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The Pueblo Indian Land Grants of the "Rio Abajo," New Mexico

Herbert O. Brayer

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INDIAN LAND
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"RIO
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BRAYER

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THE PUEBLO INDIAN LAND GRANTS OF THE "RIO ABAJO," NEW MEXICO

By

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CHAPTER I

THE LAND POLICY OF SPAIN, MEXICO, AND THE UNITED STATES RELATIVE TO THE PUEBLO INDIANS OF NEW MEXICO

THE PROBLEM

Statement of the problem. Ever since the first white settler entered New Mexico and built his home, there has been an unending stream of controversies and litigation over ownership of the land. Conflicts with the Pueblo Indians began almost as early as the first settlement. Hardly a decade has passed since the *entrada* of Don Juan de Oñate in 1598, that has not had at least one major land dispute involving one or more of the Indian pueblos. Throughout the Spanish period the governors, alcaldes, and even the audiencias in Mexico, were called upon to provide justice for the subservient Indian. In the period of Mexican control, from 1821 to 1846, the disputes were multiplied, and the basis for literally thousands of others, which were to arise in the American period, were laid. After the acquisition of New Mexico by the United States the courts were called upon to pass judgment on the validity of the many existing Spanish land grants, as well as to provide a solution for disputes. Some type of land policy was necessary in all three periods of control. The evolution of this

policy and its application to the Pueblo Indians of New Mexico is the problem of this study.

Necessity for the study. While several brief accounts of the land situation have been published in connection with general histories or archive compilations,[1] no specific study of the Pueblo land problem exists. During the last thirty-five years state and federal courts, congressional boards, and governmental committees have been called upon to investigate the status of the lands of the Indians in New Mexico. Each of these agencies has attempted to make a historical survey in connection with their activities and each has decried the lack of specific information in a form which would be easily available and authoritative. The Supreme court of the United States, in deciding a case of extreme importance to the Pueblo Indians, was forced to admit that erroneous information with regard to the Indians had been given to the court in a previous case, leading to a decision which proved highly costly, in money and land, to the Pueblo

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[1] Chas. F. Coan, A History of New Mexico (American Historical Society, 1925), I, 140-141; George B. Anderson, compiler, History of New Mexico (Pacific States Publishing Co., 1907), I, 383-390; Ralph E. Twitchell, Spanish Archives of New Mexico (Torch Press, 1914), I, 451-483; Herbert H. Bancroft, Arizona and New Mexico 1530-1888, History of the Pacific States of North America (San Francisco, 1888), XII, 673; Adolph F. Bandelier, Final Report of Investigations among the Indians of the Southwestern United States Carried on Mainly in the Years from 1880 to 1885 (Wilson and Son, 1890), I, 192.

Indians of New Mexico.[2] This study is made, therefore, in an attempt to supply, at least partially, the need so often expressed by attorneys, judges, state and federal authorities.

Review of related studies. Outside of general reviews mentioned above there are no related studies to this problem. Such publications as even faintly touch upon the subject will be found in the bibliography.

INDIAN LAND POLICY OF SPAIN

While much has been written of the cruelties perpetrated upon the Indians of the New World by the Spanish conquerors, too little has been said of the strenuous efforts on the part of the officials of the Spanish government not only to control the relationship of Spaniard and Indian, but to provide legal protection for the latter. Almost one entire book of the Recopilación de las Leyes de los Reynos de las Indias is devoted to laws and regulations regarding the Indians.[3] Numerous other acts seeking to protect the Indian are to be found in the decrees, cédulas, and autos in other books in this compilation.

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[2] U. S. vs. Sandoval, 213 U.S. The court was referring to the Joseph decision of 1877, 94 U.S. 614.

[3] Recopilación de las Leyes de Los Reynos de las Indias (Madrid, 1791), Lib. 6.

The ward and guardian relationship is notably in evidence in the great majority of all the laws promulgated in behalf of the Indian. Adolph Bandelier, noted historian and ethnologist, states:

> The Spanish government recognized at an early date not merely that the Indian was a human being, but that he was, after all, the chief resource which the New World presented to its newcomers. The tendency of Spanish legislation is therefore marked towards insuring the preservation and progress of the natives. The first great step in this direction was the promulgation of the celebrated 'New Laws and Ordinances for the Government of the Indians,' finally established in 1543, by which the aborigines were declared direct vassals of the Crown.
>
> . . . Spanish justice was slow, but it was sure, and no official, however exalted his position, escaped the dreaded 'Residencia' or the still more dangerous 'Visita'--on such occasions a functionary would accuse him of cruelty against the natives, there was always some priest ready to drag him to trial for misconduct of some sort.[4]

By the edict declaring the Indian to be a crown vassal, he occupied a position before the law in one sense equal to that of a native of Spain, and yet in many ways he enjoyed a much more favorable position. He became a special ward of the royal government, and the complaints by Spanish settlers were many and loud that everything was done for the Indian and almost nothing for themselves. The Indians enjoyed many advantages, being protected by church and civil

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[4] Adolph F. A. Bandelier, Final Report of Investigations among the Indians of the Southwestern United States, Carried on Mainly in the Years from 1880 to 1885, I, 192.

authorities, being free to marry as they pleased as long as it was according to Christian law. They could not be taken to Spain. They must be Christian, and must be taught the Spanish language. They could plant, breed livestock, keep their ceremonial days, buy, sell, and even dispose of their property, real and personal, under certain governmental restrictions. They were permitted to retain their local customs and government, adding to them the officials required by law, alcaldes, fiscales, and regidores. The priests, prelates, and every officer of the government were required to watch over and protect them. Governors and all judges were commanded under the severest of penalties to protect the Indian and see that justice was given them. At a very early date two special officers whose sole work it was to assist the Indians were provided, the protector of the Indians and the defensor. The protector had general control over all Indian interests, and the defender appeared for the Indians in all litigation. These officers were appointed by the viceroy, or the governor. That these officials were constantly alert seems evident from many records in the Spanish Archives of New Mexico.[5]

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[5] New Mexico Archives, documents no. 7, 668, 1234, 1355, 1356, 1359, 1361, 1363, 1365, 1366, 1380. All documents cited under this title are filed in the Office of the Cadastral Engineer, Santa Fe, New Mexico. Brief summaries are to be found in Ralph E. Twitchell, Spanish Archives of New Mexico, I.

Some of the more important regulations relative to the Pueblos were: Spaniards could not locate a cattle ranch within one and one-half leagues of an Indian pueblo, and the Indians might lawfully kill any cattle trespassing on their lands;[6] Indians could not leave one pueblo and take residence in another; the Indians were required to live in villages, have a fixed residence, and their cultivated and pasture lands were not in consequence, to be taken from them;[7] no Spaniard, mulatto, or negro could maintain a residence in an Indian pueblo, nor could any traveller stop over night at the house of an Indian if an inn was reasonably available.[8]

Notwithstanding these laws, based upon justice and the royal desire to protect the Indians, they were disregarded in many parts of the New World. That the crown was aware of these conditions is proven by a document written by Felipe VI,

> I will that you give satisfaction to me and to the world concerning the manner of treating those, my vassals, and if this be not done, so that as in response to this letter I may see exemplary punishment meted offenders, I shall hold myself disobeyed; and be assured, that if you do not remedy it, I will. The least omissions I shall consider grave crimes against God and against me; the evil conduct tending, as it does, to the total ruin and destruction of those realms whose natives I hold in estimation;

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7 Ibid., Lib. VI, tit. 3, law 9, II, 209.

8 New Mexico Archives, document no. 1340; see also Herbert E. Bolton, Spanish Borderlands (Yale University Press, 1921), 138.

> and I will that they be treated as is merited by vassals who serve the monarchy so well, and have so contributed to its grandeur and enlightenment.[9]

Apparently no Indian land grants were made during the early occupation of New Mexico, for the first record relative to such grants is in 1684 when Governor Domingo Jironza Pétriz de Cruzate was authorized by the crown to make Pueblo grants whenever needed.[10] The royal ordinances, together with the fact that the Spanish population up to 1680 was comparatively small, served to protect the Indians from encroachments and to guarantee their land holdings. Several examples of the protection afforded the Indians by the royal ordinances are:

> We command that the farms and lands which may be granted to Spaniards, be so granted without prejudice to the Indians; and that such as may have been granted to their prejudice and injury be restored to whoever they of right shall belong.[11]

> We command that the sale, grant and composition of lands be executed with such attention, that the Indians shall be left in possession of the full amount of lands belonging to them, either singly or in communities, together with their rivers and waters; and the lands which they shall have drained or otherwise improved, whereby they may by their own industry, have rendered them fertile, are reserved in the first place, and can in no case be sold or alienated. And the judges who shall have been sent thither, shall specify what Indians they may have found on the land, and what lands they shall have left

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[9] Pacheco and Cardenas, Documentos Inéditos del Archivo de las Indias (Madrid, 1871), VII, 290-338.

[10] New Mexico Archives, document no. 1336.

[11] Recopilación de las Leyes de los Reynos de las Indias, Lib. IV, tit. 12, law 9, II, 41.

in possession of each of the elders of tribes, caciques, governors, or communities.[12]

That the Spaniards were developing an Indian land policy even before the authorization given governor Cruzate in 1684 is definitely proved by a royal cedula issued on June 4, 1687, an extract from which is as follows:

> Whereas, as in my Royal Council of the Indies, they are advised that the Marques de Falces, conde de San Estevan, Viceroy of the Province of New Spain, issued an ordinance on May 28, 1567, by which he ordered that each of the Indian Pueblos as might need land upon which to live and sow, should have given to them five hundred varas, and more should it be necessary; and that from that time forward there should not be granted to anyone lands or grounds unless they should be located a thousand varas, cloth or silk measure, away from and separate from the pueblos and houses of the Indians, and the lands five hundred varas removed from said settlement, as is obvious from the evidence of said ordinance which has reached the council--have been contrary to custom, order and practice--have been encroached upon by owners of estates and lands, thereby depriving the Indians of them, and seizing upon them sometimes violently, sometimes fraudulently, for which cause the miserable Indians have lost their houses and towns, which is what the Spaniards seek for and desire; and obtaining these thousand or five hundred varas, which have to be apart from the towns they measure from the church or public house which the people generally have in the center of the place, and which happened to comprehend in them the whole plat of the town, whereby they lose what had been give to them, it being necessary to understand the last five hundred varas by the four winds, which is arranged and commanded in the Laws XII and XVIII, title xii, lib. iv <u>de la Nueva Recopilación de Indies</u>; and on account of the many difficulties, losses, and injuries which thus befell these poor natives, it has been thought proper to command that such Indian Pueblos as might

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12. <u>Ibid</u>., Lib. IV, tit. 12, law 17, II, 44.

need land to live upon and cultivate, should have given them not only five hundred varas, as the said ordinance provides, but whatever might be necessary, measuring them from the farthest limits and houses of the place, outwards by the four winds--thus five hundred varas east, as many west, north and south, leaving always the plat of the pueblos included as vacant place, giving these five hundred varas of land not only to the chief or capital pueblo, but all the rest that may ask for and need them, as well in the pueblos already inhabited as those which might hereafter be founded and peopled;[13] so that thus all might have land to cultivate, and upon which their flocks may graze and feed, it being just and of my royal charity to have a regard for the Indians, who, I am informed, suffer so much injustice and trouble in view of their being those who render more services, and enriching my royal crown and all my vassals; with which design, and seeing what in view of them and the said testimony and Laws XII and XVIII of the Nueva Recopilación de Indies, the acting-general of my said council of the Indies has said and alleged, I have thought it best to order and command, as by these presents I do, that in conformity with the ordinances which the Viceroy, conde de San Esteban formed and decreed on the 24th of May, 1567, and the compiled laws referred to, that there shall be given and assigned generally to all the Indian Pueblos of New Spain for their farming lands, not only the five hundred varas around the place of settlement, and these measured from the church, but from the farthest house of the place, as well eastward as westward as north and south; and not only the said five hundred varas, but a hundred varas more, up to full six hundred varas; and should the place or settlement be more than ordinarily contracted, and should not seem sufficient for all, my Viceroy for New Spain, and my Royal Court of Mexico, shall take care, as I now charge and command them to do, to set them apart a much larger quantity, and they shall mark off and assign to the said place and settlements, as many more varas of land as shall be necessary, without limitation.

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[13] Ralph E. Twitchell, Spanish Archives of New Mexico, I, 475, et seq. This sentence is believed by some authorities to constitute the power under which the governors made the pueblo grants, including that made to Sandia in 1748.

> And as regards the pasture land, it is my will and order that there shall not only be separated from the settlement and Indian places, the thousand varas mentioned in the said Ordinance of May 24, 1567, but even a hundred varas more, and that these one thousand one hundred varas shall be measured from the last house of the settlement or place, and not from the church.[14]

While this royal cedula grants to the Indians the lands six hundred varas in each of the four cardinal directions from the pueblo, constant revision of both the law and general practice increased the size of the pueblo lands to a league, 5000 varas, in each direction.[15] Thus a grant four leagues square, or 17,712 acres, measured from the church, became the accepted size for the Indian Pueblos of New Mexico.[16] The principle of this method of granting land did not originate in the New World. In fact it was quite common throughout Europe to measure grants by laying off a definite distance in each of the four directions from a church or other public building. The same method was

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[14] Loc. cit.

[15] "...The King.--Whereas the ordinances and laws of the Indies, and especially eighth, book third of the recopilation of the same, provide that locations, with sufficient water, land, timber, entrances and exits, for cultivation, be given to the settlements and towns (pueblos) of Indians which may be formed, and a common of one league, where they can pasture their cattle, without their being mixed with those of the Spaniards; . . . Done at Madrid on the fifteenth day of October, one thousand seven hundred and thirteen. I the King: By order of the King. . ." Annual Report of the Secretary of the Interior for the Year 1856 (Government Printing Office, 1857), 333-334. 1713

[16] New Mexico Archives, document no . 1354 and 1380.

applied in a later period to the townships of New England.[17]

It will be noted so far that no definite land grants had been made to the individual Indian Pueblos, although, as we have seen, the authority to make such grants was given Governor Cruzate in 1684. Eleven New Mexico Pueblos, however, possess documents dated 1689 and signed by Governor Domingo Jironza Pétriz de Cruzate, purporting to grant title to their lands.[18] For many years these grants were accepted as authentic by officials and courts alike. Each grant seemed practically identical in wording to the other grants and all were signed by Governor Cruzate and countersigned by "Don Pedro Ladron de Guitara" as secretary of government and war. The United States surveyor-general approved the "grants" in 1856 and recommended that the congress of the United States confirm the Pueblo lands.[19] This action was taken by congress and approved on December 22, 1858.

In the last decade of the nineteenth century,

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[17] Perhaps the first mention of this method of granting land is to be found in the Old Testament; "And ye shall measure from without the city on the east side two thousand cubits, and on the south side two thousand cubits, and on the west side two thousand cubits, and on the north side two thousand cubits; and the city shall be in the midst; . . ." Numbers XXXV, 5.

[18] Jémez, Acoma, San Juan, Picuríes, San Felipe, Pecos, Cochití, Santo Domingo, Zía, Laguna, Zuñi.

[19] Annual Report of the Secretary of the Interior, for the Year 1856 (Government Printing Office, 1857), 307-334.

Mr. Will M. Tipton, expert investigator for the Court of Private Land Claims, made a study of the Pueblo land grants and after exhaustive research declared all of the supposed "Cruzate grants" to be spurious. In the first place, all the grants were countersigned by Don Pedro Ladrón de Guitara, whereas no such individual had served as secretary of government and war during the Spanish period. The correct name of Governor Cruzate's secretary was Pedro Ortiz Niño de Guevara. Secondly, when the signatures at the end of the "Grants" were compared with official documents on file in the Spanish Archives of New Mexico and in the Museum of New Mexico in Santa Fe, it was found that the signatures were counterfeit. Thirdly, the grant to Laguna was made ten years before the Pueblo was even founded. Fourthly, various parts of the spurious documents were found to have been taken from a book entitled Ojeada sobre Nuevo Mejico, written by Antonio Barreyro (Barreiro) in 1832.[20] By the removal of these documents as the legal basis for the Pueblo grants, the royal ordinances previously cited become the fundamental basis for the Pueblo land grants of New Mexico.

In the days of the first settlement of New Mexico, the Indians were permitted to sell their lands under certain

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[20] Ralph E. Twitchell, Spanish Archives of New Mexico, I, 477-483. Barreiro's work was translated by Professor Lansing B. Bloom and published in the New Mexico Historical Review in 1928.

specified conditions. This authority is found in the decree of Felipe II, March 24, 1571, by the terms of which it was ordered that when the Indians desired to sell their property, real or personal, it must be sold at auction in the presence of the alcalde, after the expiration of thirty days in the case of real estate, and that any sale which did not meet with these requirements was invalid and of no effect.[21] It was also ordered that the sale and distribution of lands to the Indians should be made in such a manner that there should be appropriated to them a surplus over and above what they might strictly lay claim to; and that the lands upon which they should, by their personal industry, have made improvements, whereby their fertility was increased, should in the first place be set apart for them and in no event should they have the power to sell or alienate them.[22] In unequivocal language, an edict of the Royal Audiencia of Mexico City, adopted in 1781, declares that under no pretext whatever shall there be executed any sales, mortgages, or leases, or other species of land alienation by Indians unless such sale, lease, or other mode of transfer should first have received the license of the superior government, the general court of the natives, or the Royal Audiencia, upon proof of

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[21] Recopilación de las Leyes de los Reynos de las Indias, Lib. I, tit. 6, law 27.

[22] Ibid., Lib. IV, tit. 12, law 18.

the necessity and utility thereof, with a previous hearing of the fiscal, and after a full compliance with all the legal requirements. All magistrates and clerks were prohibited from approving or authorizing any sale or lease unless a license was obtained, under penalty of fine and loss of office. Any such instrument made, it said, would be immediately nullified, with an additional penalty that the vendors, lessors, and mortgagors, and the purchasers, lessees, and mortgagees should be condemned to lose the lands, which would then be given to needy persons who would observe the laws.[23] It is clear from such ordinances that only the higher officials, the governor, captain-general, and viceroy, could make Indian grants and validate Indian sales. The alcaldes are specifically denied the right to function in either of these two cases. The importance of this act is evident under the American regime when attempts were made to validate land sales by the Indians made without proper sanction.[24]

Summarizing the policy of the Spanish government relative to the lands of the Pueblo Indians of New Mexico the following facts are important:

1. The Pueblo Indians of New Mexico were considered wards of the Spanish crown.

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23 Mariano Galvan, Ordenanzas de Tierras y Aguas (Paris 1868), 94-98.

24 See San Felipe Pueblo, "Algodones Controversy," page 115.

2. The fundamental legal basis for the Pueblo land grants lies in the royal ordinances. The 1689 grants purporting to convey land to the Indians are spurious.

3. Only the viceroy, governors, and captains-general could make grants to the Indians, and only these officials had the authority to validate sales of land by the Indians.

4. All non-Indians were expressly forbidden from residing upon Pueblo lands.

5. The Spanish government provided legal advice, protection, and defense for the Indians. These officials had the authority to appeal cases directly to the Audiencias in Mexico.

6. The Indians had prior water rights to all streams, rivers, and other waters which crossed or bordered their lands.[25]

7. The Pueblo Indians held their land in common, the land being granted to the Indians in the name of their pueblo and title being held in severalty.

THE INDIAN LAND POLICY OF MEXICO

1821-1846

The period of Mexican control of New Mexico, while comparatively short when compared with the period of Spanish rule, produced complicated and far-reaching problems with regard to Pueblo lands. The Plan of Iguala, adopted by the revolutionary government of Mexico on February 24, 1821, while New Spain was theoretically a part of Spain, declared:

That all the inhabitants of New Spain without

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[25] Recopilación de las Leyes de los Reynos de las Indias, Lib. IV, tit. 12, law 17, II, 44.

> distinction, whether Europeans, Africans, or Indians, are citizens of this monarchy, with a right to be employed in any post according to their merit and virtues and that the person and property of every citizen will be respected by the government.

These principles were recognized in the Treaty of Córdova on August 24, 1821, and in the Declaration of Independence on September 28, 1821. Two subsequent decrees by the Mexican congress, February 24, 1822, and April 9, 1823, confirmed the principle of racial equality. By an act of September 17, 1822, to give effect to the Plan of Iguala, it was provided that "In registration of citizens, classification of them with regard to their origin shall be omitted and that there shall be no distinction of class in the parochial books."[26]

The importance of these acts lies in the fact that apparently the Indians were to be considered as citizens. The seriousness of this situation is immediately evident. If the Indians are citizens in a broad sense, then they are able to sell, trade, or otherwise alienate their land without the consent of any authority as required during the Spanish period. This is exactly the stand taken by the territorial courts of New Mexico and the supreme court of the United States for almost a half century after New Mexico became a part of the United States.

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26 United States vs. Lucero, 1 N. M. 422.

While there is no question that the acts of the Mexican people did confer citizenship on the Indians, there is a serious doubt as to just what is meant by citizenship. Let us admit that the Indians were "Mexican citizens," but does it necessarily follow that such citizenship had no abridgments, no reservations, no disabilities, and that in the matter of land alienation all disability was removed? Are infants, children, idiots, lunatics, and spendthrifts not citizens? While there can be no denying that these dependents are citizens, yet certain definite limitations or restraints are placed upon this citizenship. The courts of the United States were to seek long for a solution to this problem before the answer finally was made clear.

That the Mexican government intended no change in Indian status seems perfectly clear, in the light of several documents in the Spanish Archives of New Mexico. In the journal of the provincial deputation are many items of interest relative to the lands of the Pueblo Indians, the efforts of the people to secure title to some of them, and the disposition of the Mexican authorities is reflected in these entries. That the authorities were governed by laws and decrees which had originally been promulgated by the Spanish officials is evidenced by the action of the deputation in 1825, for after considering a petition of the Pecos Indians, asking that they be declared to be the owners of

the land one league in each direction from their pueblo, it was decided to refer the matter to the supreme government for interpretation of Section 5 of the law of November 9, 1812.[27] In the same year there was considered a petition by Miguel Rivera and others in regard to lands on the Pecos river which had been partitioned among them by the alcalde of El Vado by order of the jefe político, and from which they had been ejected. It was decided that the parties must be governed by the decision of the deputation of February 16, 1824. In discussing the matter, the question was raised as to whether the Pecos Indians could sell their lands or prevent the deputation from making donation of those lands which they claimed to own, but were not cultivating. The deputation ruled that such donations had been rejected in accordance with Section 5 of the law of November 9, 1812, which was a Spanish and not a Mexican law.[28] This would seem conclusive evidence that the Mexican officials in New Mexico considered the status of the Indians to be unchanged.

It must be noted, however, that during the Mexican period a laxity in the enforcement of existing regulations with regard to the Pueblo Indians led to a great many cases of illegal alienation of lands. This was not due to any

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[27] New Mexico Archives, document no. 1291.

[28] Ibid., Leaf 41, 2.

change in the organic law, but was the result of careless and corrupt petty officials who administered the law.[29] The local alcaldes were the chief offenders in this regard. Owning land themselves and usually desirous of obtaining more, it was not uncommon for these minor officials to act in collusion with neighboring settlers to obtain land from the Indians without consent of the higher authorities. One must be careful not to accept this as a legal change, for there exists no documentary evidence to support such a view.

In summarizing the policy of the Mexican government to the Indian land problem these observations seem evident:

1. That the Pueblo Indians of New Mexico were still considered wards of the government even though they were given the title "citizens."

2. Only the most important of the governmental officials could authorize the sale of Indian lands. That the local officials in New Mexico continued to exercise the same powers as they had during the Spanish regime throughout the entire period of Mexican sovereignty.[30]

3. That the Spanish laws in force previous to 1821 relative to the Pueblo Indian and to land policy remained in full force.

4. That because of the laxity on the part of local officials during the Mexican period a great many non-Indians were able to obtain holdings on

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[29] New Mexico Archives, document no. 1375. This document gives a good example of the corrupt local officials. Don Ignacio Sánchez y Vergara served as alcalde and protector of the Indians. The New Mexico Archives contain two petitions by Vergara for land near the pueblos of Santa Ana and Sandia.

[30] Ibid., documents no. 1369, 1370-1374, 1378.

Indian lands. The legality of such holdings needs little consideration, but the failure of the Mexican government to take action left the problem up to the United States after 1846.

5. That the title to the pueblo lands remained in the name of the individual pueblos, and that no individual Indian held title to any portion thereof.

THE LAND POLICY OF THE UNITED STATES RELATIVE TO THE PUEBLO INDIANS

When the United States acquired the territory of New Mexico under the treaty of Guadalupe-Hidalgo in 1848, it was confronted with an Indian problem for which it had no precedents. Since the very inception of the government of the United States, all Indians had been considered wards of that government. The fundamental principle upon which this early policy was developed was the assumption that the Indian was a savage requiring disciplinary control. Up to this date the United States had adopted the policy of creating new reservations whenever necessary, and when the press of civilization became too strong, the Indians were settled on new lands to the west without much regard for their own feelings in the matter. While it is true that laws were made to prevent the white settler from entering Indian lands, yet such laws were not primarily for the protection of the Indian, but rather for the protection of the white settler whom the government could not guard in such

areas.[31] Since there was already a large Mexican population this policy could not be applied in New Mexico.

Officials of the new government were also confronted with an unprecedented situation with regard to the Indian Pueblos. Here was a sedentary people with permanent villages, and with large areas of land to which was claimed a simple title. Would the traditional policy apply to these Indians in the same manner that it applied to the nomadic tribes of the United States?

