguel del Bado grant stood in a good position. Legally, they could use the special provisions of the Small Holding Claims Act of 1891 (as amended in 1893) that allowed persons who could demonstrate possession of a portion of unappropriated, available public domain land to claim a preemptive right to it. 21 Ironically, prior ownership by the grant had not been converted into a special status under the law governing the acquisition of private rights in the federal public domain.

In addition, the decision to throw open the common lands of the San Miguel del Bado grant to private acquisition unwittingly left grant residents in a favored position ecologically. If the Supreme Court had rejected the grant’s claim to its upland grazing land, it had at least recognized the relatively small acreage where the grant’s towns were located. From a land grant point of view, the decision had deprived the grant of those uplands indispensable to the subsistence economy of the grant, but now it was the public domain point of view that counted. From that new point of view, grant residents owning all the irrigable land as private property now found that they at least controlled all easy accesses to water in the area. That control had not meant much in Spanish and Mexican law,22 but suddenly under United States public land law and practice, that control became the single most important factor in a claimant’s ability to acquire rights in and control surrounding public domain. In other words, if the Sandoval decision had denied residents of San Miguel del Bado rights and privileges under Spanish and Mexican law, it had unwittingly left residents in an advantageous position under the worst of United States land law. Rather than bemoaning the deprivation of rights under the law of New Mexico’s antecedent sovereigns, residents of San Miguel del Bado moved forward to protect their position under the laws of the new sovereign, the United States.

21 Westphall, Mercedes Reales, calls the Small Holding Act a saving grace to the otherwise harsh terms of the Act Establishing the Court of Private Land Claims. Note, however, that grant residents could save only their common lands by claiming them as private property in sizes too small to support livestock production.

22 Most New Mexico community land grants specified that at least the “entradas y salidas” (entrances and exits) and “abrevaderos” (animal access to water sources) had to remain open to all. Owners of riparian lands could not totally block grazing animals from running streams. See Dan Tyler, “Ejido Lands in New Mexico,” 29.
By March 1909, the rejected common lands of the San Miguel del Bado grant not placed in the Pecos River National Forest were “thrown open” to private acquisition under the United States public land laws.23 Elsewhere in the western United States, sharp public land dealers had learned quickly to seize those few tracts on which water was located, knowing that control over those rare water sources would give effective control over a much larger public land area.24 In San Miguel del Bado, grant residents already controlled access to the Pecos River, the area’s primary water source, by virtue of the extremely limited Spanish and Mexican property rights the United States had recognized. Now, in 1909, with the opening of the balance of their grant under the United States’ public land law, residents quickly moved to lock up the other limited water resources in the area. By 1914 grant residents had acquired title to the public land surrounding every other available water source on those grant lands away from the river and not included in the Forest Service domain.

A spring in the Cañon de los Diegos portion of the grant uplands, in Township 12 North, Range 12 East, illustrates the process by which this land was privatized under the new law of federal public lands and the contortions through which that new law put grant residents. In early 1909, almost as soon as the public land formally had been opened for private entry, Teodosio Lobato, a third-generation resident of Sena, New Mexico, one of the old, intensely settled towns on the San Miguel del Bado grant, filed his application for approval of a small holding claim located on a 43-acre tract surrounding the spring.25

The rejection by the Supreme Court of the common lands of the San Miguel del Bado grant meant that the spring and the tract of land around it belonged to the unappropriated federal public domain, but Lobato’s application in 1909 said that his father had possessed the property since 1868. The reality of this long possession went against the myth of the common lands of the San Miguel del Bado grant and showed that, at least for some people and for some tracts, parts of the

23. See for example, BLM Title Records, T.12N R.12E, Historical Plat indicating that the township, part of the old common lands of the San Miguel del Bado grant, was opened to acquisition under the Homesteading Act, December 30, 1909.
24. Gates, History of Public Land Law, 466 ff. Westphall, The Public Domain in New Mexico, 63. Ironically, the Sandoval decision left grant residents in the position of the Chisum clan, who, on the lower Pecos, had used the homestead laws to tie up all accesses to the Pecos River.
common lands of the grant had been effectively privatized well before the Supreme Court had announced that they were not grant commons but federal public domain. In addition, Lobato’s application showed that grant residents were more than willing to bend ancient uses to current law. Specifically, Lobato claimed that he was entitled to the tract surrounding the Cañon de los Diegos spring under the federal law that authorized the United States to patent its land to a person who had possessed that land for twenty years prior to its public land survey.

