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Report to Congressional Requesters

June 2004

TREATY OF GUADALUPE HIDALGO

Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico

GAO-04-59

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Abbreviations

BLM	Bureau of Land Management
CPLC	Court of Private Land Claims
SGR	Surveyor General Report

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G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-302565

June 4, 2004

The Honorable Jeff Bingaman
The Honorable Pete V. Domenici
United States Senate

The Honorable Tom Udall
United States House of Representatives

In response to your request, this report: (1) describes the confirmation procedures by which the United States implemented the property protection provisions of the 1848 Treaty of Guadalupe Hidalgo with respect to community land grants located in New Mexico, and the results produced by those procedures; (2) identifies and assesses concerns regarding these procedures as they pertain to the government's confirmation of these grants from 1854 to 1904; (3) identifies and assesses concerns regarding acreage transferred voluntarily or involuntarily after the confirmation procedures were completed; and (4) identifies possible options that Congress may wish to consider in response to remaining community land grant concerns.

As arranged with your offices, this report is being issued in English and Spanish versions (GAO-04-59 and GAO-04-60, respectively). We will distribute copies in both languages in New Mexico and provide copies upon request. We also plan to send copies to the other members of the New Mexico delegation in the House of Representatives.

If you or your staffs have any questions about this report, please contact me at (202) 512-5400. Key contributors to this report are listed in appendix XIII.

Susan D. Sawtelle
Associate General Counsel

Executive Summary

Purpose of This Report

Whether the United States has fulfilled its obligations under the 1848 Treaty of Guadalupe Hidalgo, with respect to property rights held by traditional communities in New Mexico, has been a source of continuing controversy for over a century. The controversy has created a sense of distrust and bitterness among various communities and has led to confrontations with federal, state, and local authorities. Under the Treaty, which ended the Mexican-American War, the United States obtained vast territories in what is now the U.S. Southwest, from California to New Mexico. Much of this land was subject to pre-existing land grants to individuals, groups, and communities made by Spain and México from the 17th to the mid-19th centuries, and the Treaty provided for U.S. recognition and protection of the property rights created by these grants. Today, land grant heirs and legal scholars contend that the United States failed to fulfill its treaty obligations regarding community land grants within New Mexico. This contention is based in part on a belief that the percentage of community land-grant acreage recognized by the U.S. government in New Mexico was significantly lower than the percentage recognized in California, and a view that confirmation procedures followed in New Mexico were unfair and inequitable compared with the different procedures established for California. The effect of this alleged failure to implement the treaty properly, heirs contend, is that the United States either inappropriately acquired millions of acres of land for the public domain or else confirmed acreage to the wrong parties. According to some heirs, the resulting loss of land to grantees threatens the economic stability of small Mexican-American farms and the farmers' rural lifestyle.

In September 2001, GAO issued its first report on these issues, entitled *Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico* (GAO-01-951, Sept. 10, 2001).[1] Using a broad definition of "community land grant"—as any grant setting aside common lands for the use of an entire community—GAO identified 154 community land grants out of a total of 295 grants made by Spain and México for lands within New Mexico. In this second and final report, GAO discusses how the community land grants were addressed by the courts and other entities and how Congress may wish to respond to continuing concerns about them. Specifically, this report: (1) describes the confirmation procedures

[1] GAO simultaneously issued the report in Spanish—U.S. General Accounting Office, *Tratado de Guadalupe Hidalgo: Definición y Lista de las Concesiones de Tierras Comunitarias en Nuevo México*, GAO-01-952 (Washington, D.C.: Sept. 10, 2001).

by which the United States implemented the property protection provisions of the Treaty with respect to New Mexico community land grants and the results produced by those procedures; (2) identifies and assesses concerns regarding these procedures as they pertain to the government's confirmation of these grants from 1854 to 1904; (3) identifies and assesses concerns regarding acreage transferred voluntarily or involuntarily after the confirmation procedures were completed; and (4) outlines possible options that Congress may wish to consider in response to remaining community land grant concerns.