The most serious problem confronting the United States in determining its Indian policy with regard to the Pueblo Indians developed as a result of the Treaty of Guadalupe-Hidalgo. Section six of this treaty bound the United States to recognize the full rights, property and otherwise, of Mexican citizens. Because of the action of the Mexican government in declaring the Indians to be citizens, the development of a permanent Indian policy relative to the Pueblo Indians was delayed by the United States until 1913.

In order to investigate the land situation in New Mexico so that the provisions of the Treaty of Guadalupe-Hidalgo might be carried out, the congress of the United States created the office of surveyor-general for New Mexico.

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[31] Non-Intercourse Act of 1834, 4 Stat. at Large, 728.

This official was specifically charged with investigating and making a report,

> . . . in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos respectively, and the nature of their title to the land; such report to be made according to the form which may be furnished by the secretary of the interior; which report shall be laid before congress for such action therein as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of 1848, between the United States and Mexico.[32]

In accordance with these instructions the surveyor-general made a thorough investigation of the New Mexico pueblos. He found twenty-one pueblos in all, containing 8000 Indians. He recommended to congress confirmation of titles to seventeen pueblos which he declared were bona fide.[33] On December 22, 1858, congress confirmed the pueblo grants; and the general land office eight years later, November 1, 1864, issued patents to the Indians.[34] No sooner had the treaty of Guadalupe-Hidalgo been signed than there developed an unending stream of controversies over the right of the Indians, formerly under Mexican sovereignty, to alienate their land without consent of the government. Non-Indian

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[32] 10 Stat. at Large, 308.

[33] The spurious Cruzate grants of 1689 served as the basis for the surveyor general's recommendation. Annual Report of the Secretary of the Interior for the Year 1856, 307-334.

[34] 11 Stat. at Large, 374.

settlers and purchasers took the stand that the Indians under the Mexican government had been citizens with all the rights and privileges of citizens, and could therefore sell or otherwise dispose of their land as they saw fit. The territorial courts were called upon in numerous cases to provide a solution to this problem. In almost every decision during the territorial period, the courts held that the Indian was to all intents and purposes a citizen with all the rights of such a state. A summary of the decisions of the territorial courts illustrates the status of the Pueblo Indian from 1848 to 1876:

> The Pueblo Indians of New Mexico were, at the date of the treaty of Guadalupe-Hidalgo, citizens of the Mexican republic, and by virtue of that treaty became citizens of the United States, none of them having elected to retain their Mexican citizenship; their property rights are guaranteed by the treaty equally with those of other Mexican citizens in the territory. U. S. vs. Lucero, 1 N. M. 422; U. S. vs. Santistevan 1 N. M. 583; U. S. vs. Varela, 1 N. M. 593.

> The Pueblo Indians of New Mexico, not being tribal Indians are not within the provisions of the intercourse act of 1834, and are not subject to the jurisdiction of the Indian department of the United States government. U. S. vs. Lucero, 1 N. M. 422.

> The Pueblo Indians not being subject to the Intercourse act of 1834, no action lies under that act for a penalty for settling on lands secured to them by patent from the United States, their lands and remedies as to such lands being the same as those of other citizens owning land. U. S. vs. Santistevan, 1 N. M. 583; U. S. vs. Varela 1 N. M. 593.

> The Pueblo Indians hold their lands by right superior to the United States, their title dating back to grants made by Spain before the Mexican revolution, and being

protected and affirmed by the treaty of Guadalupe-Hidalgo. Territory vs. Delinquent Taxpayers, 12 N.M. 139.

Pueblo Indians, living on lands granted them by the Mexican or Spanish governments can sue and defend actions as corporations. De La O vs. Acoma, 1 N. M. 226.

At the time of the ratification of the treaty of Guadalupe-Hidalgo the Pueblo Indians in the territory of New Mexico were citizens of Mexico, having all the rights of any other citizen, including the right to alienate their lands. Territory vs. Delinquent Taxpayers, 12 N. M. 139.

With decisions of this type being handed down by the courts the attorneys for the government attempted to apply the non-intercourse acts of 1834.[35] By these acts settlers were strictly forbidden from entering upon or making settlements within Indian reservations. This defense on the part of the government also met failure. The courts held that these acts applied specifically to Indians that were wards of the government and not to Indians that were citizens.[36] The problem became further involved by the decision of the United States supreme court in the Joseph case, in 1876, in which it was held that the Pueblo Indians had a complete title to their lands and could therefore dispose of them to whomsoever they pleased.[37] In this same case, the Territorial Court had

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35 4 Stat. at Large, 726.

36 U. S. vs. Varela, 1 N. M. 593.

37 U. S. vs. Joseph, 94 U. S. 619. At the same time the supreme court made this statement: "Abiding by the rule which ought always to govern the Court, to decide nothing beyond what is necessary to the judgment the Court are (sic) to render, the question of whether the Pueblo Indians are citizens of the United States is left until it shall be made in some case where the rights of citizenship are necessarily involved."

ruled in effect that the Pueblo Indians of New Mexico were not Indians in the true sense of the term and hence the Indian laws of the United States were not applicable to them.[38] The Court further held that the "Pueblo Indians hold land in common like Shakers or other communistic societies," and may alienate their lands if they so desire.[39]

The situation remained unchanged for many years, during which the attorneys for the government and the Indians made valiant attempts to convince the courts that they were fundamentally in error. The task was a long and arduous one with only occasional successes to reward their efforts. One of the most noteworthy of these was in the case of Sunol vs. Hepburn, 1 Cal. 254. This decision was a strong denunciation of the theory of citizenship as propounded by the numerous non-Indian land holders. The Court, in its decision stated:

> The Constitution referred to, it is said, by conferring upon Indians the character of Mexican citizens, thereby removed all restraints on the alienation of lands by them. But this argument proves too much. Infants, idiots, lunatics, spendthrifts, and married women are also Mexican citizens; yet it can scarcely be claimed that those constitutional provisions were intended to remove all disabilities, under which they are placed by law, and enable them to contract and alienate their property without the intervention of tutor or curator, committee or guardian. So with the Indians. Though elevated to the condition of Mexican citizens, they must still contract and convey property in the mode proscribed for them by law.

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[38] 1 N. M. 593.

[39] Loc. cit.

> It is further contended that by virtue of the Plan of Iguala, and the circular of January 11, 1821, which declared that all inhabitants of Mexico were equal in rights, without distinction of Europeans, Africans, or Indians, the disabilities of the latter class to transfer their lands without control were removed.
>
> The same objection to this argument arises which has been noticed in respect to that founded on the constitutions referred to. It proves too much. Besides, it is laid down in the Febrero Mejicano (Tom I, p. 97) in speaking of the Plan of Iguala, that all those laws, which establish different regulations, according to the diversity of races, still remain in force, when they concede some rational and substantial favor, though not, when without reason, they subject any class to a distinction ridiculous and abhorrent, and we have seen, that the object of the disability under consideration was not to create an invidious distinction or impose a useless burden but in part at least, to favor the native inhabitants by shielding them from the impositions of the superior race.[40]

From 1848 until 1913 the controversy kept the territorial courts and the supreme court of the United States constantly at odds with the federal government and its attorneys. When New Mexico sought to become a state, the congress placed a provision in the Enabling Act which would tend to prevent future action on the part of the State of New Mexico in connection with the alienation of Indian lands. This provision read:

> All lands acquired by the Indians through or from the United States or any prior sovereignty, shall be and remain subject to the disposition and control of

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[40] Sunol vs. Hepburn, 1 Cal. 254.

Congress.[41]

The entire problem was brought to a head in 1913 with the decision of the United States supreme court in the Sandoval case, 231 U. S. 28. In this case the court took an entirely different view as to the legal status of the Pueblo Indians, and in holding that they were wards of the federal government said:

> The people of the Pueblos, although sedentary rather than nomadic in their inclinations and disposed to peace and industry, are nevertheless Indians in race, customs, and domestic government, always living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetichism, and chiefly governed according to the crude customs inherited from their ancestors. They are essentially a simple, uninformed, and inferior people.[42]

By this decision, the Indians were declared to have no right to alienate their land, and since no statute of limitation operates against a minor (a state comparable to that of the Indians under the Sandoval decision), all titles to lands purchased from the Indians were invalid. The Pueblos under the new ruling might resume control of lands that had been deeded in fair sale, and which under the Joseph decision of the supreme court had been legally sold. The only remedy for

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[41] Enabling Act for New Mexico, 36 Stat., 557, section 2. A further limitation is found under article 21, section II of the constitution of the State of New Mexico which specifies that Indian lands remain subject to the disposition and under the absolute jurisdiction of the United States.

[42] United States vs. Sandoval, 231 U. S. 28.

the protection of purchasers of Pueblo lands who made them in good faith would be an act of congress, since under the Sandoval decision the congress of the United States has complete control over the lands of the Pueblo Indians. In its decree in the Sandoval case the supreme court defended its previous action in the Joseph case by charging that it had been misled by the territorial court with regard to the Pueblo Indians. "That decision was based on the opinions of the territorial court, . . ., which are at variance with other recognized sources of information now available."

Something of the consternation which was felt by the non-Indian holders of Pueblo lands as a result of the Sandoval decision is found in a letter to the attorney general of the United States from George A. H. Fraser, prominent Denver attorney, who served for many years as special assistant to the attorney general.

> . . . The majority of the claimants had bought and possessed their lands in good faith and in reliance on a series of decisions of the Territorial Supreme Court of New Mexico, beginning in 1869 and extending to about 1908, to the general effect that the Pueblo Indians were emancipated, that they had the right to sell their lands and the liability of losing them by adverse possession, and that the Non-intercourse Act of 1834 did not apply to them. The last mentioned idea was supported by the Joseph case in 94 U. S., decided in 1877, in which the United States was defeated in an attempt to remove settlers from the pueblo of Taos under the provisions of said Act. Up to 1913, therefore, when the Sandoval case was decided (231 U. S. 28), all the law there was, including that announced by the highest tribunal, was to the effect aforesaid. The Sandoval decision came as a surprise and it was natural that any proceedings

interfering with titles so long supposed to be valid should be resisted in every possible way.[43]

From the Sandoval decision, in 1913, to the passage of the Pueblo Lands Act of 1924, every possible means to evade the consequences of the supreme court decision was utilized by those non-Indians who were in possession of Pueblo lands.[44] The constant friction between the non-Indian claimants and the Pueblo Indians finally culminated in an investigation by the sixty-seventh congress. This investigation disclosed that there were approximately three thousand non-Indian claimants to lands within the exterior boundaries of the Pueblo grants. It was estimated that these three thousand claimants represented families aggregating twelve thousand persons. With the seriousness of the situation impressed upon them by these figures congress began to seek a remedy for the situation. Senator Holm O. Bursum of New Mexico introduced into the senate of the sixty-seventh congress a bill entitled "An Act to quiet title to lands within Pueblo Indian land grants and for other purposes." On the surface the bill seemed to be just what was needed. A closer study of the Bursum bill disclosed, however, that it would have served to place the non-

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[43] George A. H. Fraser, letter to the attorney general, Washington, "re United States as Guardian of the Pueblo of Santa Ana vs. Brown, et al.," June 11, 1929. Copy on file in Land Agent's office, United Pueblos Agency, Albuquerque, Under letter file SWR 210663.

[44] Leo Crane, ~~Desert Drums~~ (Boston, 1928), 275-311.

Indian holders of Indian land in a favorable position to obtain a clear title to holdings within the Pueblo grants, and to have put the burden of disproving the right of these private land holders upon the government. This would have entirely reversed the usual procedure with regard to land claims. The burden of proof in such cases is always upon the claimant. One authority, notably biased in favor of the Indians, distinctly charges an attempt on the part of Senator Bursum and the secretary of the interior, at that time, Albert B. Fall of New Mexico, to provide an easy means by which the non-Indians could make certain of obtaining a title to their lands which would be forever secure.[45]

The Bursum bill received the backing of the Harding administration and seemed slated for enactment, to the defense of the Indians, and to the attack on the Bursum proposal, a strong opposition, led by two groups, the small New Mexico Association on Indian Affairs and the General Federation of Women's Clubs. The latter organization, in 1921, had formed a committee on Indian Welfare. Under the leadership of Mrs. Stella M. Atwood, this organization employed Mr. John Collier, a student of Indian affairs, as

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45 Crane, loc. cit. Leo Crane was connected with the Indian service for many years, serving as agent to the Hopi and Navajo Indians in Arizona and later becoming Indian Agent for the Pueblo Indians of New Mexico.

field representative. As legal counsel the services of Francis C. Wilson of Santa Fe were obtained. Two congressional committees heard the case against the Bursum bill. The arguments presented by Mr. Wilson were strong and conclusive and, together with the testimony of many who opposed the enactment of the proposed law, succeeded in "killing" the bill.

A counter-proposal known as the Jones-Leatherwood bill was suggested by the adversaries of the Bursum act, but this measure also failed to obtain the approval of the congress. Pressed by constituents from New Mexico, Senator Bursum introduced a new measure on December 10, 1923 which called for the appointment of a commission to investigate Pueblo land titles. Congress failed to pass the measure during the 1923 session. In 1924, however, the act was revived and approved by congress on June 7. Known as the Pueblo Lands Act, this measure provided the means by which a final solution was made of the thousands of non-Indian claims within the lands of the Pueblo Indians.[46]

The Pueblo Lands Act provided for the establishment of a commission to be known as the Pueblo Lands Board. This board was to be composed of the attorney general, the secretary of the interior, or their representatives, and one member to be designated by the president of the United States.

NO Indians

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[46] An Act to Quiet Title to Lands within Pueblo Indian Land Grants, and for other Purposes, 43 Stat. 636.

It was charged with the duty of determining the status of all claims within the Pueblo grants. The measure established the following procedure by which the claims could be validated.

1. A suit to quiet title to all claims found unextinguished by the Pueblo Lands board was to be filed by the attorney general in the United States district court of New Mexico.

2. Section four of the act provided two means by which non-Indian claimants could obtain title to their claims.

> Section 4 (a). That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed, under color of title from the 6th day of January 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.[47]

> Section 4 (b). That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the Statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the

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[47] By "color of title" is meant any document, authentic or not, which purports to grant title to a piece of land. The italics are mine and are used to show the fundamental difference between the two sections.

16th day of March, 1889 to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.[48]

Several elements in these quotations will bear explaining. It will be noted first that in order to claim title under either of these two sections the claimant must prove that he has had adverse possession of the land. Should he then possess a document giving him "color of title" he can invoke section 4(a) by proving that he has maintained adverse possession from January 6, 1902 to June 7, 1924, and by proving that he has paid taxes on the claim for that length of time. Should the claimant not possess a "color of title" he may still be able to obtain title under section 4(b) providing he can prove that he has maintained adverse possession from March 16, 1889 to June 7, 1924, a period of thirty-five years, and has paid taxes on his claim for that period. The Pueblo Lands board was empowered by the law to declare all titles to claims meeting one of these requirements as extinguished as far as the Indians were concerned. Section two, paragraph two, of the act provided, however, that the board must be unanimous in any decisions that determined the Indian title to land as extinguished.

Compensation to Indians and non-Indians alike for lands lost through the decisions of the Pueblo Lands board

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48 An Act to Quiet Title to Lands within Pueblo Indian Land Grants, and for Other Purposes, 43 Stat. 636.

and the courts was provided in sections six and seven of the Pueblo Lands act. The board was called upon to determine the value of both land and improvements and to recommend awards for lands lost by either the claimants or the Indians. were they just?

Other sections of the act provided for appeals from the district court decisions to the United States court of appeals, and for the operation of statutes of limitation.

Dispute as to the meaning of certain sections of the act as well as to the constitutionality of the entire measure puzzled the board at the outset. Mr. George A. H. Frazer, special assistant to the attorney general, reported to that official that

> . . . It was urged that the Act was entirely unconstitutional as overthrowing rights vested under a long series of decisions above mentioned; the equity jurisdiction was attacked on the ground that since all defendants were admittedly in possession, there was an adequate remedy at law by ejectment, and a right of trial by jury under the 7th Amendment.[49]

The act, however, was upheld by the courts during the entire period the Pueblo Lands board operated under it. A second dispute developed over the meaning of the tax provisions of the act. This problem was solved by the circuit court of appeals in the case of the Pueblo of Taos vs. Wooten, the court ruling that, "full payment of the taxes <u>any time</u> before what problem?

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[49] George A. H. Fraser to the attorney general, June 11, 1929. This letter is on file in Land agent's office, United Pueblos Agency, Albuquerque, in letter file SWR 210663. The original is on file in Washington.

the suit was filed was sufficient to satisfy the requirements of section 4 of the Pueblo Lands act of June 7, 1924."[50] Regardless of this liberal interpretation hundreds of claims were rejected by the Pueblo Lands board and the courts because of the failure of claimants to prove complaiance with the tax provisions of the act.

The board began its operations in 1925, holding hearings at each of the New Mexico Indian pueblos and reporting its findings on each pueblo. A summary of the work of the Pueblo Lands board will be found on the inserted chart. The work of the board in each of the pueblos may be seen in subsequent chapters dealing with the individual pueblos.

Following the final adjudication of the pueblo titles the special attorney for the Pueblo Indians was faced with the tremendous task of ejecting those claimants whose titles had been declared invalid. This official and the superintendent of the United Pueblos agency withheld any action in this regard until the awards made by the Pueblo Lands board had been provided for by the congress of the United States and paid to the holders of the rejected claims. Following this settlement the special attorney began the tedious process of clearing the Indian lands of all persons having no right to be upon them. At this writing, April 15, 1936, the special attorney for the Pueblo Indians, Mr. William Brophy of

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[50] 40 Fed., (2nd) 882.

Albuquerque, informs the writer that all such non-Indian claimants have been removed. For the first time, therefore, since late in the seventeenth century, the Pueblo Indians of New Mexico are free from land controversy. Hah!

Under a special acqusition program the Indian service is proceeding rapidly to purchase such lands as were confirmed to non-Indians by the Pueblo Lands board and the courts, and which were deemed desirable for the needs of the Indians. With the conclusion of this program the Pueblo Indians will have no grounds for further disputes over lands granted them by the Spanish authorities and confirmed by the United States.

Since 1848 the United States has been developing a policy designed to protect the Pueblo Indian and his property. This long period of controversy has finally produced a policy not unlike that which was founded by the Spanish crown early in the sixteenth century. Briefly summarized this policy maintains that:

1. The Pueblo Indians of New Mexico are wards of the United States.

2. The Indians have a communal title to their lands, originally granted by Spain, recognized by Mexico, and confirmed by the United States.

3. As wards of the United States the Indians may not alienate their lands without the consent of the government.

4. A special attorney shall be provided to protect the Indians against all infringements upon their rights and property, real and personal.

CHAPTER II

LAGUNA PUEBLO

On the San José river, forty-five miles southwest of Albuquerque, lies the pueblo of Laguna. Founded after the Pueblo revolt of 1680 by Keresan peoples from the pueblos of Cieneguilla, Santo Domingo, and Cochití, Laguna soon became more important than its famous neighbor, Ácoma.[1] It is the only pueblo now existing that has been founded since the advent of Europeans into New Mexico.[2] From the date of its founding to the present the Laguna Indians have engaged in an unending series of land controversies. The Indians have based their claim to the land composing the pueblo proper upon a Spanish grant dated 1689, and signed by Domingo Jironza Pétriz de Cruzate, then military governor of New Mexico. This grant to Laguna was one of a series of such grants issued to the pueblos of Jémez, Ácoma, San Juan, Picuríes, San Felipe, Pecos, Cochití, Santo Domingo, Zía, Laguna, and Zuñi in 1689. All were accepted as authentic Spanish grants until the United States government began its task of clearing New Mexico

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1 "The fact that Ácoma--a most populous pueblo, a citadel prominent in warfare and rebellion, which was visited by the Franciscans, which had a resident missioner by 1629, and a church no great while after--had in 1782 become a visita of Laguna, as it has been ever since, indicates the swift growth into importance of the younger community." Leo. Crane, Desert Drums (New York, 1928), 59.

2 Charles F. Coan, History of New Mexico (New York, 1925), I, 108.

land grant titles. Mr. Will M. Tipton, an expert investigator for the United States, found that all of the 1689 pueblo grants were spurious, none of them having existed prior to 1832, and a large portion of them plagiarized from Ojeada Sobre Nueva Mexico by Antonio Barreiro.[3] In the case of Laguna the deception is obvious as the pueblo was not founded for almost ten years after the supposed grant was issued. This does not mean, however, that the pueblos mentioned above have no claim to their lands, for the rights of these Indians to the lands occupied by them was recognized by the Spanish conquerors at a very early date. Evidence of this fact is to be found in the Recopilación de las Leyes de Los Reynos de las Indias.[4]

As will be shown, the United States government, while refusing to recognize the Laguna claim to their land on the basis of the spurious Spanish documents, nevertheless was willing to accept the more general claim based upon the custom of the Spanish government of granting to the Indian pueblos all the lands lying within the area one league in each of the four directions from the door of the church.[5]

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[3] Ralph E. Twitchell, op. cit., I, 481.

[4] Charles C. Royce, "Indian Land Cessions in the United States", 18th Annual Report, Bureau of American Ethnology, II, 541.

[5] Nueva Recopilación de las Leyes de Los Reynos de las Indias, Laws XII and XVIII, title xii, lib. iv, quoted in Ralph E. Twitchell, Spanish Archives of New Mexico, I, 476.

Upon this basis the Mexican government and later the American government recognized the claims of the Lagunas.

As has been previously stated, when the United States government attempted to solve the Pueblo land problem, and that of the Laguna grant in particular, it was found that the Indians based their claims upon the spurious Cruzate documents. In the case of Laguna the United States attorney informed the attorney for the Indians that he was prepared to prove that the Spanish grant was not genuine. After an investigation the attorney for the Indians realized that he could not establish the authenticity of the papers in question, and promptly abandoned all attempts to do so, proceeding on the ground mentioned before.[6] In 1877, a preliminary survey of the Laguna property was made and the surveyor-general of New Mexico recommended that the grant to the Laguna Indians be confirmed in the amount of 125,000 acres. No congressional action upon this recommendation was taken. In 1890, a federal commission to investigate old land claims found evidence to support the validity of the Laguna grant, but declared the acreage claimed to be excessive, and recommended that it be reduced. As a result the land was again surveyed in 1895, and a tract of land six miles square, with the pueblo situated in the center, was

who was he?

why didn't attorney force proof be presented? Who is burden of proof on. Pay 482?

who was 1890 Comm?

why was it excessive?

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[6] Ralph E. Twitchell, op. cit., I, 482.

agreed upon.[7] Essentially, this was a confirmation of the old Spanish grant of one league in each direction from the door of the church. A patent for this area, amounting to 17,328 acres, was issued by the United States government in 1909, thus ending a half-century of dispute.

Within a short time after the establishment of the pueblo, other lands were added to the original grant by purchases from encroaching settlers. Trouble over land rights, curiously enough, came not only from the Spaniards and Mexicans, but from the Indians as well. The Acomas and Navajos were constant squatters on Laguna claims, infringing upon the land and water rights of the Lagunas. The Spanish archives contain several protests filed by the Lagunas as a result of these encroachments.[8] Numerous squatters, both Spanish and Mexican, gave the alcaldes (justices of the peace) no little trouble in keeping the Laguna grant free from transgressors.[9] Changes in Spanish and Mexican political administration led to trouble owning to the lax methods used by these groups in keeping records and recording instruments. One manuscript in the Spanish archives of New Mexico describes how the Laguna Indians obtained from a

Acomas & Navajoes

See 1291 + 1372

Other squatters 1373, 1310, 668

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[7] George B. Anderson, compiler, History of New Mexico, Its Resources and People (Los Angeles, 1907), I, 432.

[8] New Mexico Archives, documents no. 1291, 1372.

[9] New Mexico Archives, documents no. 1373, 1310, 668.

retiring official a document which set forth the legal status of the pueblo, in order that his successor should not make the usual errors and thus cause the Indians great hardship.[10] The problems, however, were of small importance compared to those which the future held.

See 668

THE PAGUATE PURCHASE

The Paguate-Cebolleta Dispute and the Baltazar Baca Conflict

In 1801, a Spanish colony was founded by Governor Fernando Chacon on the old mission site of Cebolleta, north of Laguna pueblo, but owing to Navajo raids the settlers, among them the Aragon brothers, José María and Francisco, were forced to evacuate their homes and flee to Chihuahua. These colonists, however, were under contract to remain in New Mexico, and were, therefore, escorted back to their homes by the military, and solemnly warned to remain or else their lives would be forfeit.[11] Two years later, 1805, the Navajos again attacked the settlers, and had it not been for the assistance of the Lagunas, who were led by José María Aragon, the Spaniards would have been completely massacred. As a reward for their assistance in the battle, the settlers

Was he a leader?

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[10] New Mexico Archive, document no. 668.

[11] "The explanation of this remarkable order is that the colonists were under contract to remain in the country and the Spanish executive adopted this method of compelling them to abide their contract." G. B. Anderson, op. cit., I, 365.

acknowledged the rights of the Lagunas to a large strip of land adjoining the Cebolleta grant on the south.[12] This land was occupied at the time by four Mexicans, Miguel Moquino, Vicente Pajarito, Pasqual Pajarito, and Antonio Paquate from the village of Cebolleta. In order to quiet title the Lagunas purchased the improvements of these settlers and through petition to the Spanish governor obtained a title to the land.[13] This tract is known as the Paguate Purchase. In the original deed issued by the Spanish authorities, it was provided that the south boundary of the Cebolleta grant and the north boundary of the Paguate purchase should be coterminous.[14] Although this act would seem to clear the title, the record of the Paguate purchase is one of ceaseless litigation. In 1827, twenty-two years after the purchase, we find the Laguna Indians petitioning the authorities to stop the encroachments of the Cebolleta people upon the Paguate ranch.[15] A month later reference is found to another petition on the same subject, but with an additional request for a new

common

see 1373, 1291

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[12] John M. Gunn, Schat-Chen (Albuquerque, 1917), 56.