On receipt of the Lobato application, the General Land Office assigned the task of verifying Lobato’s assertions to Inspector Leslie L. Gillett. On February 27, 1909, Gillett reported that the 43.7 acres around the spring had been fenced for many years and that the presence of building and sheds, constructed by the Lobato family, all indicated the actual residence that the Small Holding Act required.

However, Gillett also reported that area residents objected to Lobato’s application on the grounds that granting the land to Lobato as his private property could deprive others of the traditional use of the spring’s waters, a use that was critical since the spring was the only local water source. “In regard to the water,” wrote Gillett, “I find that the same is included within the S[mall] H[olding] claim of the entryman (Lobato) and hence there is no objection to him doing as he sees fit with the water.”

Once again, United States public land law fundamentally had changed the Spanish and Mexican law that it had replaced. Whereas under the law of New Mexico’s antecedent sovereigns, common use of a water source guaranteed common access, under United States land law, water, especially spring water, went exclusively to the owner of the land on which the spring arose. In allowing Teodosio Lobato’s

26. Gompert, “The San Miguel del Bado Grant,” details some of the early private claims to the grant commons. Initial applications to the GLO provide further evidence that residents themselves had been taking private, unauthorized possession of the grant commons well before the Sandoval decision in 1897.

27. File No. 4383, Affidavit of Applicant Teodosio Lobato, March 15, 1907, and Affidavit of Witness Marcial Urioste, March 15, 1907, RG 49, Serial Patent File No. 109471, NA (Suitland, Maryland).

28. Leslie L. Gillett, GLO to Leroy O. Moore, Chief Field Division, General Land Office, Department of the Interior, Santa Fe, New Mexico, February 27, 1909, in RG 49, Serial Patent 109471, NA (Suitland, Maryland).

Small Holding claim to the land around the spring at the Cañon de los Diegos, the United States had not so much robbed grant residents of their land as it had changed the nature of the grant's interest in it. It might have been communal land and a common water source under Spanish and Mexican law; under United States law it was individually held private property.

Similar claims quickly surfaced for the few available water sources all over the rejected common lands of the San Miguel del Bado grant. Most were based on the provisions of the Small Holding Act of 1891, and most were filled as soon as the public land surveys had been completed for the particular area. Some of the claims gave the General Land Office pause; others involved a bitter competition between different claimants from San Miguel del Bado. But, like the claim of Teodosio Lobato to the spring at the Cañon de los Diegos, resident claims to water sources under United States law involved local claimants in ironic applications of public land requirements to Hispanic land use practices.

For example, immediately after the area's survey, David Urioste and Jesus Serna, residents of the San Miguel del Bado grant, filed overlapping claims to a spring west of the Pecos River and north of the Cañon de los Diegos. Both competitors claimed a right to the tract based on twenty years of exclusive, private possession prior to the completion of the township survey that included the land on July 6, 1911. Both Urioste and Serna employed Las Vegas lawyers to represent their respective claims before the General Land Office. Serna and his attorney based Serna's claim to the area including the invaluable spring on a possession begun in 1884 that preceded Urioste's, which began in 1889, and that was accompanied by a self-executed "título de posesión" that Serna had recorded in 1888. It turned out that Urioste was Serna's brother-in-law, and Serna claimed that he had permitted Urioste to occupy his land after 1889.

Urioste, with the help of his attorney, countered that his brother-in-law had not possessed the tract exclusively at any time since 1884 but, instead, had used the spring in common with all other grant residents. In other words, because Serna had not excluded others from the spring, as he should not have done under Hispanic law, he could not claim a private property right under the new Anglo law.