As detailed in detail in chapter 1 and appendix VIII of this report, we conducted substantial research and analysis in the preparation of these two reports. We also widely distributed an exposure draft of our first report, in response to which we received over 200 oral and written comments. We contacted and interviewed numerous land grant heirs, scholars, researchers, historians, advocates, and organizations familiar with implementation of the property protection provisions of the Treaty, as well as New Mexico county and state government officials and U.S. government officials from several agencies. We reviewed archival documentation describing the procedures established and followed by the Surveyor General of New Mexico and the Court of Private Land Claims, and evaluated numerous studies, books, law review articles, treatises, and other materials. We researched the legislation creating the Surveyor General and the Department of the Interior's subsequent instructions to the Surveyor General, and the legislation creating the Court of Private Land Claims. We obtained and examined all of the community land grant adjudicative decisions and reports from the Surveyor General of New Mexico, the Court of Private Land Claims, and the U.S. Supreme Court, and we researched pertinent provisions of the U.S. Constitution and other federal laws and federal court decisions. We conducted our review for this second report from September 2001 through May 2004 in accordance with generally accepted government auditing standards.

Historical Background

From the end of the 17th century to the mid-19th century, Spain, and later México, made land grants to individuals, groups, and towns to promote development in the frontier lands that today constitute the American Southwest. In New Mexico, land grants were issued to fulfill several purposes: encourage settlement, reward patrons of the Spanish government, and create a buffer zone between Indian tribes and the more populated regions of its northern frontier. Spain also issued land grants to several indigenous Indian *pueblo* (village) cultures that had occupied the areas long before Spanish settlers arrived. In 1821, after gaining its

independence from Spain, México continued to adhere to the land policies adopted by Spain. México's governance of New Mexico lasted until 1846 and was riddled with instability and frequent political changes in government leaders, organization, and laws.

As reflected in the literature and in popular terminology, there were two types of Spanish and Mexican land grants made in New Mexico: "community land grants" and "individual land grants." Community land grants were typically organized around a central plaza, whereby each settler received an individual allotment for a household and a tract of land to farm, and common land was set aside as part of the grant for use by the entire community. Spanish and Mexican law usually authorized the local governor to make such community land grants, and the size of each grant was a matter within the governor's discretion. Individual land grants, as its name suggests, were made in the name of specific individuals and usually were made by the governor as well.

Much of Spain's settlement in the northernmost provinces of the American continent occurred with little interference, but in time, England and France made their presence on the continent known. While France established only a few interior settlements to facilitate trade, England established permanent colonies along the Atlantic Coast and increasingly migrated westward. The United States formally acquired its independence from England in the 1783 Treaty of Paris and, with the establishment of a federal government in 1789, the U.S. steadily acquired more land and expanded south to Florida and west to California. Treaties with Spain and France, for Florida and the Louisiana Purchase, respectively, and with numerous Indian tribes, propelled the U.S. acquisition of land and westward expansion. In 1845, when Texas achieved statehood as the nation's 28th state, U.S. territorial interests, including a plan to expand settlement to the Pacific Ocean, collided with México's territorial interests. The Mexican-American War broke out over the boundary between Texas and México, bringing an end to a 9-year boundary dispute. Eventually, U.S. troops occupied Santa Fe, New Mexico; proclaimed New Mexico's annexation; and established U.S. government control over the territory. In 1847, U.S. troops occupied Mexico City and shortly thereafter, México surrendered. The war officially ended with the 1848 ratification of the Treaty of Peace, Friendship, Limits and Settlement, commonly referred to as the Treaty of Guadalupe Hidalgo.