[13] "Documentary Evidence in Reference to the Laguna Indian Pueblo," (unpublished manuscript in Land Agent's Office, United Pueblos Agency, Albuquerque), 18.

[14] Pueblo Lands Board, Report No. 1, Laguna Pueblo, "Report on Titles to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," October 9, 1929, 2. All reports of the Pueblo Lands board referred to in this thesis are on file in the office of the cadastral engineer.

[15] New Mexico Archives, documents no. 1373, 1291.

grant to the Paguate purchase.[16] After New Mexico became a part of the United States, this purchase, as well as the other Laguna tracts, was confirmed by congress subject to any private claims which might exist. No survey, however, was made until 1877. Four years later the Cebolleta survey was made, and, according to one authority at least, there was no overlap shown, although the people of Cebolleta claimed the Indian lands to be in conflict with the Cebolleta grant.[17] This conflict developed over the location of the Gabilan table-land, one of the boundary points stipulated in the Paguate purchase. The Indians contended that the real Gabilan table-land lay two miles north of the point claimed by the people of Cebolleta. In their first report, October 9, 1929, the Pueblo Lands board stated in part:

> Another point of call, and the one concerning the location which has always been in dispute is the Gabilan Mesa. The northeast boundary of the Paguate Purchase is considerably to the east of the southeast boundary of the Cebolleta Grant, so that the survey was started from that point and run to where it joins the Cebolleta Grant south line and continues on beyond the Cebolleta Grant. In doing so, according to the field notes on file and the field notes that were subsequently filed in later surveys, it went just south of the village of Moquino, across a small creek and up on the northeast edge of the mesa. All the survey records show this northeast point of the mesa to have been known as the Gabilan Mesa. This point was about half way from east to west of the north line of the Paquate Purchase. At the extreme west of

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[16] New Mexico Archives, document no. 1291.

[17] Leo Crane, op. cit., fn., 77.

> the north line of the Paquate Purchase monuments were erected which have been located in each of the subsequent surveys . . . Therefore, in projecting the north line of the Paquate Purchase starting from the known northwest corner due east, one is bound to follow the line as indicated in the surveys.

In 1910, due to continued agitation, Francis C. Wilson, special counsel for the Pueblo Indians, filed suit to quiet title to the Paguate purchase. In answer the Cebolleta owners pleaded that the government survey was incorrect, and that the true boundary was a mile and one-half south (into Laguna lands) of the line in question. This case was tried in the Valencia county court before Judge E. C. Mecham, who in his decision of August, 1914, decided against the Indians. This decision, subsequently termed the "Mecham Decree," brought forth an extremely important question: does the Valencia county court have the authority or jurisdiction to revise and define a federal survey?

Wilson filed a motion for a rehearing, but before the case could be called, he resigned his position to become a candidate for congress, and Jacob H. Crist was appointed special counsel for the Pueblo Indians. On September 28, 1914, the final decree of the Valencia county court was issued, making it possible to enter a notice of appeal. This appeal had to be filed within one year, but Crist, displaying little judgment, refused to appeal the case, although he was advised and petitioned to do so. Finding no relief

from this quarter the Laguna Indians hired Wilson as private counsel. His first action, in March, 1916, was to bring the case into the federal district court on the grounds of res adjudicata and that the decision of the Valencia county court served to change the boundary of an official federal survey. The federal district court proved adverse to this argument.

Again, in August, 1922, Ralph E. Twitchell, special assistant to the attorney general, filed suit in the United States district court of New Mexico.[18] This suit raised the same questions as had the two previous actions. On August 30, 1923, however, the court again ruled in favor of the defendants. The government appealed the case to the supreme court of the United States, which upheld the findings of the lower court.[19] The effect of the decision of the United States supreme court was accurately summarized in the Supplemental Report of the Pueblo Lands board, December 5, 1931, as follows:

> 1. That a state court of New Mexico has jurisdiction to enter a judgment in an action by an Indian Pueblo against opposing claimants concerning title to land, which would be conclusive on the United States if it authorized the bringing and prosecution of the suit.

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[18] U. S. A. vs. José Candelaria, et al. No. 902, Equity.

[19] U. S. vs. Candelaria, 271 U. S. 432.

2. "But, as it appears that for many years the United States has employed and paid a special attorney to represent the Pueblo Indians and look after their interests, our answer is made with the qualification that, if the decree was rendered in a suit begun and prosecuted by the special attorney so employed and paid, we think the United States is as effectively concluded as if it were a party to the suit."[20]

In other words, the United States supreme court held that if the suit was instituted by the regularly employed attorney for the Indians that the United States was, in effect, a party to the suit filed on March 17, 1916, and the judgment therein rendered was conclusive against the United States.[21]

Thus, by the decision of the Valencia county court, on June 1, 1926, the Lagunas lost approximately one-fifth of the Paguate purchase, which left a balance of 75,406 acres confirmed to the Indians. The Pueblo Lands board, in summarizing the case, made this observation:

It is true, however, that failure to appeal the 1910 suit to quiet title filed in Valencia County, did operate to foreclose the Pueblo of Laguna from any possible chance of ever recovering the areas in conflict with the Baltazar Baca and the Cebolleta Grants.[22]

Simultaneously with the Paguate dispute there developed the conflict over another tract of land in the same area called the Baltazar grant, an area of 6,380.9 acres,

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[20] U. S. vs. Candelaria, 271 U. S. 432, and Supplemental Report Concerning Indian Awards, Pueblo Lands Board, December 5, 1931.

[21] Ibid., 12.

[22] Loc. cit.

which lay entirely within the Paguate purchase and adjoined the territory in dispute by the Cubero claimants.[23] The Baca grant had been applied for in 1768 by Baltazar Baca, a resident of Belén, who planned to use the land for stock raising. A grazing permit was issued to Baca in 1769 for a tract of land a league or two to the north of the village of Encinal.[24] This permit seems to have contained several limitations and prohibitions, which, while brought forth in court testimony, seemed to bear little weight, although they point unmistakably to the fact that the so-called Baltazar Baca grant was not a grant at all, but a permit to graze cattle upon a certain tract of ground, under certain specific conditions. Quoting from the first report of the Pueblo Lands board, filed on October 9, 1929, these conditions are outlined as follows:

> The Grant was issued as an encouragement to the raising of livestock, and it is reasonable to assume that its limitation was to a grazing permit, for the reason that it was stated that the lands should not be used for cultivation, should not be used in any way to interfere with the Indians, and that the residence occupied by the then petitioner, . . , should not be vacated.[25]

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23 The Cubero claimants owned land south of the western portion of the Paguate purchase, claiming an overlap of their lands and those of the Indians.

24 "It also appears that the grant was very indefinite as to area, and that its boundaries could not be accurately determined." Pueblo Lands Board, op. cit., Laguna Pueblo.

25 Ibid., 144

These conditions definitely show that the Spanish officials issuing the permit did not intend the land as a grant, as it was not their practice to interfere with the grantee's use of his lands, and that by making the above provisions, the authorities intended significantly to impress upon the parties to whom the permit was issued that the Crown retained the land through its reservations made upon it! Had the authorities intended to confer title in Baltazar Baca they would not have forced the above stipulations into their permit, as conveyance of title would relinquish the authority of the Spanish administration over the use of the land, as it did in the case of other land grants.

The Baca grant ran the same gamut of litigation as the Paguate-Cebolleta dispute, being a companionate case in the various suits and decisions previously mentioned. The defendants were upheld in their contentions in all the courts including the supreme court of the United States.[26] A curious condition, however, with regard to the Baca grant, resulted from the decision of the Valencia county court of February 12, 1910, concerning the Cebolleta grant. This condition was aptly phrased by the Pueblo Lands board in its initial report in 1929:

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[26] U. S. vs. Margarita Baca, 46, Law Ed., 733.

> If the State Court's judgment is correct and the south boundary of the Cebolleta grant is moved as far south as adjudged by the Court and extended as far west as the patent calls for, it substantially obliterates the entire Baca Grant.

Both the Paguate-Cebolleta and the Baca disputes were submitted to the Pueblo Lands board in 1929, this board having been created by act of congress in 1924 for the expressed purpose of dealing with conflicting land problems affecting the Pueblo Indians. The initial members of the board were Louis H. Warner, chairman; H. J. Hagerman, representing the secretary of the interior; and Charles H. Jennings, representing the attorney general. This board held hearings during 1929 in Albuquerque to determine the facts involved in the two cases.

The Baca case was further complicated by the fact that

> . . . there is no evidence that there had been exclusive adverse possession of the same 12,000 acres of land now claimed (by the Baca heirs) which included the area in conflict above described. The Indian village of Encinal has been located within this area since 1746 and was a Navajo or Laguna summer camp to the time of its permanent occupancy by the Laguna Indians. There are evidences of conveyances in sections of this grant as evidenced by a transfer made to one Aragon in 1871 and shown on file in the clerk's office at Socorro, New Mexico.[27]

It further appears that the claimants, both past and present, had violated the provisions outlined in the permit and set forth above. According to the first report of the Pueblo Lands board, October 9, 1929, this is shown:

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27 Pueblo Lands Board, op. cit., Laguna Pueblo, 146.

> . . . according to the admission of the present claimant, who practically has no sheep or cattle, there has been no grazing of the land for a long time. In view of these facts, it appears that the present claimant, and possibly his immediate predecessor, has not met the conditions imposed upon the original grantees, Baltazar Baca and his two sons, to use the lands for the purpose of building up the livestock industry.

After much discussion, during which the members of the board personally visited and studied the tracts in dispute, and satisfied themselves concerning the location of the boundaries in question, a decision was rendered in favor of the Laguna Indians, in both the Paguate-Cebolleta and the Baca disputes. This decision was made in a formal report to the secretary of the interior on October 9, 1929. This conclusion, in direct opposition to all the various court decisions heretofore mentioned, failed to settle the questions involved. In the next two years, however, the board and its attorneys were able to bring about an agreement between the two factions on each of the controversies, the Cebolleta-Paguate dispute, and the Baltazar Baca conflict. These agreements resulted in final decrees by the United States district court of New Mexico, which definitely disposed of the two problems. By the Paguate-Cebolleta decree, No. 2080 in Equity, filed July 20, 1931, the court awarded 14,615.76 acres of land to the Indians, and 10,698.93 acres (including 766.66 acres of private claims) to the non-Indian claimants. In the Baca Grant decree, No. 2080 in Equity

filed November 9, 1931, the court awarded the non-Indian claimants 2527,29 acres of land. These awards by the court had been fixed by agreement of the parties involved before being presented to the court. The court action, therefore, had the effect of declaring these agreements binding and legal.

Meanwhile the Pueblo Lands board, finding themselves in the somewhat peculiar position of having ruled in opposition to all court decisions, reconsidered their stand taken in the two cases reported October 9, 1929, and apparently recognizing the futility of further controversy, reversed their previous stand, taking cognizance of the stipulations and compromises agreed upon by the two parties and issued by the United States district court. On December 5, 1931, the board submitted to the secretary of the interior a Supplemental Report Concerning Indian Awards.[28] In this report the board recognized the claims of the non-Indian parties and recommended that a part of the funds granted the Laguna Indians by the federal government be used for the purchase of the lands awarded to the non-Indian claimants by the court's decrees. In each case the board had appraised the lands

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[28] The membership of the Pueblo Lands board which issued the supplemental report, was the same as that which issued the original report in 1929, with the exception of Judge Louis H. Warner, who had retired. Guy P. Harrington was appointed by President Herbert Hoover to succeed Judge Warner.

awarded to the claimants and a definite price had been set which was agreeable to both the claimants and the government. In the Cebolleta-Paguate award, the 10,689.93 acres awarded the non-Indian defendants were appraised at $24,591.89, and the 2527.29 acres awarded the Baca claimants were valued at $33,566.47. Thus, by agreement, the long series of disputes was brought to an end and the possibility of the Laguna Indians' recovering their former lands, in the Paguate purchase, was made probable.

EL RITO, GIGANTE, AND SAN JUAN RANCHO PURCHASES

In 1760, Mateo Piño, a Spaniard, settled on a section of land at El Rito, southeast of the pueblo of Laguna, but owing to the Apache and Navajo raids was soon forced to abandon his site. Sixty-five years later, in 1825, Mateo's son, Gauchin Piño, and another Spaniard named Marcos Baca, returned to El Rito with the claim that Mateo Piño had been granted a large tract of land at this location. The Lagunas, in accordance with the principles of an ordinance issued by the Spanish crown on June 4, 1687,[29] had a valid claim to this

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29 ". . And in regard to the pasture lands, it is my will and order, that there shall not only be separated from the settlements and Indian places the thousand varas '33.1 inches equals one Spanish vara' mentioned in the ordinance of 26th May, 1567, but even a hundred more, and that these one thousand one hundred varas shall be measured from the last house of the settlement or place and not from the church; and if it should seem to my Viceroys of New Spain that the pasture lands are at greater distances than within the said one thousand one hundred varas, it shall be declared as soon as this dispatch is received or is made known, . . Done in Madrid, 4th June, 1687." Leo Crane, op. cit., 81.

land, having used it for many years before the advent of the settlers. They decided, however, to solve the question definitely and for all time, and proceeded to purchase the rights of the claimants. The Mexican governor issued a clear title to the property, which consisted of 11,000 acres.[30]

To the north of the El Rito purchase lie two additional tracts of land, the San Juan Rancho and the Gigante Rancho, each comprising approximately 7,000 acres. These lands had long been considered by the Lagunas as part of their holdings.[31] Several springs and good forage were to be found on these ranchos, hence it was with no little alarm that the Laguna Indians watched the Spanish and Mexican settlers build their adobes in this region. In order to prevent further encroachments, the Indians purchased both the ranchos, and obtained clear title to them from the Mexican governor. Thus, by the purchase of these three tracts, the El Rito, San Juan, and Gigante ranchos, the Lagunas added 25,233 acres to their holdings, and what is more important, they had a clear title to each of these purchases. When the titles were

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30 George B. Anderson, op. cit., I, 365.

31 "In regard to the land toward the east, they have been allowed to plant on the rancho known as El Rito, and, therefore, also the Cañada de Los Gigantes to the Ojo del Chamiso, together with the rancho commonly called San Juan, for pasture lands for their animals, the frontier being so much exposed that they cannot risk them in any other direction." Manuel Aragon, March 25, 1813. New Mexico Archives, document no. 668.

submitted to congress for confirmation, there was little argument, and the validity of the title was quickly recognized and confirmed on June 21, 1860. A patent was issued to the Indians by the federal government on September 22, 1884.

SANTA ANA GRANT

Twenty-five miles northwest of Laguna a stream rises from a warm spring which is named "El Gallo." In 1868, the stream was diverted from its normal bed by a group of ex-soldiers who had squatted in that vicinity. This land was part of a military reservation, and, upon hearing of the settling of this region, the authorities promptly ordered the ex-service men to move. In 1870, this land was opened for settlement. Among those who took up land in the area were most of the squatters who had been ordered to leave in 1868. It soon became evident, however, that these lands belonged to the Acoma Indians. The Americans, who realized the value of this area, then proceeded to bribe the head men of the Acomas into representing to the government surveyor--who was about to make a survey of the Acoma grant--that another spring, about ten miles east, was the real "El Gallo."[32] As a reward for this "favor" the settlers promised the Indians that part of the Laguna lands, which were to be

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[32] George B. Anderson, op. cit., I, 370.

surveyed in the very near future, would be given to them. Although the records are silent on this point, some American "firewater" must have been generously used to influence the Acomas, for by this thoughtless act they lost about one-third of their original patent, much of which included the finest lands in the region.

When the government surveyor appeared, the Acomas gave the desired false testimony, and the boundary line was established as the settlers had desired it to be.[33] The Acomas then began to await anxiously their promised reward. At the appointed time they were notified to be on the ground, and a Mexican alcalde, who was regarded as the supreme authority by the Indians, would give them legal possession of a large section of the Laguna land. Somehow the news reached Laguna. The land in question had been purchased by the Laguna pueblo in 1825, from a Spaniard named Garviso. It had been confirmed by the Mexican government and a clear title issued to the Indians of Laguna. Official records listed the tracts as the "Santa Ana Purchase."[34] The alarmed Lagunas presented such facts as they had learned to Walter G. Marmon, who was then operating a trading post at the pueblo. Marmon

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[33] Anderson, loc. cit.

[34] This story is to be found in the "Documentary Evidence in Regard to the Laguna Indian Pueblo," (an unpublished document in the office of the cadastral engineer, Santa Fe, New Mexico). The original documents relative to this dispute are in the possession of Mr. William Brophy, special attorney for the Pueblo Indians, Albuquerque, New Mexico.

went into consultation with George H. Pratt, a government surveyor, who at the moment happened to be at Laguna, and both men decided on punitive measures. A company of infantry and one of cavalry were hastily organized among the Indians at Laguna, and Marmon took command of the infantry and Pratt led the cavalry. Hastening to the scene of the proposed "ceremony," the Laguna "army" arrived to find that the Acomas were already on the ground and were armed with every conceivable type of weapon. The Mexican alcalde, accompanied by an armed posse, arrived at almost the same moment as the Lagunas. The alcalde then proceeded to read the decree. No sooner had he started than the Lagunas, led by the two Americans, charged. The astonished alcalde and his retinue fled, but the Acomas, who, by their war-like appearance, had evidently expected trouble, stood their ground. In the pitched battle which followed several were wounded, but, fortunately, none fatally. The Acomas were finally forced from the land, but not until they had given a fair account of themselves. Fearing further outbreaks the Indian agent, who was immediately notified of the battle,rushed to Laguna to quiet the situation. A joint meeting of the officers and principal men of each pueblo was held. A compromise was agreed upon by which the Lagunas relinquished about one-half of what they claimed within the Acoma grant, and the Acomas gave to Laguna a quit claim to the remainder of the lands in dispute that were inside of the

Acoma boundaries. Thus the Santa Ana tract became a definite part of the Laguna properties.

Although the central pueblo grant was not confirmed until 1909, the five purchases of adjoining territory received the official confirmation of congress on June 21, 1884. This confirmation included the Paguate grant, located north of Laguna, in the amount of 50,000 acres; the El Rito purchase, southeast of Laguna, of 11,000 acres; the San Juan Rancho, east of Laguna, comprising roughly 7,000 acres; the Gigante Rancho, east of the San Juan grant and adjoining it, approximately 7,000 acres; and the Santa Ana grant, west of the Laguna reservation, containing 5,000 acres.

EXECUTIVE ADDITIONS

On July 1, 1910, President Taft, upon petition and recommendation of the Indians and their agent, ordered that 29,665 acres of land lying to the west of the pueblo be set aside for the Laguna Indians.[35] This land offered additional pasturage for the growing pueblo, which no longer centered at the old pueblo, but had spread out fanwise. Other communities were founded by the Lagunas, one of which soon became larger than the parent village: Paguate, which, by

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[35] Charles J. Kappler, Indian Affairs, Laws and Treaties, III, 62nd Congress, 2nd Session, 1911-12, 687. Executive Order 1221, July 1, 1910.

1922, had almost a third more inhabitants than old Laguna.[36]

The press of population, the need for more land suitable to tillage and pasture, soon led to the petitioning for further grants from adjoining government lands. On March 21, 1917, President Woodrow Wilson signed an executive order placing an additional 117,214 acres to the south of Laguna at the disposal of the Indians of that pueblo.[37]

Thus from their original holdings confirmed by the Spanish as a grant four leagues square measured one league in each of the four directions from the door of the old church, the Lagunas have acquired by grant, purchase and executive order, 269,879 acres of land.[38]

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[36] Leo Crane, op. cit., 65.

[37] Charles J. Kappler, op. cit., IV, 70th Congress, 1st Session, 1929, 1029. Executive Order 2549, March 21, 1917.

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Original Spanish Grant, as confirmed by patent	17,361
Paguate Purchase	75,406
El Rito, Gigante, and San Juan Purchase	25,233
Santa Ana Grant	5,000
Executive Order, July 1, 1910 (Taft)	29,665
Executive Order, March 21, 1917 (Wilson)	117,214
Total Acres	269,879

CHAPTER III

PUEBLO OF ACOMA

Fifteen miles southwest of Laguna lies the rock of Acoma with the famed pueblo of the same name built upon its summit. Fields of corn and squash surround its base, and in the distance, grazing upon the short buffalo grass which covers that country, are the flocks of sheep, together with small herds of cattle and horses--the "lifeblood" of the Sky City.

The glory that was once Acoma's is fast disappearing as the Indians move away from the old pueblo to found other settlements. With their moving, the old customs and civilization which once defied the conquistadores are fast declining. The Mexicans and the Americans are infusing into the once glorious culture new elements which sometimes introduce much that is not in harmony with the concepts of the tribal elders. At Acomita, at McCarthy's, and at the other Acoma settlements, a new people is being born. With this expansion the age-old problem of obtaining suitable land is again becoming acute.

Upon file in the office of the cadastral engineer, in Santa Fe, are two Spanish documents each dated at Paso del Norte in the year 1689 and signed by Governor Domingo Jironza Pétriz de Cruzate, who served as governor of New

Mexico from 1683 to 1686 and from 1689 to 1691,[1] purporting to grant to the Acoma Indians an area of land substantially the same as their present grant. Although the congress of the United States confirmed the Acoma grant on the basis of these documents, close examination leaves no doubt that both are fraudulent. Each gives as one of the boundary points a certain "Cubero Mountain," which marks the northeastern corner of the Acoma grant. This in itself is evidence of fraud, for Cubero, for whom the mountain was named, did not become governor of New Mexico until 1699 (ten years after the date on the documents), and only at that late date did he make his well-known tour to the southern pueblos, including Laguna and Acoma, at which time his name was given to certain landmarks, of which the "Cubero Mountain" is one. The signatures of Governor Cruzate on the supposed land grants are not authentic, and the attesting secretary, Don Pedro Ladron de Guitara, is unknown except for these documents.[2] Although unsurveyed until 1876, the United States congress confirmed the Acoma grant on December 22, 1858, for 95,792 acres, with the same boundaries as those mentioned in the spurious Spanish articles.[3]

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[1] Lansing B. Bloom, "Historical Record," New Mexico Blue Book, 1935-1936 (Santa Fe, New Mexico Press; 1935), 10.

[2] A general discussion of the authenticity of the Cruzate "Land Grants" is to be found in Ralph E. Twitchell, The Spanish Archives of New Mexico, I, 456-62, 481-83.

[3] Charles C. Royce, 18th Annual Report, Bureau of American Ethnology, "Indian Land Sessions in the United States," II, 922.

The history of the Acoma land grant is one of continuous petty bickering, not only between the Indians and the encroaching Mexicans and Americans, but between the Acomas and Lagunas. These neighboring pueblos seem to have spent a large portion of their time in conflict with one another over land and water rights.

An early dispute of some interest is found in connection with the Ojo del Gallo (El Gallo Spring). In all documents of the Spanish and Mexican period this spring is given as one of the landmarks on the northwestern boundary of the Acoma property. From this spring flows the San José river, the source of Laguna's water supply. For many miles, however, before entering the Laguna property, the river flows through the Acoma grant, making it possible to carry on agriculture in many suitable places along its course. The Lagunas have always feared, although no definite evidence can be found to support that fear, that the Acoma Indians would use such a large amount of the water as to cut the Laguna pueblo off from its life-giving water supply. The Laguna Indians had made protest many times to the Spanish and Mexican authorities concerning the matter, but it is in 1826 that we find the situation being authoritatively recognized. In that year Governor Antonio Narbona of New Mexico (1825-1827), added to a document setting forth the lands and purchases of Laguna pueblo this significant paragraph:

> The place where Cubero is situated which is mentioned in this document and the water which runs in this river is the only one which these Indians enjoy. It comes from Gallo Spring. If said spring should be occupied these poor Indians (the Lagunas) would perish as it is the same water which reaches the pueblo and these natives are entitled to it on account of their priority in colonizing in good faith for more than one hundred years. (Rubric)[4]

That the Acomas had been warned not to cut off the supply of water is to be found in a petition, dated June 15, 1827, by three Laguna Indians, who, acting in the name of the people of their pueblo, petitioned the government to stop the interference of the Acomas with their water supply.[5] The Acomas had founded a group of farms along the northern portion of their lands, through which the river flowed, and the enlarging of these farm lands, with the certainty of additional water being taken from the river for irrigation, was the cause of this petition. The result of the petition is left in doubt as no order or further documents have been found relative to the subject. That the encroachments did not abate is plainly evident from an order issued by the United States district court for New Mexico in the year 1857. In order to understand this dispute it must be remembered that, although the United States confirmed the Acoma pueblo land grant in 1858, no survey of the land was officially

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[4] New Mexico Archives, document no. 668.