By way of comparison, Urioste had entered the spring tract in 1889 when no one was in possession of it. He had built a house there, lived in it with his family "for about four months each year," fenced in most of the tract and "used all the land for pasturing his own goats and swine," and, presumably, excluded all other animals and people. This
was "exclusive possession," in the style of Anglo common law, and in the minds of the General Land Office it won out over the much looser, self-serving claims of Jesus Serna. 30

David Urioste's victory signaled once again the privatization of a crucial water source on the once common lands of the San Miguel del Bado grant. From that critical location, Urioste had effective control over thousands of acres of marginal grazing land in the northwest sector of the grant. The allocation of grazing resources in the area, once at least theoretically within the jurisdiction of the land grant board, now became vested in an individual grant resident. Similarly, by 1914 all the springs and other perennial water sources on the grant's common lands had been privatized by residents of the grant. 31

At the same time, individual grant residents moved to obtain private property rights in those grant common lands that offered the richest pasture for stock. For example, a large meadow in the southwest portion of the San Miguel del Bado grant, called the Laguna Seca, 32 offered some of the best grass on the otherwise sparse offerings of the grant's uplands. A natural dam at one end of the meadow provided what Inspector Stoddard had recommended for the portion of the grant retained in Forest Service ownership: stock dams and catchment basins for the retention of what little rainfall reached the land surface. 33 At the Laguna Seca, no grant resident claimed to have perfected an individual possessory right prior to Sandoval and the arrival of the public land surveys as residents had in the area of most springs. As a result, efforts to claim private rights to the Laguna Seca's grass resource could not fall under the provisions of the Small Holdings Claim Act of 1891 but would have to come under another law governing the acquisition of private rights in the open federal public domain.

Grant residents quickly found this outlet in the general Homestead Law, which did not aim to protect previously established bona fide possessory rights in the public domain as the Small Holdings Claim


31. For example, the spring patented June 6, 1913, to Nepomuceno Madrid in NE1/4, Section 14, T.13N, R.14E, Bureau of Land Management (BLM) microfilm patent records, Patent No. 339617 (Santa Fe); and spring patented to Juanita O. Armijo in Section 9, T.13N, R.13E, Patent No. 758935 (Santa Fe).

32. Aurora Quadrangle, New Mexico, San Miguel County, 7.5 minute topographic series (United States Geological Survey 1963).

Act had. Instead, Homestead laws encouraged the first-time settlement and improvement of federal public lands not reserved for other purposes by the federal government. By the time the rejected common lands of the San Miguel del Bado grant opened for individual settlement, the Homestead acts already had a long and hoary history, especially in land west of the 98th meridian where the vision of independent, small farms never had fit well the pinched demands of a semiarid natural regime. Still the Homestead acts represented one way to rescue valuable common lands from the new grip of United States ownership, so grant residents used that avenue at the Laguna Seca and elsewhere on the grant.

On February 15, 1907, Rocita Esquibel and her husband applied to enter and homestead the 160 acres of unappropriated federal public lands in the Laguna Seca portion of the San Miguel del Bado grant. Grant residents apparently had previously used the rich Laguna Seca grasses in common because the Esquibels could show no history of exclusive use. But once the General Land Office had authorized their private possession of what was now the federal public domain, the Esquibels set out to do what the Homestead laws ordered to make the land theirs.

Between February 1907 and March 8, 1908, the industrious Esquibels built “one log house (one room), three wired fence enclosing about 4 acres, one bush corral, and one chicken house” [sic]. They also cultivated twenty-five acres, “more or less,” and, said Mrs. Equibel, whose husband had died in the meantime, the Esquibel family had resided continuously on the homestead since 1907 except “for three or four months each year” when she and her family left “for purpose of cultivating a small farm on the Pecos River and sending her children to school.”

By 1907, the General Land Office should have been accustomed to all manner of exaggeration by settlers struggling with the hostile dry land of the Rocky Mountain West and with the unrealistic demands of a Homestead law driven by an eastern vision of small, independent yeoman farmers. The Esquibels’ application for a homestead at the Laguna Seca may have stretched facts in the same way. But the Es-


36. Homestead Application No. 10712, Rocita Esquibel, Section 27, T.12N, R.14E, February 18, 1907, RG 49, Serial Patent File 199078, NA (Suitland, Maryland).
quibels' creative response to the Homestead law's requirement of con­
tinuous residence on the homestead shows what the federal land laws
had done to Hispanic land use traditions.

The new laws had stood the old practices on their head. Traditionally, Hispanic families lived near their intensely used, irrigated tracts and made occasional and common use of the uplands for forage for their stock. Sometimes they built rough huts where they could spend an occasional night with their animals. But Hispanic families continuously resided in their housés near their fields in the bends of the rivers. 37 Now in order to meet the Homestead law's requirements for acquiring the common lands that grant residents had just lost, they had to reverse the balance of land grant land use and say that they resided permanently in the uplands and only temporarily on the rivers.