The Treaty of Guadalupe Hidalgo forever altered the political landscape of the North American continent. Among the Treaty's provisions were México's cession to the United States of vast territories extending from

California to New Mexico and an agreement by the United States to recognize and protect property rights of Mexican citizens living in the newly acquired areas. In order to implement the Treaty's property protection provisions in California, Congress enacted legislation (the 1851 Act) creating a commission to review and confirm grants, with appeals authorized to federal district courts and the U.S. Supreme Court. In determining whether to recognize and confirm a grant, the 1851 Act directed the California Commission to apply Spanish and Mexican laws, customs, and usages, as well as equity principles, the law of nations (international law), the provisions of the Treaty, and decisions of the U.S. Supreme Court. The 1851 Act also directed the Commission to apply a presumption in favor of finding a community land grant where a city, town, or village existed at the time the Treaty was signed. In New Mexico, by contrast, Congress established two different and successive mechanisms for recognizing and confirming Spanish and Mexican land grants. First, in 1854, Congress established (in the 1854 Act) the Office of the Surveyor General of New Mexico within the Department of the Interior. The Surveyor General was charged with investigating Spanish and Mexican land grant claims and submitting to Congress recommendations on their acceptance or rejection. The Surveyor General was directed to examine the claims by applying Spanish and Mexican laws, customs, and usages, and to treat the prior existence of a city, town, or village as clear evidence of a grant. Because of fraud and other difficulties with this process as well as the process in California, Congress established a second mechanism in 1891, the Court of Private Land Claims (CPLC), to resolve new and remaining claims in New Mexico and certain other territories and states (excluding California, where claims already had been resolved). The criteria that Congress established for the CPLC in determining whether a land grant should be confirmed were more stringent than those it had established for both the Surveyor General of New Mexico and the California Commission. The CPLC could confirm grants only where title had been "lawfully and regularly derived" under the laws of Spain or México.

A number of factors contributed to the background against which the New Mexico community land grants were investigated and resolved under these two processes. For the most part, New Mexico consisted of a sparsely populated area of subsistence agricultural communities, and inhabitants were unfamiliar with the English language, the U.S. legal system, and American culture. The Mexican legal system, for example, had consisted largely of Spanish and Mexican codes and laws that were often interpreted according to local custom and usage, and more formal tribunals and

courts did not play the same important role in México as they did in the United States in interpreting and deciding issues and cases.

U.S. land tenure and ownership patterns also differed from those then existing in New Mexico. Then as now, the U.S. system viewed the earth's surface as an imaginary grid laid out on a piece of paper, and cartography and surveying were used to identify physical features of a particular parcel. The exact measurements of parcels were identified and located on a map, land ownership was primarily in "fee simple," and land titles were recorded in local government offices. Taken as a whole, this system facilitated the use of land as a commodity that could be bought and sold. By contrast, the Mexican and Spanish systems were rooted in a rural, community-based system of land holding prevalent in medieval Europe. That system was not based on fee simple ownership; instead, land was viewed more in its relationship to the community, although parcels could be sold to individuals after the land had been used and inhabited for a certain number of years. Land was used primarily to provide sustenance to the local population, rather than as a commodity that could be exchanged or sold in a competitive market. Land boundaries were defined with reference to terrestrial landmarks or the adjoining property, and because these markers were often difficult to locate, Spanish and Mexican land records sometimes lacked the geographic precision of the U.S. system.

Results in Brief and Principal Findings

Congress Directed Implementation of the Treaty of Guadalupe Hidalgo's Property Provisions in New Mexico through Two Successive Procedures