[5] Ibid., document no. 1372.

made until 1876.[6] The Acoma Indians in their desire for additional lands suitable to agriculture continued to move eastward along the river, occupying the Cañada de la Santa Cruz, which lay between the land grants of the two pueblos. The cañada runs in a southwesterly direction, beginning just above that point at which it cuts the course of the Rio San José, and enters the Acoma grant proper some distance below the junction of the river.[7] The river does not flow down the cañada, however, but crosses it and continues to Laguna pueblo. At the junction between the cañada and the river the Acomas found the lands they desired and built their farms and irrigation ditches along the river, much to the discomfort of the Lagunas, who had also been seeking tillable land and had arrived at the cañada at about the same time as the Acomas. A dispute between the two factions arose, but was only brought to a head when the Acomas began an irrigation ditch to carry water from the river south along the cañada. The Lagunas, in 1856, brought the situation to a climax by filing suit in the United States district court of New Mexico, seeking to restrain the Acomas from further expansion, and seeking redress for encroachment on lands which they claimed. Both sides presented

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[6] John M. Gunn, Schat-Chen, 98.

[7] See map of Acoma pueblo grant.

evidence to prove their contentions, the Acomas seemingly having the better claims, but the Lagunas having a strong argument in the fact that without the water from the San José they must face extinction. On July 6, 1857 the district court, at the request of both pueblos, issued an order which read, in part:

> First, that the Pueblo of Acoma and its inhabi-shall have free and undisturbed possession and enjoyment of all the lands in Complainants Bill mentioned, opened and irrigated by the Rio del Gallo from its source to the lower part or side of the Cañada de la Cruz, including said Cañada.
>
> Second, the dividing line between such Pueblos and the inhabitants thereof shall be a line drawn north and south from the eastern or lower edge or side of the Cañada de la Cruz, where the Gallo crosses the said Cañada, leaving the said Cañada for the Pueblo of Acoma and its inhabitants.[8]

Thus by court decree the Acoma Indians obtained definite color of title to the land, and, naturally, the right to farm along the banks of the river flowing through that land. Their triumph, however, was short lived. When the survey of the Acoma grant was made in the year 1876, it was found that the greater part of the cañada which had been used for farming by the Acomas lay outside the stated boundaries of their pueblo grant. The Acomas could make no counter claim, as the documents which they had presented in support of their title definitely defined the limits of

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[8] Pueblo of Laguna vs. Pueblo of Acoma, 1, N. M. 220.

the grant, and it is clearly evident that the lands occupied in the vicinity of the Cañada de la Santa Cruz were some distance beyond the eastern boundary of the pueblo.[9] This land then reverted to the public domain, as by the Laguna survey it was found to be quite some distance beyond their just claims. In 1910, however, these lands, including the much-desired cañada, were made a reservation for the Laguna Indians by President William Howard Taft. Thus was the situation reversed.

That all has not been well since the awarding of this property to the Lagunas is evinced by a letter from the Honorable H. J. Hagerman, special commissioner to negotiate with Indians, to James H. Miller, ex-governor of the pueblo of Acoma, dated April 2, 1926, in which the commissioner states:

> It is unfortunate that there has been so much controversy between your people and the Laguna people, and I hope very much that the recent decision of Washington to permit the Lagunas to build a fence along the east line of your reservation will be accepted with good grace by your Acoma people. My understanding is that you use the land to the east of your reservation very little in any case, and it was necessary, in order to properly

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[9] The boundaries as given in the Cruzate grant, and as confirmed by Congress are: "... the cerro (hill) which lies to the North, and the Spring of water del Gallo which lies to the West belong to the Indians of Acoma. And that the old Pueblo of Acoma is in front of the cerro (hill) of Cubero and that the Peñol (rock) is South." New Mexico Archives, document no. R. No. B.

[10] Charles J. Kappler, Indian Affairs, Laws and Treaties, III, 62nd Congress, 2nd Session, 1911-1912, 687, Executive Order No. 1221, July 1, 1910.

take care of the range, that the Lagunas be permitted to build their fence there. At the same time that this fence matter was discussed, the question of trying to get an addition to your reservation was taken, up, but, as I say, it is difficult to secure any action on that matter without a great deal of preliminary work. I am sure that if the attitude of the Acoma Indians in the future is helpful and shows a disposition to cease the controversies and strifes with the Lagunas, that that will help the Acomas.[11]

SANTA ANA RANCHO

In the year 1876, when arrangements for the survey of the Acoma grant were about to be put into execution, there occurred the "Battle of Santa Ana."[12] The result of this "war" was the confirmation of the Rancho Santa Ana to the Laguna Indians. This land lay partly in the public domain and partly in the Acoma land grant proper. The Lagunas claimed title to the rancho because of a purchase they had made from a Spaniard named Galviso early in the nineteenth century. This purchase had been recognized by the Mexican government and confirmed to the Lagunas by the United States congress on June 21, 1860 and patented on September 22, 1884; two hundred and eight and sixty-seven hundredths acres lay within the Acoma boundaries. The history of the Santa Ana Rancho after it was patented in 1884 is somewhat hazy.

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[11] H. J. Hagerman, letter to James H. Miller, April 2, 1929. On file in land agent's office, United Pueblos Agency, Albuquerque, N. M.

[12] See chapter on Laguna, page 54.

The Pueblo Lands board, in 1929, however, was advised that about 1858 a suit was instituted by the pueblo of Acoma against the Laguna Indians for the purpose of acquiring title by right of possession and occupancy to that portion of the Santa Ana Rancho lying within its boundaries, and that a judgment or decree was pronounced by the court in favor of the Acoma pueblo.[13] After a very diligent search of the Valencia county records, however, the board was unable to discover such a decree or record of such a suit. On October 5, 1929, the board made the following recommendation to the secretary of the interior:

> ... the Board is advised that the Laguna Indians are not claiming this overlap, but in view of the fact that the overlap was confirmed and patented to them, it is recommended that a deed therefore, for an agreed consideration, be obtained by the Acoma Indians from the Laguna Indians.[14]

THE CUBERO DISPUTE

In the year 1833 the government of the Republic of Mexico granted to Juan Chávez and sixty-one other individuals a large tract of land, subsequently found to embrace 16,490.24 acres, northwest of the pueblo of Laguna at a

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13 Pueblo Lands Board, Report No. 1, Acoma Pueblo, "Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished." October 5, 1929, 5.

14 Loc. cit.

place called Cubero, in what is today Valencia county. This grant was settled in accordance with the law, and stock raising as well as some agriculture was undertaken by the settlers. Not long after this settlement conflicts between the Cubero grantees and the Laguna and Acoma Indians began to occur.[15] What decisions were rendered in these conflicts are not known, but we are certain that if any were made they were not of permanent character. On November 30, 1891, the legal heirs of the original grantees of Cubero made application to the Court of Private Land Claims, in order that their title might be confirmed and their lands patented. The court complied with this request on August 30, 1892, thus giving the Cubero grantees title to all lands claimed by them, although no survey of these lands had been made.[16] Neither in the pleadings nor in the decree of the court had any reference been made to the Acoma Indian grant. "Therefore the exact area of said land (Cubero grant) and its exterior boundaries were unknown when the Court of Private Land Claims entered said decree of August 30, 1892."[17] In 1895 the United States, acting as guardians for the Acoma Indians, took an appeal from the decision of the Court of Private Land Claims,

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15 New Mexico Archives, documents no. 910, 1310.

16 Town of Cubero, Juan Chaves, et al., The United States of America, No. 1, Court of Private Land Claims.

17 Pueblo Lands Board, Report No. 1, op. cit., 22.

but the supreme court of the United States upheld the lower court in its decision.[18] The ink was hardly dry on this last decision, however, when, in 1896, the survey of the Cubero grant was made and platted and it was found that the grant overlapped the Acoma Indian grant, (made in 1858 and patented in 1877, fifteen years before the Cubero grant was confirmed by the Court of Private Land Claims!) and that the land in conflict amounted to 283.23 acres. Notwithstanding this proof of error the district court of Valencia county, in a suit brought by the Pueblo of Laguna against Unknown Claimants, held that the Cubero grant was a valid grant. In reviewing the case the Pueblo Lands board, in its first report dated October 5, 1929, determined "that the title in the Indians to the 283.24 acres in conflict has not been extinguished." The government refused to allow the case to remain unsettled, and on March 27, 1930, the special assistant to the attorney general, Mr. George A. H. Fraser, filed suit in the federal district court of New Mexico against the Cubero heirs and others. After hearing the evidence of both plaintiff and defendants, the court, Judge Colin Neblett presiding, delivered its decision on May 14, 1931, at which time it ruled in favor of the Acoma Indians, extinguishing the claim of the Cubero heirs to the overlap of 283.24 acres.[19]

35 years later

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[18] U. S. vs. Chavez, et al., 40 Law Ed. 215.
[19] U. S. vs. Jesus Arvizo, et al. No. 2070 in Equity.

FELIX M. OTERO CLAIM

The only private land claim within the Acoma grant proper, exclusive of the Cubero overlap, was a small section of 3.651 acres located in section 29 North, range 7 West, lying along the northern boundary and claimed by one Felix M. Otero. This land was part of a larger parcel, all of which, with the exception of the 2.651 acres, lay outside of the Acoma property. There were no improvements on this land when the Pueblo Lands board made its report in 1929, ruling that the Indian title to the tract had not been extinguished. The board made the following observation:

> It did not appear that the claimants entered upon this land in good faith, and no award to them is recommended.

The claimant was residing at that time in Los Angeles, but was represented by attorney in the action which followed. In the same suit brought against the Cubero heirs in 1930, special attorney Fraser brought action against Felix M. Otero and wife, Flora J. Otero, seeking to extinguish their claims to the 3.651 acres of land which lay within the Acoma boundaries. In his decree of May 14, 1931, Judge Neblett ruled in favor of the Acoma Indians and thus extinguished the last private land claim within the Acoma grant proper.[20]

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20 U. S. vs. Jesus Arviso, et al., No. 2070 in Equity.

The need for additional pasture lands has been an acute problem at Acoma pueblo for some years. Some relief, but not enough, was obtained in 1928 when congress, on May 23, set aside for the use of the Acoma Indians all vacant lands within Township 7 North, ranges seven and eight West, and fractional Township 8 North, range 8 West.[21] This land adjoins the Acoma grant on the south, and gives pasture to a large number of stock, but is insufficient to supply the needs of the pueblo.

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[21] House Resolution 11470, Public No. 481, 70th Congress.

CHAPTER IV

PUEBLO OF ISLETA

The Isleta Land Grant

Twelve miles south of Albuquerque on the west bank of the Rio Grande lies the ancient Tiwa pueblo of Isleta. With its single-story adobe houses, its central plaza, and its unusual Catholic church, Isleta serves as one of New Mexico's leading landmarks. In the days of the conquistadores the pueblo is supposed to have been situated on an island around which flowed the waters of the Rio del Norte.[1] With the changing of the river bed, Isleta has ceased to be the "little island," as its Spanish name indicates, occupying today the rich alluvial land on the west bank of the river.

Soon after the advent of the Spaniards a chapel was established at Isleta and the work of Christianizing the natives was undertaken by the padres.[2] That their work was fruitful seems evident from the fact that when the Pueblo

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[1] Frederick W. Hodge, "Handbook of American Indians North of Mexico," Bulletin No. 30, Bureau of American Ethnology (Government Printing Office, 1907), II, 622.

[2] Ibid., 323. The exact date of the founding of the Franciscan mission at Isleta is in doubt. Hodge states that the mission San Antonio de Isleta was established prior to 1629.

Revolt flared in 1680 the fleeing Spaniards took temporary refuge in Isleta.[3] Abandoning the pueblo in the face of the revolt, the Spaniards, accompanied by many of the Isleta Indians, fled to Paso del Norte, where the refugees founded a new pueblo, Isleta del Sur, ten miles south of the city on the north side of the Rio Grande. Other groups of Indians took refuge among the Hopi in Tusayán.[4] The "little island" lay abandoned, visited only by the armies of the reconquest, until Fray Juan de la Peña obtained permission to re-found the pueblo. Sometime between the years 1709 and 1718 he gathered a number of Tiwa Indians at the pueblo and re-established the mission, naming it San Agustín.[5] The rehabilitated pueblo of Isleta continued to grow: in 1760 the population was 304; in 1809 there were 487 inhabitants; in 1850 over 750 Indians were recorded as living at the pueblo; thirty years later, in 1880, the population had reached one thousand. With the establishment of the Republic of Mexico, a new administrative system was set up in New Mexico and on

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[3] Hubert H. Bancroft, History of the Pacific States of North America, "Arizona and New Mexico, 1530-1888," (History Company, 1888), XII, 177-78.

[4] The name of the Spaniards for that area of northern Arizona in which the Hopi pueblos are situated.

[5] Hubert H. Bancroft, op. cit., XII, 230. Reference is made by Bancroft to Archivo de Nueva Mexico, 197-98, as his authority. Bandelier and Lummis are opposed to Bancroft as to the actual date of the re-establishment. The indefinite date, 1709 to 1718, is therefore accepted for this work.

January 4, 1823, the territory was divided into four administrative partidos or counties, and Isleta was included in that area of which Albuquerque was the capital.

The Isleta Pueblo land grant originally consisted of four square leagues, one league in each of the four directions from the door of the church. While no document now in existence makes this specific grant, yet it is in accordance with the royal proclamation of May 24, 1567, which grants to the Indians the land one league in each direction from the door of the pueblo church.[6] That this law was effective in regard to Isleta seems evident from documents in the Spanish Archives which refer to the "Isleta league."[7] As the pueblo grew in population, the Isletans expanded their activities to the north and south as well as to the east and west. On the east lay the Manzano mountains from which the Indians gathered their firewood and game. With the advent of the American regime the Indians presented their claims to the surveyor general for the district of New Mexico. In presenting their claim to this official, no Spanish document confirming their title was offered in evidence. The Indians declared, however, that such a document had previously been deposited in the

Sp. Las Leyes de las Indias

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[6] Laws XII and XVIII, title xii, lib. iv, de la Nueva Recopilación de las Leyes de los Reynos de las Indias, June 4, 1687.

[7] New Mexico Archives, document no. 1381.

archives of the territory, and that it had recently been seen by one Miguel Antonio Lobato in the possession of another individual at Polverda or Socorro.[8] The document did not come to light during the subsequent investigations of the surveyor general. After examination, however, the surveyor general recommended that the land be confirmed to the Indians. On December 22, 1858, the congress of the United States confirmed the Isleta grant in the amount of 110,080.31 acres. In October of the following year, 1859, Deputy Surveyor John W. Garretson made a complete survey of the grant. A patent was issued to the pueblo of Isleta by the United States land office on November 1, 1863.[9]

The Isleta Tract

In surveying the original grant the officials had been in considerable doubt as to just where the east boundary of the Isleta grant should be located. According to the claims presented by the Indians, the Manzano mountains were the rightful boundary. The government surveyor, however, took this to mean the base of the mountains. This error deprived the Isletans of 21,415 acres of rich timber and

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[8] New Mexico Archives, document no.481.

[9] Charles C. Royce, compiler, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922.

55 years later, re-survey

grazing land. The Indians filed protest with the surveyor general, and on July 11, 1918, a re-survey of the tract was approved, resulting in an order by the secretary of the interior designating the backbone of the Isleta pueblo grant. A supplementary patent covering the territory in question was ordered issued to the pueblo.[10] Thirteen patented homesteads and one mining claim that had been acquired by non-Indian holders in the interval between the issuance of the Isleta patent and the correction of the survey error were not to be voided.[11] The forestry department was also held not liable for the return of grazing fees collected by it during the interim.[12] When the Pueblo Lands board met in 1928 to consider the land problems confronting the Isleta pueblo they found that up to that date no formal patent to the Isleta tract had been issued. In their first report, August 17, 1928, the board recommended that a patent be issued at once. The board recognized the validity of the fourteen private holdings mentioned above, but recommended that in the event of their abandonment they should revert to the pueblo.[13] The area

10 years later

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[10] Pueblo Lands Board, Report No. 1, Isleta Pueblo, "Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," August 17, 1928, 107.

[11] Pueblo Lands Board, Isleta Pueblo, "Report Concerning Indian Titles Extinguished," August 17, 1928, 3.

[12] Leo Crane, Desert Drums, 329.

[13] Pueblo Lands Board, Report No. 1, op. cit., 107.

involved in these exceptions was 1,588.49 acres. Thus to the original grant of 110,080.31 acres the Isleta pueblo added the Isleta tract of 21,414.99 acres. It is significant that the total area thus granted to the pueblo of Isleta, exclusive of purchases, was 131,495.30 acres, or almost eight times the old Spanish grant of four leagues square--approximately 17,000 acres!

Ojo de la Cabra Dispute

Only one important dispute with regard to the Isleta grant proper is found in the archives. To the east of the pueblo, on land which was subsequently to be granted to the Indians by the United States, was a spring known by the inhabitants of Isleta and the surrounding territory as the Ojo de la Cabra.[14] From the document now available it is apparent that while Mexican and Indian alike used the spring, yet it was generally recognized as belonging to the Isleta Indians.[15] In 1845 Don Juan Otero petitioned the departmental assembly for a grant to the spring and to the tract of land surrounding it. The assembly apparently granted the petition, for on March 27, 1845, the Indians filed a protest to such a grant and requested the governor to lay their protest before the departmental assembly. The assembly thereupon ordered

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[14] New Mexico Archives, document no. 1381.

[15] Loc. cit.

the prefect of the district and the local alcalde (justice of the peace) to make a report upon the matter. The prefect, Francisco Sarracino, replied that the spring lay outside of the "Isleta league," and rightfully belonged to no single party, and that the people from Valencia, Isleta, Padillas, and Pajarito all made use of the area. Sarracino made a second report, however, in which he stated that the spring and surrounding territory were considered as a part of the commons of the pueblo of Isleta. Upon this report the assembly revoked its previous action and withdrew its grant to Don Juan Otero, who, through his attorney, protested the action of the assembly.[16] Obtaining no satisfaction the case was appealed by Otero to the supreme court of justice at Mexico City and a decree based upon the action of that court was issued by the superior tribunal of the department of Chihuahua. When presented for confirmation to the United States court of private land claims on December 29, 1898, the court rejected the claim based on the Mexican grant. The case was then appealed to the supreme court of the United States which dismissed the action on January 18, 1899.[17] Thus ended the Ojo de la Cabra dispute in favor of the Isleta pueblo.

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16 New Mexico Archives, document no. 1382.

17 Mariano S. Otero vs. The United States of America, No. 167, "Ojo de la Cabra Grant," Court of Private Land Claims.

JOAQUIN SEDILLO AND ANTONIO GUTIERREZ GRANTS

Since the eighteenth century the pueblo of Isleta has added largely to its holdings by means of purchases of the surrounding land grants. To the south of the pueblo proper lay the Joaquín Sedillo and the Antonio Gutiérrez grants, containing some of the finest agricultural land in that area.

On November 5, 1716, thirty-six years after the Pueblo Revolt, Antonio Gutiérrez, who, according to his descendants, had served in the armies of the conquerors, obtained from Governor Phélix Martínez a grant described as being:

> Bounded on the North by an arroyo with some cottonwood trees that comes down from the hills;
> On the South by the Pueblo of San Clemente;
> On the East by the Rio del Norte; and
> On the West by the hills of the Puerco river, which boundary calls are well known objects, except that on the north of the location there is no evidence.[18]

These somewhat indefinite boundary calls placed the grant south of Isleta, on the west side of the Rio Grande, leaving a considerable tract separating the grant and the pueblo. Some time prior to 1734 this intervening tract was granted to Joaquín Sedillo.[19] The exact date of the grant is

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[18] New Mexico Archives, document no. 315.

[19] J. Francisco Chaves vs. The United States of America, No. 275, "Joaquin Sedillo Grant," Court of Private Land Claims. This file, in the office of the cadastral engineer, Santa Fe, contains the statement by the petitioner, J. Francisco Chavez and states that the original papers for the grant have been lost.

not known, but that it was made before 1734 is fairly certain, as on January 11, of that year Antonio Sedillo, son of Joaquín Sedillo, made a conveyance of a tract of land in this grant to Diego Borrego, stating therein that this tract had been granted to his father by the crown.[20] The history of the Gutiérrez and Sedillo grants between the years 1734 and 1785 is obscure, but in 1785 there was recorded the death of Clemente Gutiérrez, who died owning the whole of the Antonio Gutiérrez and Joaquín Sedillo grants, from which record it seems certain that the Sedillo grant had been purchased either by Antonio Gutiérrez or by his heirs. In making an inventory of the Clemente Gutiérrez estate, the widow listed these grants as "the Rancho commonly called San Clemente, Barrancas and Los Piños."[21] The pueblo of Isleta prior to May 3, 1808, acquired the title of Clemente Gutiérrez to all of the Joaquín Sedillo and Antonio Gutiérrez grants lying west of the Rio Grande, thus extending their holdings from the line of the "Isleta league" on the north to the boundary of the lands of the Los Lentes settlement on the south.[22]

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[20] New Mexico Archives, document no. 178.

[21] New Mexico Archives, document no. 371.

[22] J. Francisco Chaves vs. The United States of America, No. 274 and No. 275, "Joaquin Sedillo and Antonio Gutiérres Grants," Court of Private Land Claims. Petition of J. Francisco Chavez, September 9, 1896.

One major dispute affecting these two grants developed subsequent to their purchase by the pueblo of Isleta. In both the Sedillo and Gutiérrez grants the eastern boundary call was given as the Rio del Norte, or Rio Grande. After the making of these original grants the river formed a new channel at a considerable distance to the west of its former bed. The land lying between the old bed on the east and the new channel on the west became known as the Bosque de los Pinos.[23] This tract, which adjoined the new channel of the river, bordered both the Gutiérrez and Sedillo grants on the east side of the Rio Grande. By a number of deeds beginning in the year 1819, Francisco Xavier Chávez acquired from the heirs of Clemente Gutiérrez all of the Gutiérrez title to the lands east of the present river channel and the former bed of the Rio Grande.[24] The Isleta Indians have held this title to be invalid as it was claimed by the pueblo that the lands included within the Chávez--or Bosque de los Pinos--grant had been included in the original Antonio Gutiérrez and Joaquín Sedillo grants which they, the Indians, had purchased. And that, regardless of the shifting of the river channel after the original grants had been made, the original boundary calls remained the legal boundaries of the grants in question. The Isletans claimed, therefore, that their holdings did not end

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[23] Ibid., "Final Decree," September 9, 1896.

[24] Loc. cit.

at the new channel but ran to the original river bed considerably east of the present channel. The dispute remained unsettled until September 9, 1896, on which date J. Francisco Chávez, grandson of the original purchaser of the Bosque, Francisco Xavier Chávez, and the pueblo of Isleta filed claim against the United States in the court of private land claims seeking to obtain confirmation of their several titles. After reviewing the evidence presented in the case, the court of private land claims, of which Joseph R. Reed was chief justice, confirmed the title of the pueblo to the Joaquín Sedillo and Antonio Gutiérrez grants, and at the same time confirmed the title to the Bosque de los Pinos in J. Francisco Chávez.[25] The United States government, as defendant, appealed the case to the supreme court where the decision of the court of private land claims was upheld.

Numerous small holding claims within the Joaquín Sedillo and Antonio Gutiérrez grants have been brought forth, some being confirmed by the courts and others being invalidated. When the Pueblo Lands board delved into the Isleta claims in 1928, it found that within the two grants there were fifteen extinguished private land holdings aggregating 59,848 acres situated in or near the settlement of Los Lentes.

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[25] Ibid., June 2, 1898. These titles did not confer any right or title to any "gold, silver, quicksilver, mines," etc., found on the land.

Although recognizing the present validity of these private holdings the board observed that:

> All of said tracts of land so situated within the Antonio Gutierrez and Joaquin Sedillo Grants could have been recovered for said Indians by the United States by seasonable prosecution as defined in this Act (Pueblo Land Act of June 7, 1924, 43 Stat. 636). The fair market value of said water rights and said tracts of land exclusive of any improvements made therein or placed thereon by non-Indians claimants is $3,278.67, and the amount of loss suffered by said Indians through failure of the United States to seasonably prosecute any right of the United States or of said Indians thereto is $2,498.21.[26]

A patent to the Joaquín Sedillo and Antonio Gutiérrez grants was issued to the pueblo of Isleta on November 15, 1909, in the amount of 19,935.91 acres.

DIEGO DE PADILLA GRANT

"Lo de Padilla"

South of the Isleta pueblo boundary on the east side of the Rio Grande lies the Diego de Padilla grant, which is known by the name of the "Lo de Padilla" tract. This large grant, originally containing about 52,000 acres, was confirmed to Diego de Padilla on May 14, 1718, by Governor Don Antonio Valverde Cossio.[27] On that day, with all the pomp and ceremony prescribed by law, Diego Padilla was placed in possession

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[26] Pueblo Lands Board, Isleta Pueblo, "Report Concerning Indian Titles Extinguished," August 17, 1928, 5.

[27] New Mexico Archives, document no. 681.

of his grant by Captain Alonzo García, alcalde-mayor of the jurisdiction of Isleta.[28] The land made excellent forage for sheep, and Señor Padilla soon took advantage of his good fortune. It seemed, however, that Padilla's sheep were unaware of the boundaries of their pasture, for in 1733 the Indians of Isleta brought action against Diego de Padilla for allowing his flocks to trespass on the planting lands of the pueblo. Padilla answered by counter-charging that the Indians had destroyed a corral belonging to him. After hearing the arguments, the alcalde, Juan Gonzales Bas, forwarded the documents concerning the dispute to Governor Cruzate y Góngora, who ruled in favor of the Indians.[29] Subsequent history of the grant until 1750 is very sketchy. In 1736 Diego Padilla died, leaving his large estate to his children.[30]

On February 4, 1750, there appeared before Miguel Lucero, chief alcalde and war captain of the town and jurisdiction of San Felipe de Alburquerque, the seven children and heirs of Diego Padilla, together with the native officials of the pueblo of Isleta, and before this official the Padilla heirs deeded to the pueblo the entire Padilla grant for the sum of thirteen hundred pesos. In the document

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[28] The alcalde-mayor was the chief judicial and administrative officer of the district.