So long as the General Land Office would accept the reversal, as it did in the case of Rocita Esquibel's application for homestead entry at the Laguna Seca, the choice as to which aspect of traditional land grant life to emphasize as "continuous" did not make much difference. But the process significantly distorted the relative land use balance that Hispanic accommodation to the semiarid land had struck. More importantly, the process under federal land law allowed the privatization of the good grass land as well as the water resources on the rejected common lands of the San Miguel del Bado grant.

This process of privatization, however, did not stop with the good grass and the available water. Through the first quarter of the twentieth century, residents of the San Miguel del Bado grant continued to reach out under federal public land laws to acquire exclusive title to more and more marginal lands once a part of the grant commons. Federal law encouraged this movement in a series of amendments to the homestead laws that simultaneously relaxed the requirements of actual development while it increased the size of homestead tracts. 38 Using these relaxed standards, residents of the Pecos River towns inside the grant boundaries pushed up and out into the more marginal of the old common lands and secured private title to them as well.

For example, Ribera resident Mariano Ortiz used the provisions of the Expanded Homestead Act to move onto 320 acres of unclaimed land east of Ribera in February 1915. That summer he quickly built a


fifty-square-foot cedar corral and a twelve-by-fourteen-foot adobe house. He fenced another ten acres for his animals. He planted twenty fruit trees and began cultivation of five acres. 39

It was the cultivation on Margarito Ortiz' expanded homestead that gave the General Land Office pause. Even if Ortiz had cultivated five acres on the previously barren land, that amount did not meet the minimum cultivation requirements of the amended federal act. When the General Land Office looked further into Ortiz' actual development, the inspectors found such a dismal situation that they doubted the feasibility of even five cultivated acres. The land on which Ortiz located, the inspector reported, was "rocky, barren, broken and uneven." The topsoil throughout the tract was "poor, thin and unproductive." Not only was the land poor; even worse, it contained no water, and none was located nearby. 40

Still, the General Land Office approved Ortiz' application for a patent to the 320-acre tract, primarily on the grounds that the land was useless to both the government and Ortiz. It probably was. 41 But 1,000 other useless 320-acre tracts had made up the commons of the San Miguel del Bado grant and had well, if not completely, served the needs of a small Hispanic population engaged in relatively nonintensive subsistence agriculture and husbandry.

In the manner of Mariano Ortiz, more and more marginal lands of the old San Miguel del Bado grant were broken into smaller and smaller pieces and delivered into the hands of primarily private parties. The size of the pieces reflected the dichotomy between Hispanic ideas of common ownership and Anglo-American obsession with very small, completely separated tracts. Consistent with that fundamental change, the owners of those tracts became the individual heirs to the San Miguel del Bado grant rather than the corporate community as a whole.

First in regard to water sources, then to the areas of better grass, and finally to those genuinely marginal lands only valuable by virtue of their proximity to other, richer areas, the Hispanic residents of the San Miguel del Bado grant reconquered the common lands that the Supreme Court had said were not theirs. Township by township, they took title under federal public laws to land that supposedly did not

41. Final Certificate, November 8, 1919, in RG 49, Serial Patent File 725969, NA (Suitland, Maryland).
belong to them under the law of New Mexico's antecedent sovereigns. For example, in the 23,040 acres in Township 13 North, Range 14 East in which both David Urioste and Mariano Ortiz had obtained land formerly part of the grant commons, Hispanic residents beginning as early as 1911 and continuing straight through 1971, took title to 15,520 acres or 67 percent of the available land base. In Township 12 North, Range 14 East where lay Laguna Seca, now the private property of Rocita Esquibel and Teodosio Lobato's private spring, Hispanic residents, during the same period, obtained title to 12,577 acres or 55 percent of the old grant land base. Similarly precise figures for the grant as a whole are more difficult to calculate, but Hispanic residents of the area quickly recovered under federal public land law nearly two-thirds of the land that the United States Supreme Court had denied to them under the Treaty of Guadalupe Hidalgo. 42