As noted above, over a 50-year period starting in 1854, Congress directed implementation of the property protection provisions of the Treaty of Guadalupe Hidalgo in New Mexico for community land grants through two distinct and successive procedures. First, in the 1854 Act, Congress established the Office of the Surveyor General of New Mexico within the General Land Office of the Department of the Interior (Interior). The Surveyor General was charged with investigating the land grant claims and, through Interior, making recommendations to Congress for final action. The 1854 Act directed the Surveyor General to base his conclusions about the validity of land grant claims on the "laws, usages, and customs" of Spain and México and on more detailed instructions to be issued by Interior. These instructions, in turn, directed the Surveyor General to recognize land grants "precisely as México would have done" and to presume that the existence of a city, town, or village at the time of the Treaty was clear evidence of a grant. The Surveyor General investigated

claims under this process from 1854 to 1891, and Congress confirmed the vast majority of grants recommended for confirmation before the Civil War in the early 1860s. Congressional confirmation ceased during the war and resumed thereafter in the mid-1860s, but stopped again in the early 1870s because of concern about allegations of fraud and corruption. These concerns finally were addressed with the advent of a new Presidential administration in 1885, which scrutinized the confirmation process and appointed a new Surveyor General. The new Surveyor General reconsidered and reversed some of his predecessor's recommendations to Congress, and a backlog of land grant claims developed.

After several attempts at reform, Congress ultimately revised the confirmation process in 1891 with passage of the 1891 Act. The 1891 Act established a new entity, the Court of Private Land Claims (CPLC), to resolve both new and remaining claims for lands in New Mexico (and certain other territories and states). In part to prevent the type of fraud and corruption which had characterized some of the claims filed in New Mexico and California, Congress directed the CPLC to apply stricter legal criteria for approval of land grants than Congress had established for the Surveyor General of New Mexico. Under the new criteria, the CPLC could confirm only those grants that claimants could prove had been "lawfully and regularly derived" under Spanish or Mexican law, and the presumption that Interior had directed the Surveyor General to follow—to find in favor of a grant based on the previous existence of a city, town, or village—was eliminated. Either the claimant or the U.S. government could appeal the CPLC's decisions directly to the U.S. Supreme Court, which could review claims *de novo*, that is, without giving a presumption of correctness to the CPLC's rulings. Like the CPLC, however, the Supreme Court was bound by the same legal criteria in determining whether a grant should be confirmed: title to the land must have been "lawfully and regularly derived" under Spanish or Mexican law. The CPLC adjudicated land grant claims from 1891 through 1904. Thus over the 50-year history of the two successive statutory land grant confirmation processes in New Mexico, the legal standards and procedures applied in determining whether a community land grant should be confirmed became more rigorous.

In discussing the results of these two confirmation procedures in New Mexico, land grant scholars often have reported that only 24 percent of the acreage claimed in New Mexico was awarded, for both community and individual grants, in contrast to the percentage of acreage awarded in California of 73 percent. In our judgment, the percentage of claimed acreage that was awarded for New Mexico grants was actually 55 percent, because the acreage that can fairly be viewed as having been claimed is

considerably smaller than that cited by land grant scholars, with the result that a larger proportion of acreage was actually awarded. For example, scholars include as grant lands claimed in New Mexico acreage that was located outside of New Mexico, acreage that was covered by claims that were withdrawn or never pursued, and acreage that was "double-counted." We believe the acreage attributable to these factors should be excluded from a fair assessment of the confirmation process results.

The claims that were filed and pursued for the 154 community land grants located in present-day New Mexico during this 50-year period encompassed 9.38 million acres of land. The majority of these land grants—105 grants, or over 68 percent—were confirmed, and the majority of acreage claimed under these confirmed grants—5.96 million acres, or 63.5 percent—were ultimately awarded, although a significant amount (3.42 million acres, or 36.5 percent) were not awarded and became part of the U.S. public domain available for settlement by the general population. Some of the confirmed grants were awarded less acreage than claimed, and grants that were wholly rejected were awarded no acreage at all. Land grant heirs and scholars commonly refer to acreage that was not awarded during the confirmation process as "lost" acreage, and thus it is said that community land grants "lost" 3.42 million acres during the confirmation process. The circumstances surrounding this perceived loss have been a concern of land grant heirs for more than a century.