[29] New Mexico Archives, document no. 684.

[30] New Mexico Archives, document no. 685.

drawn up by Lucero it was stated that the rancho had been deserted.[31] The Indians were allowed to pay the purchase price in two installments, which privilege they promptly fulfilled, for on August 22, 1751, Francisco Padilla, in the name of his brothers and sisters, signed the final document clearing the title in favor of the pueblo of Isleta. On January 27, 1893, the Isletans filed petition with the Court of Private Land Claims seeking to have the Padilla grant confirmed as required by law. After consideration of the facts, the court, on November 28, 1896, confirmed the title to the grant.[32] While seemingly this would have the effect of a permanent settlement of the title, yet on February 3, 1915, the district court for the county of Valencia handed down a decision in a case known as Federico Sanchez et al., vs. the Pueblo of Isleta, which conflicted with the confirmed title. According to the evidence presented in the case, it appeared that in 1797 ten natives, presumably the descendants of Diego de Padilla, purchased back from the pueblo a part of the grant. The Valencia court decree states that the descendants of these purchasers entered into possession and retained possession until just before the beginning of the suit.

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[31] Original document, in file 273, is in the office of the cadastral engineer, Santa Fe, New Mexico.

[32] Pueblo of Isleta vs. the United States of America, No. 273, "Lo de Padilla Grant," Court of Private Land Claims, "Decree of Confirmation," November 28, 1896.

The description of the area in the decree was such that it was practically impossible for either the Indians or the non-Indian claimants to identify the tract. The result was a continuous controversy between the interested parties until the Pueblo Lands board undertook to solve the problem.

Toward the eastern end of the tract in dispute was situated the settlement of Peralta. The Indians had never claimed possession or title to the area within and surrounding this town. The situation resulted in negotiations between the people of Peralta and the Padilla heirs on one hand, and the Isleta Indians through their appointed representatives on the other, looking toward an agreement whereby a fair division of the Lo de Padilla area could be made. An understanding was reached after considerable negotiation, whereby the Peralta settlement and adjacent lands, aggregating 14,710.85 acres, were segregated from the Lo de Padilla grant and set aside by the Pueblo Lands board as the area to which the Peralta people, and the claimants under the Valencia court decision, were entitled.[33]

Unaware of the dispute outlined above, a patent to the Lo de Padilla grant was issued to the pueblo of Isleta by the United States government on April 9, 1908, in the amount of 51,940.82 acres. The Pueblo Lands board, after making the

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[33] Pueblo Lands Board, Isleta Pueblo, "Report Concerning Indian Titles Extinguished," August 17, 1928, 2.

the so-called "Peralta Settlement," reported on August 17, 1928, that:

> The Board therefore finds . . ., that of the 51,914.82 acres patented as the Lo de Padilla Grant, the Indians are now entitled to 37,229.97 acres and the non-Indians to 14,710.85 acres.

Two small tracts, 160 acres and 200 acres, have been confirmed to non-Indian settlers within the Isleta portion of the Lo de Padilla grant. The Pueblo Lands board ruled in 1928 that these tracts could have been recovered for the Indians by "seasonable prosecution," and set the loss suffered by the Indians through failure of the United States to prosecute at $720.00.

Thus has the pueblo of Isleta grown from a village of four square leagues to a rich agricultural community owning 188,661.18 acres.[34] The Isletans have made but little use of their vast holdings. Less than 3,000 acres of land are under cultivation, although many times that area is suitable for tilling. The Isletans have, however, enjoyed an income from their property by leasing it for grazing. An annual income of $4500.00 per year has been the result. Potentially the pueblo of Isleta is the richest of the pueblos of New Mexico.

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Pueblo of Isleta Grant	110,080.31 acres
Isleta Tract	21,414.99 acres
Joaquin Sedillo and Antonio Gutierrez grants	19,935.91 acres
Lo de Padilla grant	37,229.97 acres
Total	188,661.18 acres

CHAPTER V

SANDIA PUEBLO GRANT

Situated twelve miles north of the city of Albuquerque on the eastern side of the Rio Grande valley lie the somewhat dilapidated remains of the once populous pueblo of Sandia.[1] Forming one of the pueblos of the ancient Spanish Tiguex province, Sandia was known to the early Spanish explorers by the name of "Napeya."[2] The ruins of the original pueblo may still be seen a few yards north of the present village. When the Pueblo Revolt of 1680 forced the retirement of the Spaniards from New Mexico, the retreating governor, Don Antonio de Otermin, stopped momentarily at Sandia, but found that the Indians had abandoned the pueblo and had fled to the hills.[3] In the year following the uprising, Governor Otermin, seeking to reconquer the province, utterly destroyed the original pueblo. The Indians had meanwhile fled to the Hopi country, called Tusayán by the Spaniards, in northern Arizona, where they established the pueblo of "Payupki" on the Middle Mesa.

nice way to put it

During the period of abandonment two Spanish

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1 Vetancurt estimated the population of the original pueblo at 3000 Indians. Augustin Vetancurt, Chrónica de la Provincia del Santo Evangelio de Mexico (Mexico, 1697), 99.

2 Pacheco and Cardenas, Documentos Inéditos del Archivo de Las Indias (Madrid 1871), XVI, 115. Referred to hereinafter as Documentos Inéditos.

3 Ralph E. Twitchell, Spanish Archives of New Mexico, II, 18.

communites developed in the old Tiguex province, Alameda, to the south of the site of Sandía, and Bernalillo, situated a short distance to the northwest. The land in this region was very fertile and not only suitable for grazing but excellent for truck farming. It is not surprising, therefore, to find the area becoming populated. In 1733, during the administration of Governor Gervasio Cruzate y Góngora, a group of Indians, who had abandoned their tribal relations and had embraced Christianity, petitioned the governor for permission to make a settlement on the then abandoned site of Sandía. After considering their request, Governor Cruzate y Góngora denied the petition but offered the converts residence in any of the pueblos already established.[4]

It was not until 1748 that Sandía again became an active pueblo. Early in that year, Fray Juan Miguel Menchero, commissary-general, requested permission to refound the pueblo with Indians who had been returned from Tusayán under the leadership of Fathers Delgado and Pino in 1742, and who had been residing among the Jémez and other Pueblo Indians since that date.[5] Permission was granted by Governor Joaquín Codallos y Rabál on January 23, 1748. This permission evidently did not constitute a title to the land, for on

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[4] New Mexico Archives, document no. 1208.

[5] New Mexico Archives, document no. 1347.

April 5, 1748, as the result of a second petition by Father Menchero, Governor Codallos y Rabál issued a grant to the land. It is upon this grant that the modern pueblo of Sandía bases its legal claim to the land upon which it is situated.[6] The original expediente, containing the petition of Friar Menchero, the grant made by Governor Codallos y Rabál, the certificate of possession, and many other papers relative to the Sandía land grant are on file in the General Land Office in Santa Fe, New Mexico, and in the Museum of New Mexico in Santa Fe.

The governor's order placed the pueblo under the administrative jurisdiction of the "Villa de San Felipe de Alburquerque," and ordered the construction of the new pueblo to be "commenced during the early part of May of the present year, 1748."[7] As was customary the governor ordered the lieutenant-general, at that date Don Bernardo de Bustamante Tagle, to examine the pueblo site and to determine the boundaries of the new grant. That the lieutenant-general carried out this assignment well may be seen from his official report.[8] A conference of the neighboring Spanish ranchers was held at which the boundaries of the pueblo were

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6 Twitchell, op. cit., II, Archive 486, 220-225.

7 Ibid., 222.

8 Ibid., Archive 486, 223.

discussed and an agreement with the ranchers made. The Spanish citizens owned the land on the west side of the Rio Grande, thus making it impossible for the Spanish officials to make the customary boundary provisions of one thousand varas in each of the four cardinal directions from the pueblo. The western boundary of the grant was therefore made the Rio Grande, and to compensate for the loss of land toward the west the northern and southern boundaries were extended and the eastern boundary established as the main ridge of the Sandía mountains. In his report Bustamante observed that the land was "all adapted to the raising of wheat and the water being convenient to the surface of the ground." The population at that date he placed at "three hundred and fifty souls, great and small, comprising seventy families."[9]

At the very outset the new Sandía pueblo faced trouble over its boundaries, for in the same year as the re-establishment, 1748, a petition was filed by Salvador Martínez, who complained that the Sandía pueblo grant dispossessed him of his property. Governor Codallos y Rabál considered the complaint and on July 13, 1748 denied the petition, apparently on the grounds that Martínez had made no protest at the time the grant was made to the Indians, and also because he had suffered no real injury, having more desirable property elsewhere.[10]

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[9] Ibid., 225.

[10] New Mexico Archives, document no. 532.

The subsequent history of the Sandia grant during the Spanish and Mexican periods reveals many land controversies between the Indians and their neighbors. The desirability of the land and its convenient location made the Sandia grant the prey for many unscrupulous land seekers. In 1814 the Indians of Sandia had loaned to twenty Spaniards several strips of land for a period of five years. Six of the Spaniards built huts on the property in which to live while tilling the soil. The Indians allowed the farmers to remain until 1816, when, apparently becoming alarmed over the permanent buildings and actions of the settlers, they appealed to the Protector of the Indians, Don Felipe Sandoval, to oust the non-Indian renters. The action of the governor in this case is not recorded, but it may be supposed that the Indians were made to abide by their contract.[11] Ten years later, in 1826, the heirs of Eusebio Rael petitioned the governor for permission to build on land which had been in controversy between themselves and the Sandia Indians, and which, according to the petition, had been decided in their favor. The petition was denied unless the heirs could obtain the voluntary consent of the Indians to the arrangement.[12] In the years immediately following this incident there appeared what apparently was a mass attempt on the part of local officials

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[11] New Mexico Archives, documents no. 1359, 1360.

[12] Ibid., document no. 1210.

and ranchers to obtain part of the best land in the Sandía grant. In 1821 Don Ignacio María Sánchez Vergara (referred to as Ignacio María Sánchez in several documents) petitioned for and received a grant of land near the pueblo of Sandía.[13] Sometime between 1821 and 1827 Sánchez became alcalde for the region in which the Sandía pueblo is located. On July 7, 1827, acting in his official capacity he transmitted an expediente of a suit in regard to a land controversy between Don Julian Rael and the Sandía pueblo to the governor at Santa Fe.[14] His recommendation was strongly in favor of Rael. Twitchell suspects that Sánchez was probably personally interested in the matter, as he requests the return of certain documents and at the end of a letter he acknowledges receipt of his documents. If this supposition is valid, it explains the partiality with which Sánchez made his recommendation. That Sańchez was unscrupulous is more evident from a deposition made at Bernalillo on May 15, 1829, by Rafael Miera. It also indicates the methods, all too prevalent in the history of New Mexico, by which the Pueblo Indians were fleeced of their property. The deponent states that some years before he was at the house of Don Eusebio Rael (note the litigants in the 1826 case mentioned above), in company with some of his brothers-in-law, when

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[13] New Mexico Archives, document no. 1198.

[14] Ibid., document no. 1298.

> . . . Don Ignacio Sanchez came to the house and, after having conversed for some time with Don Eusebio Rael, took from his pocket the grant of the Sandia Indians; that deponent saw that Sanchez was reading the grant, and pinching out of it certain words and putting in others with a pen he had in his hand; that also on the same occasion deponent heard Sanchez say that now they could bring suit for the lands claimed by the pueblo of Sandia and he promised Don Eusebio Rael that if he got the land he would give him the half of it; that while the suit was going on deponent's brother-in-law asked him what he was going to put up to assist in paying for the paper and other expenses which might arise, and he replied that in view of what he had witnessed, he would not contribute even half a real.[15]

The archives do not contain the result of this incident.

The period of Mexican occupation, from 1821 to 1846, was disastrous for the Sandía pueblo land grant. Whereas under Spanish rule the Indians were considered to be wards of the crown and as such could not alienate their lands without consent of the governmental officials,[16] under the Mexican regime this policy was relaxed and many grants were made within pueblo lands by the Indians. Contained in the records of the Pueblo Lands board, the Bernalillo and Sandoval county records, and in the archives of New Mexico are numerous small grants dated 1824 to 1846 which deed Indian land to non-Indian settlers. The grant to Bernalillo, which lies almost wholly within the Sandía pueblo boundaries was made in 1824

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[15] New Mexico Archives, document no. 1375.

[16] Recopilación de las Leyes de los Reynos de los Indias, Ley 27, tit. 6, lib. 1.

as were numerous holdings in the Alameda area.[17] Title to these lands was to be later challenged by the Pueblo Lands board and several major legal battles questioned their validity.

Soon after the United States annexed New Mexico, it became necessary for all land grants, both private and pueblo, to be confirmed by the national congress. The United States surveyor general for New Mexico investigated the title of the Sandía Indians and on December 22, 1858, congress confirmed the title to the grant. A patent was issued by the land office on November 1, 1864, recognizing the grant as containing 24,034.87 acres.[18] The boundaries of the grant as established by the patent were:

> On the West the Rio Grande, on the East the top of the Sandia mountains, on the South a line commencing at the intersection of the Rio Grande with

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[17] The Indians received very little or nothing for these lands. A deed made to Antonio Lucrecio Muniz dated November 14, 1826, shows that he paid the Indians for a fair sized holding the following: "six sheep, five serapes, one hand worked spread, one calf (two or three years old), 2 1/2 fanegas of wheat, 5 sacks of corn, one pair fine stockings and one pueblo belt." Another deed to Baltazar Perea dated June 5, 1826, shows that as payment for a strip of land Perea paid, "one good horse, one bull (two or three years old), one sieve, and eight sheep." Abstract of title in Sandia file, Land Agent's Office, United Pueblos Agency, Albuquerque, New Mexico.

[18] Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922. The Joy Survey made in 1915 placed the acreage at 24,715.51. The discrepancy is due, no doubt, to the shifting of the bed of the Rio Grande and to errors in the original survey.

> the county line dividing Bernalillo and Sandoval counties and running to a point at the top of the Sandia Mountains about two miles south of said county line, and on the North by a line running from a point on the Rio Grande about one mile North of the third standard Parallel north to a point on the top of the Sandia Mountains, about three miles south of said Parallel.

The greatest portion of the grant lies in southeastern Sandoval county, with a small part of it projecting into Bernalillo county. No action was taken by the federal government at this time to question the title of non-Indians to lands within the grant.

In 1924 the Pueblo Lands board was established by act of congress to investigate the claims of non-Indians to Pueblo Indian lands.[19] Hearings on the Sandia pueblo grant were held in October and November of 1927 at the town of Bernalillo. The board found three hundred and eighty-six private claims aggregating 3,262.57 acres within the Indian grant. A major problem facing the board was the fact that a major portion of the town of Bernalillo lay within the northern boundaries of the Sandia pueblo lands. A deed dated April 2, 1824, was produced by the residents of Bernalillo which showed that in that year two Sandia Indians, "Juan Angel Moquino, alcalde for the district of the Sandia Pueblo, and Mariano Montoya, also of the pueblo," deeded to

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[19] 43 Stat. 636, "An Act to Quiet Title to lands within Pueblo Indian land grants and for other purposes," June,7, 1924.

sixty-seven residents of Bernalillo a large tract of land "on account of their (the Bernalillo citizens) not having land on which to support their families."[20] The Pueblo Lands board, after considering all claims presented by the Bernalillo citizens, found extinguished the claim of the Indians to only 44.77 acres, ruling the majority of the Bernalillo claims to be unextinguished in so far as the Indian claims were concerned. The attorneys for the Indians and the board held that the Sandía Indians could not legally deed away their land during the Mexican regime any more than under the Spanish or the present American rule, and hence the 1824 deed was null and void.[21] In accordance with the law establishing the Pueblo Lands board in 1924, a suit to quiet title to the lands in the name of the Sandía pueblo was filed in the federal district court of New Mexico.

Before the case could be heard, however, a group of Bernalillo residents entered into negotiations with the Sandía Indians and purchased a large tract of the lands in controversy. Mr. Siegfried Seligman, acting as trustee for the Bernalillo citizens, obtained a quit claim from the

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[20] Warranty deed, Book 21, page 294, Bernalillo county records, "Juan Angel Moqueno to Rafael Perea et al., April 12, 1824," filed July 6, 1891. This deed also shows that the Indians gave this land to the Bernalillo citizens as a gift, receiving, so far as the actual deed is concerned, no recompense for same.

[21] United States as Guardian of the Indians of the Pueblo of Sandia vs. George Abousclman, et al., No. 1839, In Equity, "Bill of Complaint."

Sandia Indians to the lands within the community of Bernalillo. This purchase received the approval of the Indian agent for the pueblos, and the department of the interior gave its sanction on October 23, 1929. The case of the United States vs. George Abouselman, et al., No. 1839, In Equity was heard in December of 1929, and resulted in the court awarding 112.2 acres to non-Indian claimants in its final decree on December 16, 1929. These awards were based upon one of two facts: first, that "notorious, actual, exclusive, continuous, adverse possession" had been maintained under "color of title" since January 6, 1902, or second, that they had had adverse possession without color of title for thirty-five years--since March 16, 1889.[22]

Involved in the same case were lands in the vicinity of Alameda, which community adjoins the southern boundary of the Sandia grant. The largest single claimant in this region was Pedro C. García, who claimed title to 1223.76 acres lying in southwestern portion of the Indian grant, in Bernalillo county.[23] The lands which García held had originally been granted to Miguel Antonio Lobato on June 10, 1842

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[22] Any document or instrument of deed constitutes "color of title." "Color of title ... is that which in appearance is title but which in reality is no title," Montoya vs. Unknown Heirs of Vigil, 232 U. S. 375.

[23] Pueblo Lands Board, Sandia Pueblo, "Report of Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," Santa Fe, January 10, 1928.

by "Jose Ortiz Salbe, et al., children and chiefs of the Pueblo of Sandia,"

> In consideration for defending their lands in La Rinconada, which has been in litigation for the last twenty-two years; the sum of $5,000 in money, cattle, mules, and horses, and the balance in land wherever he chooses to make up the $5,000; that if he win the suit they (the Indians of Sandia) would give him (Lobato) in addition all of the land he desired for himself, his wife, children, heirs and successors forever, and that if he would reside with them they would build him a house and make him a chief of said pueblo.[24]

After making this agreement the Indians evidently lost some of their regard for Lobato, for on June 28, 1842, eighteen days after the first agreement, a second contract was drawn up between the Sandia leaders and Lobato in which the latter agreed that he or his successors would never sell any of the land which he occupied and that at the death of his immediate heirs the land would again revert to the pueblo.[25] On April 2, 1846, the Indians granted Lobato a second tract of land for services in a lawsuit in which they had been engaged for over four years. This grant carried no limitation or reversion clause. Additional land was also granted to the "benefactor" by the Indians of Sandia on November 7, 1847, November 12, 1847, November 7, 1857, June 16, 1860,

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[24] On record in the county clerk's office, Sandoval county court house, deed records, Book A, 312; filed May 13, 1915.

[25] Sandoval county deed records, Book 2, 327; filed July 27, 1915.

October 7, 1865, April 17, 1868, October 18, 1868, March 10, 1869, and November 11, 1879.[26]

On October 4, 1910, Pedro C. García bought a portion of the Lobato lands from the heirs of the original grantee. On the 22nd of the same month and year he purchased a second tract from Jesse C. Clark, who, two years earlier, had acquired the tract from the successors of Miguel Antonio Lobato.[27] Other purchases were made by García in 1908 and 1915. When the Pueblo Lands Board considered García's claims it naturally held that the original Indian grant to Lobato was null and void since the Indians at no time had the power to make such a grant, and, also, that the original grant made by the Indians was not a grant in "fee simple" but a "life estate" and hence Lobato could not sell, give or trade the land.[28] However, the board recognized that García had a "color of title" to part of the lands and previous to the final decree of the court an agreement between García and the Indians was arranged by which García gave up his claim to 1158.44 acres and the Indians dismissed

under Mex. rule

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[26] Ibid., Book A-1, 314-319.

[27] Bernalillo County Deed Records, Book 45, 105, and Book 47, 576.

[28] A "fee simple" title confers upon the holder the right to sell, alienate or otherwise dispose of the property possessed under such a title. A "life estate" title may not be alienated in any way and reverts to the grantor upon death of the grantee and his immediate heirs.

their complaint to 80.7 acres held by García. This agreement was entered by the district court as a stipulation in the case of the United States vs. George Abouselman, et al., No. 1839, In Equity, and made a part of the final decree relative to Pedro C. García, on December 2, 1929.[29] The two court decrees, December 2, and December 16, 1929, and the community purchase of the Bernalillo lands thus cleared the Sandía grant of all unextinguished claims.[30]

With the establishment of the Middle Rio Grande Conservancy district many acres of water-logged land were reclaimed for the use of the Sandía Indians. The present population of Sandía, however, have farmed approximately only five hundred and thirty acres and are using but two hundred and forty additional acres for occasional hay cutting and pasture. While the federal government since 1846 has endeavored to protect the pueblo against encroachments, yet frequent intermarriage of the neighboring Mexican population and the Indians has greatly diluted the true Indian strain. The present population of the pueblo is one hundred and twenty-five.

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[29] Because of the importance of the García claims the court issued a separate "final decree", although the García dispute was a part of the original case.

[30] There are no purchases or executive additions to the Sandía pueblo grant.

CHAPTER VI

SAN FELIPE

On the west bank of the Rio Grande, ten miles north of Bernalillo, in Sandoval county, is situated the Indian pueblo of San Felipe. Known to the early Spanish *conquistadores*, San Felipe has survived a historical period of almost four hundred years, and is today a flourishing village of 623 persons. The site of the original pueblo, located at the foot of the mesa of *Tamita*, has disappeared, having been inundated numerous times by the waters from the *Tunque* arroyo. Still in evidence, however, are the ruins of the pueblo of *Katishtya* and its Spanish mission, built in 1694, on the top of Black Mesa just above the present village. This site was occupied after the pueblo revolt of 1680. It was on this mesa that Governor Otermín, during his retreat in 1680, discovered the Indians, who had abandoned their pueblo, peering down at his retreating army.[1] The present location of San Felipe pueblo, at the base of Black Mesa, was occupied some years after the reconquest of New Mexico by Don Diego de Vargas.

Few of the New Mexico pueblos can claim as complicated a land history as San Felipe has presented, not only during

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1 Ralph E. Twitchell, *The Spanish Archives of New Mexico*, II, 15. This is an account of the retreat as translated from the original *Auto* of Governor Otermín. The original is on file in the Museum of New Mexico, Santa Fe.

the American period, but during the Spanish and Mexican periods as well. For many years the Indians of San Felipe based their claim to the pueblo lands upon a grant allegedly made by Governor Domingo Jironza Pétriz de Cruzate in the year 1689.[2] This document purported to grant to the pueblo the usual league in each of the four cardinal directions from the center of the pueblo. While the authenticity of this grant was not questioned for many years--in fact, it was upon this document that the congress of the United States, upon recommendation of the surveyor-general for New Mexico, confirmed the San Felipe title in 1858--subsequent research has proven that this document is spurious.[3] An authentic basis for the Indian grant is found, however, in a second document, dated 1770, which refers to the "league" of San Felipe.[4] Upon this document, therefore, the Indians of San Felipe pueblo have been able to derive the legal justification for the many disputes which have developed since 1770. The San Felipe pueblo grant was confirmed by the congress of the United States on December 22, 1858, and a patent was issued by the General Land Office on November 1,

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[2] New Mexico Archives, document no. R No. E.

[3] Will M. Tipton, in Ralph E. Twitchell, Spanish Archives of New Mexico, I, 477.

[4] Office of the cadastral engineer, Santa Fe, file 200, Reported Claim No. 142.

1864.[5] The grant as surveyed consisted of 34,766.86 acres, of which 7,797.48 acres were held, or claimed, by non-Indian settlers.[6]

SANTA ANA DISPUTES

Beginning early in the eighteenth century and lasting up to, and including, the present decade, the Indians of San Felipe have engaged in a long series of controversies with the Indians of Santa Ana pueblo. Santa Ana is situated a few miles up the Jémez river from the junction of the Jémez and the Rio Grande. The lands surrounding this pueblo are very poor, and although water is readily obtainable, the land is not easily tilled. For this reason the Indians of Santa Ana have for centuries farmed whatever land they could purchase or rent in the valley of the Rio Grande, a few leagues to the east. In possession of the Santa Ana Indians are a number of documents made by Spanish settlers and dated between 1709 and 1763, which deed land in the Rio Grande valley to the pueblo of Santa Ana.[7] Upon these lands the

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[5] Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922.

[6] Pueblo Lands board, San Felipe Pueblo, "Report concerning Indian Titles Extinguished," May 14, 1928.

[7] These lands are situated between the junction of the Jémez and Rio Grande and the southern boundary of the San Felipe pueblo. The documents referred to may be found in file 157, El Ranchito Grant, office of the cadastral engineer, Santa Fe.

Indians of that pueblo planted their corn and grazed their stock. These activities soon lead to conflict with the Indians of San Felipe, who claimed ownership of the land upon which the Santa Anas had settled.