By and large, they have held onto them to today. 43 As elsewhere, ownership tended almost immediately to consolidate into tracts more efficiently scaled than the ones contemplated by the Homestead Act's utopian scheme. For example, Teodosio Lobato sold the land around his spring in 1911 to Justiano Leyba. Leyba, a successful rancher from the San Miguel del Bado area, bought the tract as part of a series of purchases he made to block up private holding in the grant and on the Rowe Mesa. Sixteen years later, Leyba sold to San Miguel County Sheriff José C. Rivera, a Pecos-based sheep rancher with land-holdings extending from the mountains east of Pecos to the flatlands south of San Miguel del Bado. 44 For the first time, a single ownership encompassed all the grass types necessary to New Mexico ranching, and that ownership still resided in a Hispanic with real ties to the San Miguel del Bado grant. Using the Anglo institution of individual private property, local Hispanic residents began to rebuild tracts on a scale appropriate to the demands of the high desert terrain. Today perhaps ten
prominent San Miguel del Bado families control the lion’s share of the private land that represents the rejected common lands of the San Miguel del Bado grant.\textsuperscript{45}

In the end, the experience at the San Miguel del Bado grant shows that the United States did not so much rob the community lands of the grant as change the nature of the ownership interest in them. What had once been the corporate property of a municipal Spanish and Mexican local government became the private property of the local government’s constituents, the actual residents of the grants.

Every New Mexican land grant is different; each followed a different path. But, in general, all these different roads led in one way or another to the privatization of what once had been common property. In some grants, privatization of common property came at the hands of common law legal procedures that guaranteed to each individual the privatization of his corporate share. In other grants, the privatization came because the United States mistakenly confirmed common property to individuals.\textsuperscript{46} At San Miguel del Bado, privatization came because the United States courts refused to recognize the corporate nature of community land grants, so resident members had to take what they could through United States land procedure.

By any route, the privatization that came to New Mexico land grants followed a trend in both England and Spain.\textsuperscript{47} At San Miguel del Bado, the privatization did not cost astute local residents ownership of or access to what had been the common lands of the Spanish grant. In other grants, privatization quickly cost local residents ownership of and access to those municipal commons. But in both cases the United States did not so much expropriate the land of New Mexico land grants as it did change the way in which those lands were held and ultimately the way that they were used.

\textsuperscript{45} Current San Miguel County tax records show that the Ortiz, Boros, Gonzales, Tapia, Sena, Lobato, Romero, Madrid, López, Urioste, Madril, and Baca families hold large tracts of land within the old grant boundaries.

\textsuperscript{46} For confirmation of a community grant as a private grant, see Ebright, \textit{The Tierra Amarilla Grant: A History of Chicanery} (Santa Fe: Center for Land Grant Studies, 1980). For the partition of the common lands of a confirmed community land grant, see deBuys, \textit{Enchantment and Exploitation}, 171–92. See also Montoya v. Unknown Heirs of Vigil, 16 N.M. 349 (1911) and Bond v. Barelas Heirs.

Figure II shows the effect of the *Sandoval* decision on the land base of the San Miguel del Bado grant. The decision left only those shaded areas immediately adjacent to the Pecos River, approximately 5,000 acres, in grant ownership. These acres represented the historically irrigated tracts in the bends of the Pecos River where grant residents resided. The dashed line between the grant's original eastern boundary and the Pecos River, near the edge of the Glorieta Mesa, delineates that land that was added to the Santa Fe National Forest after the *Sandoval* decision determined that the land was public domain. The balance of the old grant, the land between the new forest boundary to the east and the Pecos River and between the old grant boundary on the west and the Pecos River, was thrown open to acquisition under the public land laws of the United States. This article describes how astute grant residents re-conquered the San Miguel del Bado grant under United States land law.
Recent criticism of the fate of the common lands of Spanish and Mexican land grants in New Mexico under United States rule has all been directed at the idea of title. This criticism is based on the primitive argument that the United States deprived the community grants of something that “belonged” to them. However, the experience at San Miguel del Bado shows that, in the end, the imposition of the full range of United States law to the common lands of the grant did not deprive residents of “title” to the grant’s extensive common lands. Instead, residents ended up owning under United States law what the United States had said was not theirs under Spanish and Mexican law. What they lost was the corporate control of that resource. That loss may have been as important as the loss of ownership, but there is a large difference in the two, as San Miguel del Bado shows.