Heirs and Others Are Concerned That the United States Did Not Properly Protect Land Grants during the Confirmation Process, but the Process Complied with All U.S. Laws

A number of land grant heirs, legal scholars, and other experts have charged that activities under the two federal statutory New Mexico community land grant confirmation procedures did not fulfill the United States' legal obligations under the Treaty's property protection provisions. With respect to grants that were confirmed, heirs and others have voiced concern about whether the full amount of acreage that they believe should have been awarded was in fact awarded, as well as whether the acreage awarded was confirmed and patented to the rightful owners. With respect to grants that were rejected, the heirs' principal concern is that no acreage was awarded at all. Published studies have identified three core reasons for rejection of claims for New Mexico land grants, all involving decisions by the CPLC or, on appeal, the U.S. Supreme Court: (1) that under the Supreme Court's decision in the *United States v. Sandoval* case, the courts confirmed grants but restricted them to their so-called "individual allotments," that is, to acreage actually occupied by the claimants; (2) that under the Supreme Court's decisions in the *United States v. Cambuston* and *United States v. Vigil* cases, the courts rejected grants because they had been made by unauthorized officials; and (3) that under the Supreme

Court's decision in the *Hayes v. United States* case, the courts rejected grants because they were supported solely by copies of documents that had been made by unauthorized officials. These three reasons resulted in rejection of claims for approximately 1.3 million acres of land in 17 different grants. If Congress had established less stringent standards in the 1891 Act for the CPLC to apply in evaluating claims for the New Mexico community land grants, such as those it established for the California Commission under the 1851 Act or the Surveyor General of New Mexico under the 1854 Act, these results might have been different. Congress had discretion in how it implemented the Treaty provisions, however, so long as it did so within constitutional and other U.S. legal limitations (which it did, as discussed below). Thus the fact that Congress established different standards for grant confirmation at different times did not indicate any legal violation or shortcoming.

In addition to these concerns by heirs about how specific claims were adjudicated, some heirs and legal scholars have contended that there were two more general problems underlying the Surveyor General and CPLC processes. *First*, with respect to the Surveyor General procedures, heirs and scholars contend that they did not meet the "fairness" requirements of due process of law under the U.S. Constitution. We found that the procedures did, in fact, meet constitutional due process requirements, as the courts at that time defined them and even under today's standards. All potential land grant claimants were provided with the requisite notice of the establishment of the Office of the Surveyor General and the requirement to submit claims for any land grant for which they sought government (congressional) confirmation. Persons who filed claims with the Surveyor General were then given the requisite opportunity to be heard in defense of their claimed land grants. Even persons who disputed claims that had been filed with the Surveyor General based on their allegedly superior Spanish or Mexican title, but who did not themselves file a claim, had opportunity to be heard, both during the Surveyor General process and thereafter—including to the present day. *Second*, with respect to the CPLC process, heirs and scholars assert that it did not appropriately consider principles of equity, particularly in comparison with the Surveyor General process, but instead applied standards that were overly technical and "legal." We found that the CPLC did apply more stringent standards in deciding whether to approve community land grants than the Surveyor General had, but that these differences were the result of differences in the authority and mandates that Congress established for the two entities. Under the 1854 Act, the Surveyor General was directed to look to the "laws, usages, and customs of Spain and México" in recommending a grant for Congress' confirmation, while under the 1891 Act, the CPLC was

directed to confirm only those grants that had been "lawfully and regularly derived" under the laws of Spain, México, or any of the Mexican states. As the U.S. Supreme Court explained in the *United States v. Sandoval* case, the CPLC—and the Supreme Court in reviewing the CPLC's decisions—was required as a matter of U.S. law to act within the boundaries that Congress had established in deciding whether to confirm grants under the 1891 Act. Because the 1891 Act directed the CPLC to apply more stringent standards than the 1854 Act had established for the Surveyor General, the Court explained in *Sandoval*, claimants had to look to "the political department" of the U.S. government—the Congress—to address any remaining concerns about consideration of "equitable rights." Whether the 1891 Act appropriately considered equitable rights was a policy judgment for the Congress in 1891, and it remains so today.