The Spanish archives of New Mexico contain documents by which we can trace more than a century of continuous controversy between these pueblos. In 1808 the Santa Ana Indians complained to Don Felipe Sandoval, protector of the Indians, that the natives of San Felipe had seized their lands and had sold a large part of them to Spanish settlers.[8] No answer to this complaint having been received, the Indians sent a second petition on May 5, 1813, stating that in the interim since the first petition the San Felipe Indians had not only sold a large quantity of the land claimed by the Santa Ana pueblo, but had cut a great deal of timber, and unless immediate action were taken the timber would all be destroyed. This petition brought immediate results from acting governor Don José Manrique, who ordered an investigation by local officials, headed by Don José Pino, one of the alcaldes of Albuquerque. The Santa Ana pueblo presented documentary evidence to substantiate their claim, as did the Indians of San Felipe, who claimed the land in controversy. The boundaries according to the Santa Ana document were:

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[8] New Mexico Archives, document no. 1348.

> . . . on the north side it is bounded as far as the outlet of the Angostura, where there is a trunk of a tree which the Indians cut down; on the east by the Rio del Norte; on the South by the junction of the two rivers; on the west by the lands of the Pueblo itself.[9]

The San Felipe document described the boundaries as follows:

> . . . on the east the Rio del Norte; on the west by the cuevillo; on the north the boundary of said pueblo; on the south by lands of the Pueblo of the Indians of Santa Ana.

Alcalde Pino, after studying these documents, laid out the boundaries and officials of both the pueblos involved gave their approval to his judgment. Both parties then requested Pino to outline their boundaries on the east side of the river. This was a more difficult task than the previous problem, due to the inadequate description of the boundary calls in the documents. When Pino decided upon the boundary it was found that several pieces of land which the San Felipe Indians had sold to citizens of Angostura were included in that portion of the land which fell to the Santa Ana Indians.

Since these purchases were now illegal, having been made by the San Felipe Indians, who did not own the land, Alcalde Pino suggested that the vendors return the money paid

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[9] New Mexico Archives, document no. 1356. This voluminous manuscript is on file in the office of the cadastral engineer, Santa Fe, N.M. An excellent brief of the document is to be found in Ralph E. Twitchell, Spanish Archives of New Mexico, I, 422-28.

by the purchasers. The pueblo of San Felipe on May 21, 1813, petitioned the protector of the Indians to present to the governor a statement of the injury they had suffered because of Pino's settlement. This injury was based on the awarding of lands at Angostura to Santa Ana, which had been purchased by the San Felipe Indians from the heirs of Cristobal Baca.

Felipe Sandoval, protector of the Indians, made an investigation of the San Felipe claims at Angostura, and decided the complaint was a just one. He, therefore, on May 29, 1813, recommended to acting Governor José Manrique, that each pueblo be made to produce documents in order that the boundaries might be definitely and finally decided. On June 3, Governor Manrique directed Don José María de Arze, ensign of the Company stationed at Santa Fe, to investigate and report on the matter. Arze made a thorough investigation, giving his decision in a report to the acting governor on June 7, 1813, which approved the action of Alcalde Pino in regard to the lands in dispute on the west side of the river, but recommended that the boundaries on the east side of the Rio Grande, as established by Pino, be annulled, and the new survey which he, Arze, had made be substituted. On June 18, 1813, Governor Manrique approved this recommendation. This decision proved to be in the favor of the Santa Ana Indians.[10]

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[10] New Mexico Archives, document no. 1356. See "Santa Ana Pueblo," pages 129-131.

That the Spanish settlers of Angostura refused to give up the lands which they had purchased from the San Felipe Indians, and which land had been awarded to the Santa Ana pueblo, is evident from another document in the Spanish archives of New Mexico.[11] On April 19, 1817, acting upon an appeal from the Indians of Santa Ana, the royal audiencia made public a decision in the city of Guadalajara, Mexico, instructing the governor of New Mexico to restore the lands in question to their rightful owners and to give a hearing to the persons who had bought them, with a view to providing other lands for them on the royal domain and entirely separated from the lands of the Indians.[12] On April 22, 1819, the governor of New Mexico, Don Facundo Melgares, announced his intention of enforcing the decision of the audencia and ordered Ignacio María Sánchez Vergara, alcalde of the district, to make the proper distribution of the lands in controversy, and to offer the Spanish settlers land in the royal domain at Socorro. The governor added that since the Indians of San

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[11] New Mexico Archives, document no. 1363, 1.

[12] It was contrary to Spanish law for non-Indians to reside within an Indian pueblo. New Mexico Archives, document no. 1340 shows that on August 25, 1705, Governor Francisco Cuervo y Valdez issued an order prohibiting all Spanish citizens from residing in Indian pueblos, or even entering them without express permission from the governor, and commanding any citizens who were then living in pueblos to leave them, and to remove therefrom all of their property.

Felipe had sold lands which did not belong to them in would be well for them to make some suggestion as to how they should make restitution.[13]

Investigation proved the settlers willing to give up the land they were occupying, and the governor then ordered the Indians of San Felipe to repay the money they had received for the illegally sold lands. Vacant land in the royal domain between Santo Domingo and San Felipe was to be granted to the citizens who had given up their claims to the tract confirmed to the pueblo of Santa Ana.[14] In August of 1819, however, the settlers were given new lands on the west side of the river.[15]

In June, 1819, the Santa Ana Indians requested permission to move their pueblo to the banks of the Rio Grande in order that they might be near their farming lands. At the same time they offered to purchase from the Indians of San Felipe the land at Algodones, which they felt that the San Felipe pueblo did not need.[16] The result of this petition from the protector of the Indians to the governor is not recorded.

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[13] New Mexico Archives, document no. 1364.

[14] New Mexico Archives, document no. 1365.

[15] New Mexico Archives, document no. 1234.

[16] New Mexico Archives, document no. 1366.

When the Court of Private Land Claims was petitioned by the Indians of Santa Ana, in 1897, to confirm the additions to its grant, obtained by purchase from the Spanish settlers, it was evident that these lands, called "El Ranchito" overlapped the lands of the San Felipe pueblo by 695.02 acres. While confirming El Ranchito within its present boundaries to the Santa Ana pueblo, the court declined to decide the question of the overlap.[17] In 1928 the Pueblo Lands Board was requested by the Indians to adjudicate the controversy, but this body decided, after reviewing the dispute, that it had no authority under the Pueblo Lands Act of 1924, to interfere in controversies between pueblos.[18] In his report of October 1, 1932, to the secretary of the interior, George A. H. Fraser, special assistant to the attorney general, reported:

> I have consulted with Mr. W. C. Cochrane, Special Attorney for the Pueblo Indians, who is satisfied that in spite of this apparent priority 'of the San Felipe Indians', about 200 acres of the conflict area should belong to Santa Ana by reason of continuous and exclusive occupation and use for a period reaching back beyond the memory of living man . . . I understand that there is no use attempting to procure the consent of San Felipe to a declaration of ownership by Santa Ana of this conflict, because the former pueblo, when approached on the subject, merely states that if the conflict area lies within its

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[17] Pueblo of Santa Ana vs. The United States of America, Court of Private Land Claims, No. 157, "Decree of Confirmation," May 31, 1897.

[18] Correspondence file 3, Pueblo Lands Board, San Felipe Pueblo, land agent's office, United Pueblos Agency, Albuquerque, New Mexico.

Grant, it continues to claim it.[19]
This problem is no nearer solution today than in 1898, when the Court of Private Land Claims confirmed the El Ranchito purchase without deciding the question of the overlap of this purchase with the San Felipe grant.

THE ANGOSTURA DISPUTE

The Angostura grant, lying between the San Felipe pueblo grant and the lands of the Santa Ana Indians to the south, overlaps the San Felipe grant by 878.66 acres. The first record of this land was made in 1704, when a group of Spanish citizens petitioned Governor Vargas for a grant "at a place called Angostura," which apparently was occupied by the San Felipe Indians. The attorney for the Indians opposed the grant because of "their (the Indians) loyalty to the crown during the uprisings of 1693 and 1696." Governor Vargas refused the petition at Bernalillo on February 26, 1704.[20]

A grant to the Angostura lands was made, however, on November 4, 1745, by Governor Joaquín Codallas y Rabál to Juan José Gallegos who petitioned:

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19 Report on Two Hundred Acre Conflict between the Pueblo of San Felipe Grant and El Ranchito Purchase of Pueblo Santa Ana, George A. H. Fraser, October 1, 1932, 2. On record in "San Felipe" file, land agent's office, United Pueblos Agency, Albuquerque, New Mexico.

20 New Mexico Archives, document no. 78.

> I ask and pray that your excellency be pleased to adjudge to me a tract of vacant royal domain which is situated a long distance from the lands belonging to the Pueblo and Indians of San Felipe, and which are, on the East, the Rio del Norte, on the West an Arroyo called the Cuerbo Arroyo, on the north the lands of said pueblo of San Felipe, and on the South by lands of the Indians of the Pueblo of Santa Ana...[21]

On November 10, 1745, Gallegos was given formal possession of the Angostura grant by the lieutenant chief alcalde, Andrés Montoya, who, according to his deposition had first called the Indians of San Felipe to the site of the new grant, and acquainted them with the order of Governor Codallas y Rabál. The Indians, according to the alcalde, recognized the land in question as being part of the royal domain, and thus not Indian property.[22] The boundaries as set forth were those described in the above-quoted petition. After seven years of possession Gallegos, on December 5, 1752, sold and conveyed the tract to the Indians of San Felipe for the sum of $300.00 in reales.[23] The Indians retained possession of the Angostura grant until 1866, when on April 19, the governor and fiscal mayor of the San Felipe pueblo conveyed to José Leandro Perea, "1325 varas from

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21 Angostura Grant, file 165, office of the cadastral engineer, Santa Fe, page 1.

22 Ibid., 3, 4.

23 This conveyance is also to be found in file 165.

North to South, and 713 1/2 varas from East to West," in the Angostura tract.[24] On February 28, 1874, the surveyor general reported that the tract was occupied by the inhabitants of the village of Angostura, and "that said village was in existence at and before the American conquest in 1846." Believing the original Spanish papers in the case to be genuine, and that the claimants were holding under the grant in good faith, he recommended that the lands be confirmed to both the Indians and the native inhabitants.[25]

It is evident that no action was taken on this recommendation for in April, 1897, Jesús M. Castillo, Justiniano Castillo, Mariano S. Perea, and José L. Perea, all settlers at Angostura, petitioned the Court of Private Land Claims for confirmation of the Angostura grant.[26] The land as described was a strip two miles wide and five miles long bounded exactly as stated in the original grant to Juan José Gallegos

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[24] Angostura Grant op. cit., file 165. The endorsement at the end of this conveyance states that it was filed "in the probate court of the County of Santa Ana, Territory of New Mexico, Book letter D, pages 39 and 40, on the 26 day of May, 1866."

[25] Report, United States Surveyor General for New Mexico to the Surveyor General of the United States, February 28, 1874. Copy of this report is on file in the office of the cadastral engineer, Santa Fe. The recommendation for a joint grant was apparently made because of the fact that the Indians had conveyed only a part of the original purchase.

[26] Jesús M. Castillo, et al., vs. the United States of America, No. 229, "Angostura Grant," Court of Private Land Claims.

in 1745. The attorneys for the government and the Indians attacked the petition on three grounds:

> 1. That the original grantee had sold the grant to the Indians of San Felipe in 1752, and that the Indians had authority to make the deed of 1866 without the expressed permission of the United States government, as their guardian.
>
> 2. That the Act of Congress, approved December 22, 1858, confirmed to the pueblo of San Felipe a tract of land including in whole or in part the tract claimed by the petitioners, and that a patent had been issued to the pueblo of San Felipe.
>
> 3. That under section 13 of the act creating the Court of Private Land Claims, that court was expressly forbidden from interfering with any grant previously confirmed or passed upon by the Congress.

The Court of Private Land Claims, however, on June 2, 1897, confirmed the Angostura grant to the petitioners, setting forth the boundaries as:

> North boundary line of the Pueblo of San Felipe as recognized and understood by the said Indians and the people of Angostura, the same being an east and west line through the point where the Arroyo Maria Chavez empties into the Rio Grande del Norte; on the East the old bed of the Rio Grande del Norte as the same ran at the time of the making of this Grant; South, the boundary of the Pueblo of Santa Ana, the same being a line of stones continuing westward across the Rio del Norte from the Loma Infernada and constituting the North boundary of the lands confirmed by decree of this court to said Pueblo of Santa Ana: and on the West the Arroyo del Cuerbo; the said tract containing, more or less, 2000 acres.[27]

The Court of Private Land Claims, while confirming the Angostura grant to the settlers of that area did not

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[27] Ibid., "Decree of Confirmation," January 28, 1898.

definitely decide the problem involved in the 878.66 acre conflict between the Angostura grant and the San Felipe pueblo grant, the decision merely awarding the former grant, as set forth in the boundary descriptions, to the petitioners. In May, 1928, the Pueblo Lands board, after reviewing the evidence in regard to the Angostura grant and the overlap with the San Felipe pueblo lands ruled:

> The settlers in setting up their claims before the Board to lands lying within said overlap did not base their title upon the Angostura grant alone, but rested upon deeds, and other documentary evidences of title, adverse possession, and payment of taxes. In the opinion of the board, those claiming any part of the lands in conflict have no better title, if any, than those claiming lands in the Indian grant where there is no conflict.[28]

After thus ruling the Indians' title to the Angostura overlap as unextinguished, the board, through the special assistant to the attorney general, filed suit for confirmation of the title in the United States district court of New Mexico. The defendants answered this suit by claiming title, not under the decision of the Court of Private Land Claims, but under the "Adverse possession" clause, Section 4, of the Pueblo Lands Act of 1924. In its final decree of April 22, 1930, the district court reversed the Pueblo Lands board in almost all of its decisions relative to the tract

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[28] Pueblo Lands Board, San Felipe Pueblo, "Report on Title to Lands Granted or Confirmed to Pueblo Indians not Extinguished," May 14, 1928, 4.

in conflict, awarding the land to the non-Indian defendants.[29] Thus today, within the southwest corner of the San Felipe pueblo grant, the residents of the community of Angostura retain possession of approximately 878 acres by reason of the title acquired through the decision of the district court.

ALGODONES CONTROVERSY

Adjoining the Angostura grant on the east lies the community of Algodones, with a population of several hundred Spanish-American settlers. The lands of this village are wholly within the exterior boundaries of the San Felipe pueblo grant as confirmed by the congress of the United States in 1858.

On March 8, 1826, during the Mexican regime, there appeared before the local alcalde, Don Baltazar Perea, at the settlement of Algodones, four Indians of the pueblo of San Felipe. These Indians, Juan de Jesús Martín, Asencio Sánchez, José Riano, and José Carma, claiming to represent the "voice power of the pueblo," deeded to the "Republic of Algodones" 3400 varas of Indian land in and around that settlement.[30] The Indians, according to this document received

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[29] United States as Guardian of the Indians of San Felipe Pueblo vs. The Algodones Land Co., et al., No. 1870 In Equity, "Final Decree," April 22, 1930.

[30] Spanish Land Records, Book A, 118, 119. Office of the cadastral engineer, Santa Fe, N. M. The originals are also on file in this office.

two hundred head of sheep in payment. The boundaries of the "purchase" as set forth in this deed were:

> . . . on the North side of lands of the same Pueblo where there is a deep arroyo which is called Maria Chavez; and on the south the foot of the loma of the Canada del Rito de las Cuestas, which is the part on the north side, and on the east the lands which are contiguous to the old settlement of Las Cuestas; and on the west the bank of the Rio del Norte, . . .[31]

It will be noted that this deed, therefore, not only includes the lands at Algodones, but a large part of the Angostura lands as well. Alcalde Perea, on June 1, 1826, drew up a list of the citizens who shared in the lands deed by the Indians. This document proves that the newly acquired tract was to be considered community land by the settlers, and title was to remain in the community and not in the individual holders.[32] The situation is further complicated by the fact that the deed made to the settlers at Angostura in 1866 also included a large part of the Algodones tract.

The lands at Algodones remained in the hands of the non-Indian settlers throughout the nineteenth century without any dispute being recorded. In 1928, however, the Pueblo Lands board, after public hearing at Algodones, ruled the Indian title to sixty-seven out of 235 private land

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[31] Spanish Land Records, op. cit., Book A, 118, 119.

[32] File 165, Algodones Grant, office of the cadastral engineer, Santa Fe, New Mexico.

holdings as unextinguished.[33] Suit was filed by the government in the United States district court seeking to quiet title to the Indians.[34] The government contended that:

1. The deed of 1826 was null and void, the Indians not having the authority to alienate land without governmental consent.

2. That the alcalde who certified the deed did not have the power under either Spanish or Mexican law to give the consent of the government.

3. That the deed of 1866 was void for the same reason as the deed of 1826.

4. That the residents of Algodones involved in the suit could not prove adverse possession because of non-payment of taxes as set forth in the Pueblo Lands Act of 1924.

The defendants, in answer, agreed that the deed of 1826 was void, but claimed to have title under the adverse possession sections of the Pueblo Lands Act. The decision of the district court, on April 22, reversed the board in forty-nine instances, thus confirming only sixteen titles to the Indians. Of those confirmed, thirteen were at Algodones. These amounted to approximately thirty-four acres, and included the property upon which the Catholic church was located.

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[33] Pueblo Lands Board, San Felipe Pueblo, "Report on Titles to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," May 14, 1928.

[34] United States as Guardian for the Indians of the Pueblo of San Felipe vs. The Algodones Land Co., et al., No. 1870 in Equity.

Not being satisfied with the outcome of the district court suit, the special assistant to the attorney general, Mr. George A. H. Fraser, filed an appeal in the United States circuit court of appeals for the tenth circuit in April, 1931, praying for a reversal of the district court decision in twenty-two of the forty-nine claims confirmed to the defendants. The circuit court, however, on September 11, 1931, upheld the district court in seventeen of the appealed cases, reversing the lower court in but five instances.

The land within the Algodones settlement, confirmed to the Indians by the decision of both courts, still remains the property of the San Felipe pueblo. The Indians have, however, granted the Catholic church permission to use the land upon which its church is located.

SAN FELIPE-SANTO DOMINGO GRANT

On file in the office of the cadastral engineer in Santa Fe is a joint grant made by Governor Pedro Fermín de Mendinueta to the pueblos of San Felipe and Santo Domingo in 1770.[35] This grant adjoins the lands of the San Felipe pueblo, just south of the northeast boundary of the San Felipe grant, appearing on a map as if it were an extension

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35 San Felipe-Santo Domingo Grant, Report No. 142, (file 200), office of the cadastral engineer, Santa Fe, N. M.

of the Santa Rosa de Cubero grant. This tract, comprising 1070.68 acres, of which 70.52 acres are in conflict with the San Felipe pueblo grant, was not confirmed by the congress of the United States, but remained a joint grant to the two until 1898, when the Indians of Santo Domingo and San Felipe appealed to the Court of Private Land Claims for a title to the land. The court, after considering, vested the title in both the pueblos in equal share. A patent was issued to San Felipe and Santo Domingo on May 5, 1905.[36]

This tract is still jointly owned, there being no disposition on the part of either party to purchase the interest of the other.

SANTA ROSA DE CUBERO CONFLICT

Cutting a swath 824 yards wide, north and south, and five miles long, east west, the Santa Rosa de Cubero grant divides the San Felipe pueblo grant into two parts, and borders the land of both San Felipe and Santo Domingo on the east. Between the years 1760 and 1762 this land was granted, by Governor Manuel Portillo Urrisola, to Bartolomé Fernandez, a former alcalde of Santa Fe, and to José Quintana, a soldier in the Spanish forces in New Mexico.[37] Fernández built a home

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[36] Pueblo of Santo Domingo and the Pueblo of San Felipe vs. The United States of America, No. 142, Court of Private Land Claims, "Decree of Confirmation," December 8, 1898.

[37] New Mexico Archives, document no. 281, 1, 2.

for his family on his part of the land, living there for almost twelve years, when it appears, from one of the documents in a subsequent dispute, that governor Don Pedro Fermín de Mendinueta, upon complaint of the Indians of both Santo Domingo and San Felipe, annulled the grant and restored the tract to the Indians.[38]

The heirs of Bartolomé Fernández, Domingo Fernández and others, petitioned governor Alberto Maynez on July 1, 1815, for a new grant to the land which had become known as the Santa Rosa tract. After a survey by the local alcalde, José Gutiérrez, the grant was approved by Maynez on September 1, 1815, and the grantees were placed in formal possession.[39] This new grant was made in two parts exactly as the original grant had been made, half to the heirs of Bartolomé Fernández and the other half to the heirs of José Quintana, the latter being José Alejandro Quintana, who claimed to be a son of the original grantee. A dispute between the two heirs immediately arose; Domingo Fernández and the other Fernández heirs questioning José Alejandro's right to the other half of the Santa Rosa de Cubero grant, and demanding

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[38] Ibid., 13.

[39] Ibid., 4,5,6,--according to these documents the Indians of San Felipe and Santo Domingo were made acquainted with the new grant by the alcalde, and gave their consent to the grant. Because of this cordiality the new settlers deeded a small tract along the north boundary of the grant to the Santo Domingo pueblo.

that he prove he was the son of the original Quintana. After much wrangling between the contestants, Quintana proved his birthright and was confirmed in his possession on January 31, 1816.[40] Quintana retained possession of his grant for only a short period, as on June 18, 1818, at Bernalillo, he deeded his portion of the Cubero grant--the southern half--to the pueblo of San Felipe for $210.00 in reales.[41]

Apparently this sale served to reopen the verbal warfare between the heirs of the two original grantees, as the archives of 1819 contain voluminous charges, counter-charges, reports and orders, relative to the Santa Rosa de Cubero dispute.[42] This second series of arguments, however, resulted exactly as had the first, in Quintana being upheld in his title to the land.[43]

Between the years 1821 and 1898 the lands of the Cubero grant were subdivided into small holdings and sold to numerous settlers by the heirs of the original grantees. Members of the Montoya family were the largest purchasers,

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[40] Ibid., 32.

[41] Ibid., 34, 35.

[42] Ibid., 10-15, 17-32.

[43] Exhibit "J" No. 267, Court of Private Land Claims. The original document is attached to Archive 255, office of the cadastral engineer, Santa Fe, New Mexico.

their first acquisition being on November 21, 1821.[44] During this period numerous disputes developed not only between the Indians and the settlers, but between the settlers and the heirs of the original grantees.

Under the act of congress establishing the Court of Private Land Claims, it was necessary for the heirs and assigns of the original grantees to seek confirmation of their lands before the court, the United States not having adjudicated this claim since assuming control of New Mexico in 1846. Under title, Valentine Cabeza de Baca, et al., vs. United States as guardian of the Indians of San Felipe Pueblo, No. 267, Court of Private Land Claims, the settlers presented their case to the court seeking confirmation of their title. The attorneys for the United States fought the confirmation on two grounds:

> 1. The Cubero grant was void because it was superimposed upon a grant previously made to the San Felipe Indians.
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> 2. That the land in dispute had been included in the Spanish grant to the Indians and had been confirmed by the United States in 1858 and patented in 1864. The Court therefore had no jurisdiction under section 13 of the act creating it.[45]

After hearing the case in the January term, 1898, the court, on July 5, confirmed the title to "Bartolome Fernandez and Joseph Quintana and their heirs." In its findings the

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[44] Valentine Cabeza de Baca, et al., vs. United States as Guardian of the Indians of San Felipe Pueblo, No. 267, Court of Private Land Claims, Exhibits L,P,Q,T,U,X,Y,Z.

[45] Ibid., "Defendant's brief."

of the San Felipe pueblo claims, and in its report on May 14, ruled that notwithstanding the action of the Court of Private Land Claims, the title to the Santa Rosa de Cubero grant comprising 1402.35 acres was not extinguished, and that in the opinion of the board the Indians had a prior and valid title to said grant.[48] Based upon this decision, and in accordance with section one of the Pueblo Lands Act of 1924, the United States, through its attorneys, filed suit in the United States district court of New Mexico on July 7, 1928, seeking to quiet title in the name of the San Felipe Indians to the Cubero grant and to other lands.[49] The defendants, in answer to the complaint, claimed title on two grounds:

> 1. That the Pueblo of San Felipe had never had title to the Cubero tract, it lying between the pueblo grant and the Santo Domingo pueblo lands.
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> 2. That they, the defendants, had acquired title by adverse possession under section 4 of the Pueblo Lands Act.[50]

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[48] Pueblo Lands Board, San Felipe Pueblo, "Report on Titles to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," May 14, 1928, and "Report Concerning Indians Titles Extinguished," 3.

[49] United States as Guardian of the Indians of the Pueblo of San Felipe vs. The Algodones Land Co., et al., No. 1870 in Equity.

[50] Pueblo Lands Act of 1924, 43 Stat. 646; and 25 U.S.C.A. 331.

After hearing the evidence, the district court, Judge Colin Neblett presiding, reversed the decision of the Pueblo Lands board and entered a final decree in favor of the Cubero defendants.[51]

Feeling that the court had erred in this decision, George A. H. Fraser, special assistant to the attorney general, filed an appeal in the circuit court of appeals, 10th circuit, seeking a reversal of the district court decision. Meeting in June, 1931, at Denver, Colorado, the court of appeals upheld the district court in its decision awarding the Santa Rosa de Cubero grant to the non-Indian claimants.[52] Commenting upon the outcome of these legal disputes, José E. Armijo, acting as special assistant to the attorney general, stated in his report to the attorney general on October 3, 1931:

> The trial court held, and it was affirmed by the Circuit Court of Appeals, that there was no conflict between the Santa Rosa de Cubero grant and the San Felipe grant for the reason that the survey of the western boundary of the San Felipe grant was erroneous in that it failed to follow the calls of the original Spanish grant.[53] That if the survey had

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[51] United States as Guardian of the Indians of the Pueblo of San Felipe vs. The Algodones Land Co., et al., No. 1870 In Equity, "Final Decree," Aprill 22, 1930.