Finally, some scholars and legal commentators have raised questions about whether the statutory confirmation procedures that Congress established for New Mexico grants fulfilled the United States' obligations under the Treaty and international law. They contend that the substantive requirements of the statutes—the standards that Congress set for determining when a grant would be confirmed—were inconsistent with the terms of the Treaty and international law, and thus even if the United States carried out the statutory requirements, these allegedly did not satisfy all of the government's obligations. Under established U.S. law, however, as articulated by the U.S. Supreme Court in the *Botiller v. Dominguez* case and other decisions, courts are required to comply with the terms of federal statutes that implement a treaty such as the Treaty of Guadalupe Hidalgo that is not self-executing. (A treaty is not self-executing if it requires implementing legislation before becoming effective.) If an implementing statute conflicts with the terms of the treaty, this conflict can be addressed only as a matter of international law or by enactment of additional legislation. In the case of the Treaty of Guadalupe Hidalgo, the evidence indicates that the substantive requirements of the implementing statutes were, in fact, carried out, through the Surveyor General of New Mexico and the CPLC procedures. Thus any conflict between the Treaty and the 1854 or 1891 Acts—which we do not suggest exists—would have to be resolved today as a matter of international law between the United States and México or by additional congressional action. As agreed, we do not express an opinion on whether the United States fulfilled its Treaty obligations as a matter of international law. By contrast, any concerns about the specific procedures that Congress, the Surveyor General, or the CPLC adopted cannot be addressed under the Treaty or international law, but only under U.S. legal requirements such as

the Constitution's procedural due process requirements, and as noted, we conclude that these requirements were satisfied.

Notwithstanding the compliance of the two New Mexico confirmation procedures with these statutory and constitutional requirements, we found that the processes were inefficient and created hardships for many grantees. For example, as the New Mexico Surveyors General themselves reported during the first 20 years of their work, they lacked the legal, language, and analytical skills and financial resources to review grant claims in the most effective and efficient manner. Moreover, delays in Surveyor General reviews and subsequent congressional confirmations meant that some claims had to be presented multiple times to different entities under different legal standards. The claims process also could be burdensome after a grant was confirmed but before specific acreage was awarded, because of the imprecision and cost of having the lands surveyed—a cost that grantees had to bear for a number of years. For policy or other reasons, therefore, Congress may wish to consider whether some further action may be warranted to address remaining concerns.

Heirs and Others Are Concerned that the United States Did Not Protect Community Land Grants after the Confirmation Process, but the United States Was Not Obligated to Protect Non-Pueblo Indian Land Grants after Confirmation

Some land grant heirs and advocates of land grant reform have expressed concern that the United States failed to ensure continued community ownership of common lands after the lands were awarded during the confirmation process. They contend that the Treaty of Guadalupe Hidalgo imposed a duty on the United States to ensure that these lands were not subsequently lost through other means, either voluntarily or involuntarily, and that because the United States did not take such protective action, the United States breached this alleged "fiduciary" duty. (A fiduciary duty is a duty to act with the highest degree of loyalty and in the best interest of another party.) Land grant acreage has been lost, for example, by heirs' voluntary transfers of land to third parties, by contingency fee agreements between heirs and their attorneys, by partitioning suits that have divided up community land grants into individual parcels, and by tax foreclosures. Some land grant heirs also contend that the Treaty specifically exempts their confirmed grant lands from taxation. These issues have great practical importance to claimants, because it appears that virtually all of the 5.3 million acres in New Mexico that were confirmed to the 84 non-Pueblo Indian community grants has since been lost by transfer from the original community grantees to other entities. This means claimants have lost substantially more acreage *after* the confirmation process—almost all of the 5.3 million acres that they were awarded—than they believe they lost *during* the confirmation process—the 3.4 million acres they believe they should have been awarded but were not.

We conclude that under established principles of federal, state, and local law, the Treaty did not create a fiduciary relationship between the United States and non-Pueblo community grantees in which the United States was required to ensure the grantees' continued ownership of confirmed lands, nor did it exempt lands confirmed to these grantees from state or local property requirements, including, but not limited to, tax liabilities. The United States does have a fiduciary relationship with the Indian Pueblos in New Mexico and it protects community lands that the Pueblos obtained under Spanish land grants. But this relationship is the result of specific legislation, bringing the Pueblos under the same general protections afforded to other Indian tribes, rather than the result of obligations created under the Treaty. Thus the U.S. did not violate any fiduciary duty to non-Pueblo community grantees.

Concluding Observations and Possible Congressional Options in Response to Remaining Community Land Grant Concerns

As detailed in this report, grantees and their heirs have expressed concern for more than a century—particularly since the end of the New Mexico land grant confirmation process in the early 1900s—that the United States did not address community land grant claims in a fair and equitable manner. As part of our report, we were asked to outline possible options that Congress may wish to consider in response to remaining concerns. The possible options we have identified are based in part on our conclusion that there does not appear to be a specific legal basis for relief, because the Treaty was implemented in compliance with all applicable U.S. legal requirements. Nonetheless, Congress may determine that there are compelling policy or other reasons for taking additional action. For example, Congress may disagree with the Supreme Court's *Sandoval* decision and determine that it should be "legislatively overruled," addressing grants adversely affected by that decision or taking other action. Congress, in its judgment, also may find that other aspects of the New Mexico confirmation process, such as the inefficiency and hardship it caused for many grantees, provide a sufficient basis to support further steps on behalf of claimants. Based on all of these factors, we have identified a range of five possible options that Congress may wish to consider, ranging from taking no additional action at this time to making payment to claimants' heirs or other entities or transferring federal land to communities. We do not express an opinion as to which, if any, of these options might be preferable, and Congress may wish to consider additional options beyond those offered here. The last four options are not necessarily mutually exclusive and could be used in some combination. The five possible options are:

Option 1: Consider taking no additional action at this time because the majority of community land grants were confirmed, the majority of acreage claimed was awarded, and the confirmation processes were conducted in accordance with U.S. law.

Option 2: Consider acknowledging that the land grant confirmation process could have been more efficient and less burdensome and imposed fewer hardships on claimants.

Option 3: Consider establishing a commission or other body to reexamine specific community land grant claims that were rejected or not confirmed for the full acreage claimed.

Option 4: Consider transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants.

Option 5: Consider making financial payments to claimants' heirs or other entities for the non-use of land originally claimed but not awarded.

As agreed, in the course of our discussions with land grant descendants in New Mexico, we solicited their views on how they would prefer to have their concerns addressed. Most indicated that they would prefer to have a combination of the final two options—transfer of land and financial payment.

Chapter 1: Introduction—Historical Background and the Current Controversy

Overview

From the late 1600s until 1846, Spain, and later México, made a total of 295 grants of land within what today are the boundaries of New Mexico. These grants were made to individuals, groups, and towns in order to promote development in the frontier lands that now constitute the American Southwest. Of these 295 grants, 141 were made to individuals, and the remaining 154 were made to communities, including 23 grants made by Spain to indigenous Indian *pueblos* (villages) in recognition of the communal lands that the Pueblo people had held and used long before the Spanish settlers arrived. The principal difference between a community land grant and an individual grant was that the common lands of a community land grant were held in perpetuity and could not be sold. Both types of land grants fulfilled several purposes: they encouraged settlement, rewarded patrons of the Spanish government, and created a buffer zone between Indian tribes and the more populated regions.