[52] United States as Guardian of the Indians of the Pueblo of San Felipe vs. The Algodones Land Co., et al., 334 Circuit Court of Appeals, 10th Circuit, September 11, 1931.

[53] The courts continued to refer to the original pueblo grant despite the fact that it was perfectly evident some years before that this document was spurious.

> been properly made that no conflict would have occurred. These courts held that there was sufficient space between the San Felipe and Santo Domingo grants to place this grant without overlapping with either of these grants. These courts held that even if the survey of the San Felipe grant was correct, that the claimants of the Santa Rosa de Cubero grant had acquired title by adverse possession under section 4 of the Pueblo Lands Act. These courts also held that referring to the deed of 1818 'Jose Alejandro Quintana to the Pueblo of San Felipe' there is no evidence that this deed was recorded, nor that it was delivered, nor that possession of the land was formally delivered under it, as was the then custom.[54]

This grant, a strip of land 824 yards wide and five miles long cutting the entire width of the San Felipe pueblo grant, is still in possession of the non-Indian title holders despite attempts by the superintendent of the United Pueblos Agency to have the Indians of San Felipe purchase the grant. The Indians have repeatedly refused to take such action, claiming that the grant is theirs despite decisions to the contrary. The land is unfenced and is constantly traversed by the Indians regardless of the fact that legally it is private property.

EXECUTIVE ADDITION

On June 13, 1902, President Theodore Roosevelt established the San Felipe Executive Order Reservation, comprising

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[54] Letter file SWR 210663, San Felipe Pueblo, land agent's office, United Pueblos Agency, Albuquerque, N. M.

11,240.48 acres, adjoining the Pueblo grant on the east.[55] This reservation provides considerable grazing land for the stock of the pueblo.

The total area possessed by the pueblo of San Felipe including the Executive Order Reservation, is, therefore, 47,078.03 acres.[56]

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[55] Charles J. Kappler, Indian Affairs, Laws and Treaties, I, 57th Congress, 1st Session, 1901-1902, 878.

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Original Spanish Grant	34,766.86 acres
Executive Order Reservation , . .	11,240.48 acres
Joint San Felipe-Santo Domingo Grant . .	1,070.69 acres
Total . . .	47,078.03 acres

CHAPTER VII

SANTA ANA PUEBLO

On the northern bank of the Rio Jémez, a western affluent of the Rio Grande, about eight miles northwest of Bernalillo, lies the ancient Keresan pueblo of Santa Ana. This pueblo was visited by the Conquistador Don Juan de Oñate in 1598, who then referred to it in his reports as Tamy, or Tamaya.[1] Being located some distance from the Rio Grande, the pueblo was not visited by Governor Don Antonio Otermín either in his retreat during the Pueblo Revolt of 1680, or in his attempt to reconquer the province in 1681. In 1687, however, Pedro Reneros de Posada, then governor at El Paso, carried the pueblo by storm after a desperate resistance, and burned it.[2] The Indians, according to a deposition made in 1681, had fled to a mesa about ten miles northeast of Jémez,[3] but were later induced by Governor Don Diego de Vargas to return to their former locality, where they built the present village.[4]

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[1] Documentos Inéditos, XVI, 102, 115.

[2] Irving A. Leonard, translator, The Mercurio Volante of Don Carlos Sigüenza y Góngora, Quivira Society (Los Angeles, 1932) III, 58.

[3] Archivo General de Mexico, Historia, XXVI, 134.

[4] Frederick W. Hodge, "Handbook of American Indians," Bulletin 30, Bureau of American Ethnology, (Government Printing Office, 1907), II, 454.

No Spanish document has been found conveying to the Santa Ana Indians their pueblo grant. The Indians, however, have a tradition that such a document did exist, but that it has been lost for many years. After New Mexico became a territory of the United States, in 1846, the surveyor general for New Mexico made a survey of the Santa Ana Indian claims, and recommended that the grant be confirmed. This action was taken by congress on February 9, 1869, and a patent was issued to the Indians on April 25, 1883, in the amount of 17,360 acres.[5]

The Santa Ana pueblo grant is extremely unsuited to agriculture and is, therefore, of little use except as grazing land. This handicap has, in years past, worked great hardship upon the Indians, who have been forced to seek tillable land several miles from the pueblo in the valley of the Rio Grande. At least once in the historical period of the pueblo an attempt was made to secure permission to move the pueblo from its present site on the Jémez river to the Rio Grande valley.[6] Because of the nature of this grant there has been little or no controversy due to non-Indian encroachments.

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[5] Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922.

[6] New Mexico Archives, document no. 1366.

EL RANCHITO PURCHASE[7]

Because of the lack of suitable agricultural land on their pueblo grant, the Santa Ana Indians have for centuries carried on farming operations on land purchased or rented in the Rio Grande valley. The greater proportion of these activities is confined to a tract amounting to 4945.24 acres, lying between the Felipe-Gutiérrez or Bernalillo grant, and the San Felipe pueblo grant. The Santa Ana Indians have named this area El Ranchito, "the little ranch."

While the Ranchito is usually thought of as one large tract, actually it is composed of five small purchases made by the Indians of Santa Ana during the eighteenth century. The first of these purchases was made on June 27, 1709, on which date Captain Manuel Baca deeded a grant he had obtained from Governor Don Diego de Vargas to the Indians of Santa Ana for the sum of fifty pesos. Four purchases, by the Indians, of land adjoining the Baca tract followed.[8] The Indians, in 1897, petitioned the Court of Private Land Claims seeking confirmation of these purchases. The court, after a review

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[7] All documents with reference to El Ranchito purchase may be found in file 157, office of the cadastral engineer, Santa Fe, New Mexico.

[8] June 4, 1742, Josefa Baca to pueblo of Santa Ana. Undated deed, Capt. Juan Gonzales to pueblo of Santa Ana. May 25, 1755, Alejandro Mora to pueblo of Santa Ana. July 7, 1763, Quinteria Cristobal to pueblo of Santa Ana.

of the documents presented by the Indians, confirmed the grant on May 31, 1897.[9] A patent was issued by the General Land Office on October 18, 1909.[10]

Considerable controversy over land within the Ranchito boundaries has troubled the Indians of Santa Ana. A conflict with the San Felipe pueblo developed early in the nineteenth century over land in the northern part of the Ranchito purchase, and in the vicinity of Angostura.[11] While decisions in these disputes were usually favorable to the Santa Ana pueblo Indians, nevertheless there still exists a conflict of 695 acres between the Ranchito purchase and the San Felipe pueblo grant. While confirming the Ranchito within its present boundaries to the pueblo of Santa Ana, the Court of Private Land Claims declined to decide the question of the overlap.[12] In 1928 the Pueblo Lands board heard evidence in regard to the controversy but refused to take action because of limitations in the law under which it was

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[9] Pueblo of Santa Ana vs. United States of America, No. 157, Court of Private Land Claims, "Decree of Confirmation," May 31, 1897.

[10] General Land Office, patent No. 84386.

[11] For a discussion of these controversies see page 104, "San Felipe Pueblo."

[12] Court of Private Land Claims, loc. cit.

operating.[13] The conflict is still without solution.

In 1927 the Pueblo Lands board made a thorough study of the lands owned by the pueblo of Santa Ana. In its first report, filed July 19, 1927, the board extinguished the Indians' title to twenty-one private claims, amounting to 95.15 acres, held by non-Indians within the Ranchito purchase.[14] Title to five non-Indian holdings was ruled unextinguished. A suit in the United States district court to quiet title to these five claims was filed by Mr. George A. H. Fraser, special assistant to the attorney general, which resulted in all but two claims, aggregating 16.3 acres, being quieted in favor of the Indians.[15]

FELIPE GUTIÉRREZ GRANT DISPUTE

Bordering the Ranchito purchase on the south is the Felipe Gutiérrez or Bernalillo grant, which was confirmed by

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[13] Report on Two Hundred Acre Conflict between the Pueblo of San Felipe and El Ranchito Purchase of the Pueblo of Santa Ana, George A. H. Fraser, October 1, 1932, 2. On file, land agent's office, Albuquerque, New Mexico.

[14] Pueblo Lands Board, Report No. 1, Santa Ana Pueblo, "Report on Titles to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," July 19, 1927.

[15] United States as Guardian of the Indians of Santa Ana Pueblo vs. Chas. F. Brown, et al., No. 1814 In Equity, "Final Decree," May 31, 1929.

the Court of Private Land Claims in 1897.[16] Within the exterior boundaries of this tract, and immediately adjacent to the southern boundary of the Ranchito purchase, lie 29.69 acres, to which the Indians of Santa Ana have recently laid claim. It appears that the title to this tract is claimed by the Indians under a deed executed by Juan Gonzales Bas to Josefa Baca, October 14, 1713, who sold the land on December 20, 1739 to Cristobal Martín. On July 7, 1763, Quinteria Contreras, widow of Cristobal Martín, sold the tract, most of which is included in the Ranchito Purchase, to the Santa Ana Indians.[17] No mention of this claim within the Gutiérrez grant was made to the Pueblo Lands board, which accounts for the lack of a definite solution to the conflict.

The Santa Ana Indians carry on extensive agricultural operations on the Ranchito grant, growing considerable quantities of corn and alfalfa. Most of the spring, summer, and fall are spent by the Indians on their lands in the Rio Grande valley, returning to the old pueblo, on the Rio Jémez

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16 Pedro Perea, et al., vs. United States of America, No. 257, "Felipe Gutierrez, or Bernalillo Grant," Court of Private Land Claims, and, Jose M. Chaves, et al., vs. United States of America, No. 217, Court of Private Land Claims, "Decree of Confirmation," June 3, 1898. The Gutierrez grant was made in 1701 to Felipe Gutierrez by Governor Don Pedro Rodriquez Cubero. It was revalidated on January 21, 1704 by Governor Don Diego de Vargas.

17 All of the documents mentioned may be found in file 154, Ranchito Grant, office of the cadastral engineer, Santa Fe.

CHAPTER VIII

ZIA PUEBLO

Sixteen miles northwest of Bernalillo on the north bank of the Rio Jémez stands the historic pueblo of Zía. Mentioned first as Chia by the chronicler of the Coronado expedition, Don Pedro de Castañeda, Zía soon became one of the most frequently visited pueblos by the Spanish conquistadores.[1] Espejo in 1582 noted that Sia was the chief pueblo of the Punames province, consisting of five pueblos.[2] Don Juan de Oñate visited the pueblo in 1598, referring to it as Tria.[3] Joining the other Indian pueblos, Zía played a tragic part in the Pueblo Revolt of 1680. The pueblo was attacked and almost completely destroyed by Governor Domingo Jironza de Cruzate in August of 1689, during his campaign of reconquering the province of New Mexico.[4] The slaughter of the Indians at this battle left Zía in a decimated state from which she has never fully recovered.

The basis for the Zía pueblo land grant for many years

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[1] George Parker Winship, translator, "Narrative of Pedro de Castañeda," 14th Annual Report, Bureau of American Ethnology, (Government Printing Office, 1896), II, 525. Ibid., "Narrative of Captain Juan Jaramillo," 587.

[2] Documentos Inéditos, XV, 178.

[3] Ibid., XVI, 115, 254.

[4] Irving A. Leonard, Translator, The Mercurio Volante of Don Carlos de Sigüenza y Góngora, Quivira Society, III, 58.

was a document dated 1689, signed by Governor Domingo Jironza de Cruzate. This grant, along with all of the pueblo grants date 1689, was proved to be a fraud by the late Will M. Tipton, expert investigator for the Court of Private Land Claims.[5] Following the acquisition of New Mexico by the United States, the surveyor general for New Mexico investigated the Zia pueblo title and recommended that the grant be confirmed. The congress of the United States accepted the recommendation and on December 22, 1858, the grant was approved and confirmed. A patent was issued to the Indians on November 1, 1864, in the amount of 17,514.63 acres.[6] The land within this grant is very poor and requires diligent care in order to be used for agricultural purposes. It is therefore not strange that in 1927, when the Pueblo Lands board investigated the land problems of Zia, they found no non-Indian encroachments.[7]

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[5] Will M. Tipton, in Ralph E. Twitchell, Spanish Archives of New Mexico, I, 477.

[6] Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of Ethnology, II, 922.

[7] Pueblo Lands Board, Report No. 1, Zia Pueblo, "Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished," May 7, 1927.

CONGRESSIONAL EXTENSION

By an act of congress approved April 12, 1924, there was reserved and withdrawn from settlement, occupancy, or disposal, a tract of land located in the public domain adjacent to the northwest corner of the Zía pueblo grant. This tract, amounting to 386.85 acres, was set apart as a reservation for the benefit, use , and occupancy of the Indians of Zía pueblo.[8]

The Indians of Zía possess no other lands than the 17,514.63 acre pueblo grant and the 386.85 acre congressional extension. The pueblo is, perhaps, the poorest of all the New Mexico Indian pueblos from the standpoint of adequate agricultural land.[9] The population in 1936 showed an increase over the last few years, the pueblo containing 203 men, women, and children.[10]

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[8] 43 Stat. L. 92.

[9] For a discussion fo the joint Zía, Jémez, Santa Ana, "Holy Ghost," grant, rejected by the Court of Private Land Claims see page 148, "Jemez Pueblo."

[10] Annual Report of the Secretary of the Interior, for the Fiscal Year ended June 30, 1936, 215.

CHAPTER IX

JÉMEZ PUEBLO

On the north bank of the Jémez river, some twenty miles northwest of Bernalillo, is situated the Indian pueblo of Jémez. Until about 1650, the Jémez Indians occupied a number of pueblos, probably ten, on the headwaters of the Jémez river. Because of the Navajo raids the pueblos of the Jémez were abandoned about 1622, but were reoccupied prior to 1627, when protection was guaranteed them by Fray Martín de Arvide.[1] The Jémez pueblos were visited by many of the early Spanish explorers. Castañeda, the chronicler of Coronado's expedition, recorded seven pueblos of the Jémez Indians in his narrative.[2] Espejo in 1583 also mentioned seven pueblos occupied by the Jémez,[3] while Oñate heard of eleven but actually visited only eight of the Jémez villages.[4] In the Pueblo Revolt of 1680, the Jémez played a prominent role, giving the Spanish little rest until 1696, when they were finally repulsed by a small detachment of Spaniards from

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[1]Mrs. Edward E. Ayer, trans., The Memorial of Fray Alonzo de Benavides, 1630 (Chicago 1916), 27.

[2]George Parker Winship, trans., "Narrative of Pedro de Castañeda," 14th Annual Report, Bureau of American Ethnology, II, 525.

[3]Documentos Inéditos, XV, 116.

[4]Ibid., XVI, 102, 260.

Bernalillo and Zía.[5]

The pueblo of Jémez has for many years based its claim to pueblo lands upon two Spanish documents dated 1689, and signed by Governor Domingo Jironza de Cruzate. Although the congress of the United States, upon recommendation of the surveyor general for New Mexico,[6] confirmed the Jémez grant upon the strength of these documents, subsequent investigation by government experts has proven these "grants" to be spurious.[7] The boundaries as set forth in the fraudulent "grants" merely followed the usual practice of the Spanish by granting the land one league in each of the four cardinal directions from the church in the center of the pueblo.[8] There have been but few controversies with non-Indians over encroachments upon Jémez pueblo lands. Those few, however, are worthy of note. In 1783, after first measuring the "leagues" of both Jémez and Zía, Don Antonio Nerio Montoya, alcalde of Alameda, placed the land lying between the two pueblo grants in possession of Don Antonio

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[5] Frederick W. Hodge, "Handbook of American Indians North of Mexico," Bulletin 30, Bureau of American Ethnology, I, 630.

[6] "Report of the Commissioner of General Land Office," The Annual Report of the Secretary of the Interior for the year 1856, 307 et seq.

[7] Will M. Tipton, in Twitchell's Spanish Archives of New Mexico, I, 477.

[8] Report of the Commissioner of the General Land Office, loc. cit.

de Armenta, who apparently settled upon the tract.[9] Subsequent to this episode Armenta became alcalde for the district, during which time he purchased a corn field within the Jémez pueblo league, without consent of either the pueblo officials or the Spanish governor. The Indians, unable to secure justice from Armenta protested early in 1812, to the protector of the Indians, Don Felipe Sandoval. The Indians charged that Armenta had not only retained the corn field but had sold parts of the pueblo land to various non-Indian settlers. On August 28, 1812, Sandoval, acting for the Indians, transmitted a report of the conflict to acting governor José Manrique, requesting that official to instruct him as to what steps should be taken to adjust the dispute. The governor sent the communication to the provincial attorney, Don Rafael Bracho, for an opinion.[10] No record of the outcome of this dispute has been found, but it may be inferred that the Indians received favorable action as no further complaints are on file, and the land in controversy is in Indian possession.

An interesting but unimportant dispute is found in

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[9] New Mexico Archives, document no. 1261. The town of Isidro is now located upon this grant.

[10] New Mexico Archives, document no. 1355.

Spanish archive 1245, dated April, 1833.[11] South of the Jémez pueblo grant were situated the lands of Rafael García, who apparently had been having some difficulty with the Jémez Indians over conflict of his property with that of the pueblo. Sometime prior to April 18, 1833, the alcalde had measured the league of the pueblo at the request of García who desired to establish a definite boundary between his lands and those of the Indians. The alcalde began the measurement at the church in the center of the pueblo, laying off 5000 varas with a horse hair rope fifty varas in length.[12] This measurement resulted in the pueblo league extending into the lands claimed by García by 100 varas. Thereupon the alcalde measured the horse hair rope and discovered that it had stretched almost a vara during the measuring of the league. The parties involved, however, agreed that fifty varas of the overlap should be allowed to García. No sooner had this settlement been reached than a dispute arose over who was to pay the alcalde for his work. García was somewhat disappointed at the outcome of the measurement and took advantage of the argument to demand that the league be measured again using poles instead of rope. The controversy raged between the two factions on one hand and the alcalde on the other who desired not only to

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11 New Mexico Archives, document no. 1245. The entire dispute is contained in this single document on file in the cadastral engineer's office, Santa Fe.

12 A Spanish vara is equal to 33.1 inches. Leo Crane, Desert Drums, 81.

settle the dispute but to collect his fee. The alcalde, unable to bring about a solution, appealed to the governor for advice on how to measure the league and how to collect his money for services already rendered. The governor, however, gave the poor local official little satisfaction, merely stating that

> . . . it is not the governor's business to resolve doubts that may arise in the minds of the alcaldes with respect to the administration of justice, and that the alcalde had better consult an attorney; that with respect to his fees he should have been governed by the schedule of fees in force within his district, or in lack of the latter, to the well established custom in such matters, provided it was not in conflict with the laws.

Whether the harassed alcalde solved the problem is not known. The Indians may have won their point, however, as no further controversy is recorded.

After the United States established its sovereignty over New Mexico, the surveyor general for New Mexico recommended that the Jémez pueblo grant be confirmed. This action was approved on December 22, 1858, and a patent was issued by the General Land Office on November 1, 1864, in the amount of 17,510 acres.[13]

In 1925, the Pueblo Lands board investigated the land situation at the Jémez pueblo and in its initial report found

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13 Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922.

title to four non-Indian private holding claims amounting to 19.175 acres, extinguished in so far as the Indians were concerned. Only one non-Indian claim was ruled unextinguished by the board, this being a right of way occupied by the Santa Fe Northwestern Railroad. A right of way for the railroad was granted by the department of the interior under the act of March 2, 1899, making it possible to obtain easements through Indian reservations.[14] The Pueblo Lands board, however, ruled that such a grant did not constitute a title to the land being occupied, and that the title remained vested in the pueblo. The board cast a doubt as to the applicability of the 1899 stature.

The special assistant to the attorney general was duty bound, by the board decision, to file suit against the railroad in order to quiet title to the Indians. Since the railroad was sincere in its efforts to perfect the title to the Jémez right of way the case was continued from time to time through the courtesy of the court and the plaintiff. A bill providing for the condemnation of lands within the Indian pueblos of New Mexico for public purposes was rushed through the congress of the United States on May 10, 1926, but the district court ruled the act insufficient authority to warrant a decree in favor of the railroad company.[15]

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[14] 30 Stat. L., 990.

[15] 44 Stat. L., 498.

The Indians of Jémez throughout the controversy repeatedly refused to make an agreement with the company, even though the company did everything within its power to satisfy the whims of the pueblo. A new act, drawn especially to provide for the case in dispute, was introduced into congress, passed, and approved by the executive on April 21, 1928.[16] Under this act the railroad secured a right of way through the pueblo lands.

Having thus effectively disposed of this claim the government moved that the complaint against the railroad be dismissed.[17] Before this action was taken, however, and while the suit was still pending against the railroad company, leave of the court was obtained to bring in the Presbyterian Board of Missions as an additional defendant. The Presbyterian Board had, in 1878, entered into an agreement with the authorities of the pueblo and the then Indian agent, whereby a designated tract was "devoted to school purposes for the benefit of said Pueblo so long as the parties building the house shall maintain a school upon said premises for the benefit of said pueblo." The Presbyterian Board built the school house but the government declared that this license had been forfeited because the

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[17] United States as Guardian for the Indians of the Pueblo of Jemez vs. The Santa Fe Northwestern Railway Co., et al., No. 1629 In Equity.

board had not maintained a school for a period of sixteen years. Evidence in the case was introduced to show that the Indians had tried to eject the missionaries for almost thirty years. The district court decided that the Presbyterian Board had shown evidence of adhering to the original agreement, and that by the Indians' testimony the mission had acquired color of title by "open, notorious, actual, exclusive and continuous adverse possession. . . without color of title" since 1878. The court thereupon dismissed the government's complaint "with prejudice."[18] This action would have tended to prevent the government or the Indians from renewing its action in the future. The decision also brought forth an extremely important legal question. Can permissive possession become adverse possession?

The special assistant to the attorney general, Mr. George A. H. Fraser, took an exception to the decision of the district court and filed an appeal in the circuit court of appeals, 10th circuit. After hearing the appeal this court affirmed the lower court on December 27, 1929 but modified its decree by striking out from the lower court's decision the phrase "with prejudice," and inserting in lieu thereof the phrase "without prejudice to renew its (the government's)

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[18] United States as Guardian of the Indians of Jemez Pueblo vs. the Board of National Missions of the Presbyterian Church of the United States of America, No. 1629 In Equity, "Final Decree," January 2, 1929.

action when and if the defendant ceases to occupy the premises for mission or school purposes."[19] In other words the circuit court of appeals held that as long as the Presbyterians maintained a school they could not be ejected from the Jémez pueblo. With this decision the pueblo of Jémez claims were finally adjudicated.

EXECUTIVE ORDER RESERVATION

On December 19, 1906, the president of the United States, Theodore Roosevelt, set aside 23,900 acres adjacent to the west boundary of the Jémez pueblo for the use of the Indians.[20] An amendatory order was issued by President William Howard Taft on September 1, 1911.[21] This land is suitable for grazing and considerable wood cutting has been carried on in the reservation by the Indians.

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[19] United States as Guardian for the Indians of Jemez Pueblo vs. The Board of National Missions of the Presbyterian Church of America, Circuit Court of Appeals, 10th Circuit, No. 107, "Decision," December 27, 1929.

[20] Charles J. Kappler, Indian Affairs, Laws and Treaties, III, 62nd Congress, 2nd Session, 1911-1912, 686.

[21] Loc. cit., President Woodrow Wilson on October 4, 1915, added 908.47 acres adjoining the west boundary of the Jemez pueblo to the reservation. Ibid., IV, 1029.

EL OJO DE ESPIRITU SANTO GRANT[22]

In 1766, the Indians of Jémez, Zía and Santa Ana pueblos petitioned governor Don Velez Cachupin for a large grant of land, aggregating 382,849 acres to the west of Jémez pueblo and to the south of Jémez and Zía pueblos. Their petition described the tract as being,

> . . . a valley commonly called the Holy Ghost Spring, (Ojo de Espiritu Santo), and that in some urgent cases, the same as is known is used as a pasture for the horses of this royal garrison, and the said parties being aware that the valley has had in its vicinity some applicants to acquire the same by grant, which will cause them very great injury, as they (the Indians) have considerable cattle, sheep, goats and horses for the royal service, and not having any other place in which to pasture them, particularly the pueblo of Zía, the great part of whose fields are uplands, and some of them in the glens of said valley, adjoining their said pueblo.."[23]

Upon receipt of this petition, June 16, 1766, governor Cachupin ordered the alcalde of the district, Bartolomé Fernandez to investigate the facts of the case as set forth in the petition. The alcalde complied with this order and reported to the governor that the Indians possessed large quantities of stock and needed the land for pasturage. Governor Cachupin, after reviewing the report of the alcalde, issued a joint grant to the tract on August 6, 1766 to all

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[22] All documents relative to this grant and quoted herein are located in file #50, office of the cadastral engineer, Santa Fe, New Mexico.

[23] Document "A", file #50, Jemez, Zia, Santa Ana Grant, office of the cadastral engineer, Santa Fe, New Mexico.

three pueblos, Jémez, Zía and Santa Ana, for the purpose of, ". . . pasturing the stock and horses of the aforesaid three pueblos. . ." The boundaries of this grant, containing 382,849 acres, were described by the governor as,

> . . . from north to south from the place Ventaña to the stone ford of the Puerco river, the boundaries also of the citizens of San Fernando de Nuestra Señora de la Luz; and from east to west from the pueblo of Zía to the eastern bank of the Puerco river, the whole valley of the Ojo de Espiritu Santo being embraced within the center and within the boundaries of this grant.

Sometime after the grant was made to the Indians by governor Cachupin in 1766, the Spanish settlers began to settle in the vicinity of the Espiritu Santo Spring, located in the northern part of the grant. Title to a part of this land was given to Luis Maria Cabeza de Baca on May 28, 1815. After the American occupation the Indians of the three pueblos involved sought to have the title to the Holy Ghost grant confirmed by the Congress of the United States. James K. Proudfit, United States surveyor general for New Mexico, investigated the Indian claims and on February 7, 1874 reported the grant favorably, recommending confirmation. No action was taken upon the recommendation as far as the Indian claims were concerned. In 1877, however, congress confirmed a portion of this grant to the heirs of Luis Maria Cabeza de Baca.

In 1883, the Indians filed suit in the Court of Private Land Claims seeking a confirmation of their title. As

CHAPTER X

SANTO DOMINGO PUEBLO

Thirty-five miles north of the city of Albuquerque on the eastern side of the Rio Grande lies the pueblo of Santo Domingo. Visited by Oñate on June 30, 1598, and by subsequent Spanish expeditions this pueblo was early subjected to the influences of Castilian civilization.[1] During the revolt of 1680 the Indians of this pueblo quickly joined forces with the other revolting pueblos, slaying five Spaniards, including three priests stationed at the mission in Santo Doming.[2] The retreating Spanish governor, Don Antonio de Otermín, found the pueblo deserted on August 24, 1680, the Indians having fled to the "sierra" of Cieneguilla.[3] After the reconquest of New Mexico by Vargas, the Santo Domingo Indians returned to their pueblo on the Rio del Norte and today constitute one of the largest of the remaining pueblos.

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[1] George P. Hammond, Don Juan de Oñate and the Founding of New Mexico, (El Palacio Press, 1927), 98.

[2] Ralph E. Twitchell, Spanish Archives of New Mexico, II, 45. This is a translation of an auto by governor Don Antonio de Otermín.

[3] Loc. cit. The pueblo of Cieneguilla, now extinct, was formerly located a few miles north of the present pueblo of Cochití. It was occupied by the Cochití Indians almost continuously between 1681 and 1694, when it was burned, in the latter year, by Governor Don Diego de Vargas, during his reconquest of New Mexico.

pueblos on the east side of the river, for a dispute between the two pueblos over this land immediately developed. At the order of Governor Juan Domingo de Bustamante, the local alcalde, Alfonso Rael de Aguilar, investigated the dispute, and determined the purchase to have been on the west side of the river as claimed by the Santo Domingo residents. He then proceeded to measure the leagues of each pueblo, dividing the 1600 varas remaining between the two pueblos, on the east side of the river equally between them.[5] In 1730 Governor Bustamante granted to Diego Gallegos a tract of land on the west side of the Rio Grande opposite Santo Domingo pueblo. The Indians, according to the chief alcalde, Andrés Montoya, made no complaint at the time Gallegos was put in possession. On November 28, 1749, however, the Indians succeeded in purchasing the Gallegos grant and a conveyance was made on that date by María Josefa Gutierrez, widow of Diego Gallegos.[6] Diego Gallegos had also deeded a tract of land between Jémez and Santo Domingo to the pueblo some years before, but the pueblo had sold the land to another Spaniard.[7] The dispute over lands between the pueblos

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[5] New Mexico Archives, document no. 1343.

[6] New Mexico Archives, document no. 1346.

[7] New Mexico Archives, document no. 1037.

and on the west side of the Rio Grande appears again in 1808, at which date Friar Antonio Caballero, acting for the Santo Domingo Indians, wrote to acting Governor Don Alberto Maynez a lengthy account of the lands in question, in which he pointed out that the Indians had paid 400 pesos for the disputed tract.[8] This piece of land seems to have been in constant dispute up to 1897 when it was presented to the Court of Private Land Claims under the name of "Cañada de Cochiti." The court, after examining the evidence, confirmed the grant, amounting to 19,112.78 acres, to the non-Indian claimants.[9]

A second dispute which lasted until 1927 involved a small tract at the community of Sile (sometimes spelled Cile) in the northern part of the Santo Domingo grant, on the west side of the river. This dispute began in 1817 when the Indians complained to the governor, Don Pedro María de Allande, that Don Antonio Ortiz was holding the "rancho Sile" and that said property was on the pueblo league. The same complaint also charged Don Luís Cabeza de Vaca with illegal possession of land in the vicinity of Peña Blanca and Santa Cruz. Governor Allande ordered the lands of both Santa Domingo and Cochití to be measured. The dispute was then

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[8] New Mexico Archives, document no. 1232.

[9] Court of Private Land Claims, "Decree of Confirmation," No. 205, Cañada de Cochití, February 16, 1898.

referred to the royal audiencia.[10] What action was taken by this body is not recorded, but if any action was taken at all, which seems doubtful, it was probably in favor of the Indians, as in 1836 the attorney for Santo Domingo laid claim to the land in dispute.[11] Constant bickering over lands in the north portion of the grant led to Governor Matinez ordering an official survey of this area in 1844. The survey definitely established the boundary as claimed by the Santo Domingo Indians.[12] The Sile rancho dispute continued until 1927, when the Pueblo Lands board, after hearings at Peña Blanca, ruled the Indian title to 374.28 acres in this area as extinguished.[13] The controversy which developed in the region south of Peña Blanca was similar. In its first report in 1927, on the Santo Domingo pueblo, the Pueblo Lands board extinguished the Indians' claim to 76.37 acres in this area. The remaining claimants in both of these tracts were made parties to a suit to quiet title by the United States government in 1929, acting as guardian for the pueblo of Santo Domingo.[14]

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[10] New Mexico Archives, documents no. 1362, 1243.

[11] New Mexico Archives, document no. 1378.

[12] New Mexico Archives, document no. 1380.

[13] Pueblo Lands Board, Report No. 1, Santo Domingo Pueblo, "Report on Titles to Lands Granted or Confirmed to Pueblo Indians Not Extingusihed, December 29, 1927."

[14] Charles C. Royce, "Indian Land Cessions in the United States," 18th Annual Report, Bureau of American Ethnology, II, 922.

After the American conquest the pueblo sought to have its grant confirmed by the congress of the United States. Acting upon the recommendation of the United States surveyor general for New Mexico, the congress on December 22, 1858 confirmed the grant and a patent was issued by the General Land Office on November 1, 1864.[15] The area under the original survey was 92,398.382 acres, but after a resurvey the Pueblo Lands board confirmed the grant in the amount of 66,081.082 acres. The large discrepancy is due to an error in the original survey.

Several conflicts between private grants and the pueblo lands complicated the situation. Previous to the Pueblo Revolt of 1680 a large tract of land northeast of the Santo Domingo pueblo grant had been given to Cristóbal Fontes. This grantee had lost the grant which was subsequently given to Jacinto Sánchez about 1697. Sánchez, however, had also lost the grant, and in 1703 he petitioned the Marquis de la Nava Brazinas (Diego de Vargas) for another grant to the land, receiving same on December 23, 1703.[16] This tract has since been known as the La Majada grant. Although the grant conflicted with both the Cochití and Santo Domingo pueblo grants, the Court of Private Land Claims confirmed the title

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[15] United States as Guardian of the Indians of Santo Domingo Pueblo vs. Alfredo Montoya, No. 1830 In Equity, "Final Decree," April 25, 1929.

[16] New Mexico Archives, documents no. 822, 141.

to non-Indian claimants in 1894.[17] The conflict with the Santo Domingo grant amounted to 4,592.61 acres. The Pueblo Lands board in 1927, however, recognized the Indians' claim to this overlap as extinguished, allowing the Non-Indian grantees to hold title under the decision of the Court of Private Land Claims.[18]

Another private grant which conflicted with the Santo Domingo pueblo lands was the Mesita de Juana Lopez grant, made by Governor Juan Bautista de Anza to Domingo Romero, Manuel Ortiz and Miguel Ortiz in 1782.[19] This tract was surveyed in 1876 and confirmed by congress on January 28, 1879. Under the original survey of the Santo Domingo grant the area in conflict with the López grant was a strip six miles long and nearly a mile wide. The later survey, in 1907, however, extended the boundary of the pueblo to such an extent that the conflict increased to 37,971.45 acres. The Pueblo Lands board, in 1927, after a corrected survey showed the 1907 boundaries to be in error, recognized the Indian claim to the overlap as extinguished.[20]

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[17] Court of Private Land Claims, No. 89, September 20, 1894, La Majada grant.

[18] Pueblo Lands Board, Report No. 1, Santo Domingo Pueblo, "Report on Title to Lands Granted or Confirmed to Pueblo Indians not Extinguished, December 29, 1927.

[19] New Mexico Archives, document no. 1261.

[20] Pueblo Lands Board, op. cit.

The pueblo of Santo Domingo has had continuous strife with both of the neighboring pueblos, Cochití and San Felipe. Adispute between the pueblo of Cochití and Santo Domingo due to an overlap of 149.88 acres by the grant of the former pueblo has caused considerable controversy. No solution to this problem has been made and none seems likely unless the Indians of Cochití agree to quit claim the tract in favor of the Santo Domingo Indians. A dispute with San Felipe arose over a 644.16 acre conflict between the 1,070.68 joint San Felipe-Santo Domingo tract adjoining the southern boundary of the Santo Domingo grant, and confirmed to both pueblos by the Court of Private Land Claims in 1898.[21] Since both pueblos own the tract in conflict with the pueblo grant it is unlikely that any decision concerning the overlap will be arrived at for some time.

The Pueblo Lands board, meeting in 1927 to consider the various Santo Domingo land controversies, confirmed thirty-six out of fifty-four private land claims, amounting to 550.71 acres, to non-Indian claimants. In accordance with the provisions of the Pueblo Lands Act of 1924, the attorney for the board filed suit in 1929, in the United States district court for New Mexico, seeking to quiet title in the name of the pueblo of Santo Domingo to the eighteen

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[21] Court of Private Land Claims, No. 134, Santo Domingo and San Felipe Grant. For a discussion of this grant see the chapter on "San Felipe" page 102.

unextinguished claims. After reviewing the evidence, the court, on April 25, 1929, reversed the Pueblo Lands board in three instances and confirmed one additional holding, not considered by the board, to non-Indians. The acreage confirmed to these four claimants under the final decision of the court amounted to 87.21 acres.[22]

The Santo Domingo grant as confirmed by the Pueblo Lands board, and confirmed by the district court, lies in the east part of Sandoval county with a small strip on its eastern edge in Santa Fe county, about thirty-five miles north of the city of Albuquerque. The area is approximately a parallelogram, bearing northwest and southeast about eighteen miles long, and seven miles wide north and south, cut nearly in its center by the Rio Grande. The pueblo is situated near the river, about halfway between the north and south boundaries of the grant. There are, therefore, about 33,000 acres east of the river and a like amount west of the river. The Indians farm a large part of the land on both sides of the Rio Grande, producing large quantities of corn and alfalfa, much of the latter being sold in nearby communities. The population of the pueblo in 1936 was 923 persons.[23]

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[22] United States as Guardian for the Pueblo of Santo Domingo vs. Alfredo Montoya, et al., No. 1830 In Equity, FFinal Decree, April 25, 1929.

[23] Annual Report of the Secretary of the Interior for the Fiscal Year ended June 30, 1936, G. P. O. 1936, 215.

CHAPTER XI

COCHITI PUEBLO

Cochití pueblo lies in the valley of the Rio Grande, in the eastern part of Sandoval county, about forty miles northwest of Albuquerque and twenty-five miles southwest from Santa Fe. It is supposed that prior to the occupation of the present site, the Indians of Cochití lived at the pueblo of Tyuonyi, and other villages, now in ruins, within the Rito de los Frijoles.[1] The Spaniards visited Cochití very early in their occupation of New Mexico. Don Juan de Oñate visited the pueblo in 1598, receiving the allegiance of the Cochití Indians.[2] During the Pueblo Revolt of 1680 the Indians of Cochití abandoned their village and fled to the mesa land at Cieneguilla.[3] Governor Diego de Vargas in 1693, while reconquering the province, defeated the Indians and burned the pueblo of Cochití to the ground.[4]

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[1] Edgar L. Hewett, "The Excavations at Tyuonyi, New Mexico in 1908," American Anthropologist, No. 3, July-September, 1909, 431-55.

[2] Documentos Inéditos, XVI, 102.

[3] Ralph E. Twitchell, Spanish Archives of New Mexico, II, 45. This is a translation of an Auto by Governor Don Antonio de Otermín.

[4] Frederick W. Hodge, "Handbook of American Indians North of Mexico," Bulletin 30, Bureau of American Ethnology, I, 318.

A Spanish grant dated 1689, and signed by Governor Domingo Jironza Pétriz de Cruzate, has long served as the basis for the Cochití pueblo grant.[5] This document is another of the eleven pueblo grants which have been proved to be counterfeit.[6] It was upon this spurious document, however, that the congress of the United States confirmed the Cochití pueblo grant in 1858.

The fertility of the lands within the Cochití grant, and especially along the Rio Grande, has been the cause of numerous controversies between the Indians of this pueblo and Spanish or Mexican settlers. One of the most outstanding of these disputes is in connection with lands in the vicinity of the village of Peña Blanca, located in the south-central portion of the Cochití pueblo lands. Here on the east side of the river the land is excellent for agriculture. The northern part of the strip in dispute, near Peña Blanca, lies within the Cochití grant, and the southern portion, known as the Cile rancho, lies within the boundaries of the Santo Domingo pueblo land. Early in 1815, an Indian of Cochití named Quintana succeeded in obtaining an order from Governor Alberto Maynez dispossessing Juan Antonio Baca from

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[5] New Mexico Archives, document no. R.G.

[6] Will M. Tipton, in Ralph E. Twitchell, Spanish Archives of New Mexico, I, 469, 479.

land occupied by the latter in the vicinity of Peña Blanca. Baca claimed the land to have been granted to him by Governor José Manrique. That the annulment order was enforced seems evident, for on March 14, 1815, Baca answered the governor requesting four thousand pesos reimbursement for improvements he had made upon the tract in dispute.[7] Sometime prior to January, 1817, the Indians of Cochití had conveyed to a "settler" named Alencaster a strip of land to the south of Peña Blanca. This settler apparently sold the land, or succeeded in having the Indians sell an additional tract, to Don Luís Baca.[8] Such a conveyance was contrary to Spanish law, not having been made with the consent of the governor. Acting in his position as protector of the Indians, the king's attorney sought to restore these lands to the Indians and brought suit against the settlers in the royal audiencia of Guadalajara seeking an annulment.[9] After what was evidently a preliminary hearing, the audiencia ordered governor Maynez to submit all documents relative to the dispute.[10] Previous to transmitting the evidence requested by the audiencia, Governor Maynez ordered a survey of both

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[7] New Mexico Archives, document 1358.

[8] This document is far from clear. It is so difficult to determine from its wording the origin of the land given Baca that both possibilities are here included.

[9] New Mexico Archives, document no. 1361.

[10] New Mexico Archives, documents no. 1360, 1361.

the Cochití and Santo Domingo grants "with a view of reporting the results to the royal audiencia."[11] Just what the result of this litigation was is unknown, as no record which would shed light on the subject has been found, with the exception of two documents dated 1819, and 1820, assessing Don Luís Cabeza de Baca with the costs of the litigation before the royal audiencia.[12] It seems highly improbable, in the light of later events, that any action was taken. In 1930 the Pueblo Lands board found numerous non-Indian claimants residing on both the Peña Blanca lands and the Cile rancho. After hearings at Peña Blanca the board extinguished many of the claims. Those claimants whose lands were not extinguished were made parties to a suit, in the United States district court for New Mexico, to quiet title to the Indians. In the final decree on April 9, 1931, the court reversed the board, confirming thirty-four private claims amounting to 379.36 acres, many in the Peña Blanca-Cile rancho area, to the non-Indian claimants.[13]

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[11] New Mexico Archives, document no. 1362.

[12] New Mexico Archives, documents no. 1283, 1284.

[13] United States as Guardian for the Pueblo of Cochití vs. Manuel Aragon, et al., No.2153, In Equity.

THE CAJA DEL RIO AND LA MAJADA DISPUTES

Two major conflicts with the Cochití pueblo grant have long been a source of controversy between the Cochití pueblo and non-Indian settlers. Overlapping the pueblo grant on the east are the Caja del Rio and the La Majada grants. The Caja del Rio grant was made on May 13, 1742, to Nicolás Ortiz Niño Ladrón de Guevara, by Governor Domingo de Mendoza, as a reward for services performed as a soldier in the reconquest of New Mexico in 1692. The boundaries of the Caja del Rio according to the original grant were:

> East by the wide Cañada,
> West by the Rio del Norte
> North by the point on the Mesa situated in the same Caja del Rio,
> South by the drainage of Santa Cruz.

The area in conflict with the Cochití grant was 1,354.22 acres. The grant passed to the heirs of Guevara and was occupied until 1818, when, owing to frequent raids by the Navajo Indians, it was temporarily abandoned.[14]

The La Majada grant was first made on February 10, 1695, by Governor Diego de Vargas, to Captain Jacinto Peláez who had served in the armies of the governor during the reconquest. Several times in the years following the Spanish governors revalidated the grant to the heirs of Captain

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[14] New Mexico Archives, documents no. 1078, 1079.

Peláez. The boundaries of this land as set forth in the original document were:

> North by a line running from east to west one league north of the spring on the said tract known as the Ojito de la Legua de Tio Mes, on the south by the north boundary line of the Indian pueblo of Santo Domingo; on the east by the Bocas de Senetu and on the west by the Rio Grande.[15]

The area in conflict between the La Majada and Cochití pueblo grants was 5,104.73 acres.

It is evident from the boundary calls of these two grants that besides overlapping the Cochití pueblo grant east of the Rio Grande, the two grants were in conflict with each other. After the acquisition of New Mexico by the United States it was necessary that all private grants be confirmed by the new government. The Caja del Rio grant was presented for confirmation to the Court of Private Land Claims in 1893 by Felipe Delgado and other heirs of the original grantees. That court confirmed the grant on August 30, 1893, entering a final decree on February 12, 1895.[16] A significant statement in the confirmation must be noted: ". . . such confirmation should not interfere with or overthrow any just unextinguished Indian title or

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[15] All documents quoted relative to La Majada may be found in file 89 in the office of the cadastral engineer, Santa Fe, New Mexico.

[16] Felipe Delgado, et al., vs. United States of America, No. 63, "Caja del Rio Grant," Court of Private Land Claims.

right to any lands within the exterior boundaries thereof." The La Majada grant was confirmed by the Court of Private Land Claims on September 29, 1894, and a final decree was entered on March 25, 1896.[17] This confirmation also contained a qualifying sentence exempting" . . . from this confirmation any part of said lands that may have been disposed of by the United States." A patent was issued to the Caja del Rio grant on February 20, 1897, and to the La Majada grant on October 26, 1908.

The court made no decision, however, relative to the overlap between the two confirmed grants. In 1903, in the district court of Santa Fe, the Caja del Rio owners filed suit for title including the area in conflict with the La Majada grant. The Cochití Indians intervened in the suit on the grounds that any action which confirmed the area in dispute would be harmful to their rightful claims. The court clarified matters in 1914 when it decreed that " . . . the overlapping part of the Caja del Rio grant did not cast a cloud upon the Indian title."[18]

When the Pueblo Lands Board in 1930 considered the overlap between these two grants and the lands of the Cochití

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[17] Court of Private Land Claims, No. 89, La Majada grant, March 25, 1896.

[18] Aniceto Aboytia, et al., vs. Willie Spiegelberg, No. 1430, district court of the county of Santa Fe.

pueblo it found title to the conflict to be in the pueblo of Cochití.[19] In regard to the settlers on the land in conflict with the Caja del Rio and La Majada grants, who based their claims upon adverse possession as defined in the Pueblo Lands Act of 1924, the board said, "In the opinion of the Board those claiming any part of the lands in conflict have no better title, if any, than those claiming lands in the Indian grant where there is no conflict."[20]

In accordance with the Pueblo Lands Act of 1924, the special assistant to the attorney general, Mr. George A. H. Fraser, filed suit in the United States district court for New Mexico seeking to quiet title to the overlap in the name of the pueblo of Cochití. During the hearings, however, the attorney for the owners of the La Majada grant, entered a disclaimer to the land in dispute, thus partially clarifying the controversy. The court, on April 9, 1931, entered a final decree vesting title in the Cochití Indians to almost the entire area in conflict.[21]

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[19] Pueblo Lands Board, Report No. 1, Cochití Pueblo, "Report on title to Lands Granted or Confirmed to Pueblo Indians not Extinguished," April 30, 1930

[20] Pueblo Lands Board, loc. cit.

[21] United States as Guardian for the Pueblo of Cochití vs. Manuel Aragon, et al., No. 2133, In Equity, "Final Decree," April 9, 1931.

EL OJO DE SANTA CRUZ DISPUTE[22]

In 1933 there developed a controversy over a tract called El Ojo de Santa Cruz which had been overlooked by the Pueblo Lands Board because it lay entirely within the La Majada grant. The history of this land is worth reviewing. The La Majada grant had, at an early date, belonged to a Spaniard named Juan Fernández de la Pedrera, who was succeeded by his son, Bartolomé Pedrera. In 1728 one of these grantees petitioned the governor complaining of trespass by the Cochití Indians. Soon after, in an undated petition, Pedrera asked leave of the governor to sell his land or part of it, not stating to whom the sale was to be made.

On June 17, 1744, permission to make the sale was granted to Pedrera by Governor Don Joaquín Codallos y Rabál. The fact that on August 11, 1744, Pedrera made a deed to the Cochití Indians selling that part of his land known as the Ojo de Santa Cruz for fifteen hundred pesos, suggests that the sale was made in pursuance of the permission granted by the governor. Little record of the Ojo de Santa Cruz is found in the Spanish archives with the single exception of

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[22] All documents quoted or referred to in this dispute are on record in file 224, in the office of the Cadastral engineer, Santa Fe, New Mexico.

a document mentioning the purchase by the Indians in 1744.[23] This document shows, however, that the land had been occupied by Don Luís Cabeza de Baca previous to 1817, and that in that that year the Indians were seeking the return of the tract, along with other lands in the vicinity of Peña Blanca, through a suit pending before the Royal Audiencia of Guadalajara. The Ojo de Santa Cruz was included in the 53,000 acres confirmed as the La Majada grant by the Court of Private Land Claims in 1894. Since, however, the Indians of Cochití were not parties to that suit it would seem probable that a suit to quiet title to the Ojo de Santa Cruz purchase might result in a decision favorable to the Indians, although, on the other hand, it is doubtful that the Indians could prove possession. No action was taken by the Pueblo Lands board or the United States district court in regard to this Indian claim, since the Indians made no mention of same until 1933.[24]

SANTO DOMINGO-COCHITI OVERLAP

An unsettled controversy exists over a 149.88 acre overlap of the Santo Domingo pueblo grant by the southwestern

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[24] George A. H. Fraser, special assistant to the attorney general, to Walter C. Cochrane, special attorney for the Pueblo Indians, and to John Collier, commissioner, United States Indian Service. Copy on file in Land Agent's Office, United Pueblos Agency, Albuquerque.

corner of the Cochití grant. There seems little likelihood of a settlement of this conflict as no desire is manifest by either pueblo to quit-claim or purchase the area in dispute. The Pueblo Lands board, while recognizing the conflict, was of the opinion that it was limited by the act creating it from making any decisions with regard to inter-pueblo controversies.

The Cochití pueblo grant was confirmed by the congress of the United States on December 22, 1858, and was patented on November 1, 1864, in the amount of 24,256.61 acres.[25] When the Pueblo Lands board in 1930 sought to clear the title to all lands within the exterior boundaries of the grant, it ruled 172 non-Indian private holdings, amounting to 261.69 acres, extinguished as far as the Indians were concerned, but found unextinguished seventy-nine non-Indian claims. A suit to quiet title to these unextinguished claims was brought by the United States, as guardian for the pueblo of Cochití, in the United States district court for New Mexico. Of the seventy-nine claims enumerated in the complaint, the title to four had been recovered by the pueblo before the suit was heard. Of the remaining seventy-five, thirty-seven were awarded to the government (Indians), thirty-four to

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[25] Charles C. Royce, "Indian Land Cessions in the United States" 18th Annual Report, Bureau of American Ethnology, II, 922.

to non-Indian claimants, and four were divided.[26] The Indians thus recovered 5,312.84 acres and the non-Indian claimants recovered 379.36 acres. The Pueblo Lands board, accepting a resurvey of the Cochití grant made by the cadastral engineer, confirmed the pueblo grant in the amount of 24,299.9 acres.[27] The grant is rectangular in shape, bounded on the north by the Cañon de Cochití grant; on the south by the Santo Domingo pueblo grant and the public domain; on the east by the La Majada and Caja del Rio grants; and on the west by the foothills of the Jémez mountains and the public domain. The population of Cochití pueblo in 1936 was 309.[28]

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[26] United States as Guardian for the Pueblo of Cochití, vs. Manuel Aragon, et al., No. 2133 In Equity,

[27] Pueblo Lands Board, Report No. 2, Cochití Pueblo, "Report Concerning Indian Titles Extinguished," April 30, 1930.

[28] Annual Report of the Secretary of the Interior, for the Fiscal Year ended June 30, 1936, 215.

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