As Spain and later México encouraged settlement along the northern frontier, England established colonies that began at the Atlantic Coast and extended westward. The United States, after establishing a federal government in 1789, steadily acquired land and promoted expansion south to Florida, west to California, and north to Oregon. The relative ease with which the United States acquired the Louisiana Purchase (by 1803 treaty with France) and Florida territories (by 1819 treaty with Spain), among other areas, propelled U.S. acquisition of land and westward expansion. In 1845, when Texas achieved statehood as the nation's 28th state, U.S. territorial interests, including plans to expand settlement to the Pacific Ocean, collided with México's territorial interests. The Mexican-American War broke out shortly thereafter, over the location of the boundary between Texas and México, culminating a 9-year dispute. Eventually, U.S. troops occupied Santa Fe, proclaimed the annexation of New Mexico, and established U.S. government control over the territory. In 1847, U.S. troops occupied Mexico City, and México soon surrendered. The war officially ended with the 1848 ratification of the Treaty of Peace, Friendship, Limits, and Settlement, commonly referred to as the Treaty of Guadalupe Hidalgo.

The Treaty of Guadalupe Hidalgo forever altered the political landscape of the North American continent. Among the Treaty's provisions was México's cession to the United States, for $15 million, of vast territories in the southwest from California to Texas. The United States also agreed under the Treaty to recognize and protect Mexicans' ownership of property within the ceded territory and to admit Mexican citizens living in the ceded territory as U.S. citizens if they wished.

Today, 300 years after the first Spanish land grants were made in New Mexico and 150 years after the signing of the Treaty of Guadalupe Hidalgo, conflicts persist over New Mexico community land grants. Many heirs of those who claimed to own community lands at the time the Treaty was ratified assert that the United States did not fulfill its treaty obligations. The effect of this alleged failure, heirs contend, is that the United States either inappropriately acquired millions of acres of land for the public domain or else confirmed acreage to the incorrect parties. To assist the Congress in deciding whether any additional measures may be appropriate in response to these continuing concerns, and if so, what measures Congress may wish to consider, GAO was asked to study a number of issues. The results of this study are set forth in our first report on these issues in September 2001, and in this second and final report.

New Mexico during the Spanish Period, 1598-1821

The arrival of Columbus on the North American continent in 1492 heralded the beginning of a Spanish campaign of exploration, conquest, and settlement. In 1513, Ponce de Leon led an expedition into Florida. Six years later, Hernando Cortés conquered the Aztec empire in central México. To help govern his rapidly expanding colonial empire, the King of Spain established a Council of the Indies in 1524, creating the vice-royalty of New Spain, and later the vice-royalties of Peru, Buenos Aires, and New Granada, and appointed a viceroy to govern each region. The viceroy of New Spain governed from the new capital city of Mexico City and appointed a general commander to govern locally in each of the vice-royalty's 10 provinces, including New Mexico and California. Initially, the laws governing the empire came from Spain's *Las Siete Partidas*. A revised compendium of laws—known as the *Nueva Recopilación de Las Leyes de España*—replaced them in 1567, with another compendium following in 1680—the *Recopilación de las Leyes de los Reynos de las Indias*—and another in 1805—the *Novissima Recopilación de las Leyes de España*.

Spanish exploration of New Mexico and the greater southwest began in earnest with the 1540 expedition of Francisco Vasquez de Coronado, whose search for gold and silver led to encounters with native tribes of the region. Coronado encountered Indian tribes who lived in villages, or *pueblos* (as referred to by the Spanish explorers), which had been occupied for centuries. (The term *pueblo* was also used to refer to the Indians living in these communities; these persons were referred to as Pueblo Indians or Pueblos.) The *pueblo* settlements were long-established communal villages that were sustained by an agrarian economy.

Significant Spanish settlement in New Mexico began in 1598 with the arrival of an expedition led by Juan De Oñate. Oñate came as New Mexico's first provincial governor, and his office assumed all civil and military authority in New Mexico. The governor had authority to do all that was necessary to assure the proper functioning of the provincial government, including supervising the founding of settlements and maintaining the official files of documents that later formed the archives of Santa Fe. Historically, the files of colonial governors and those of the *cabildo* (the provincial council) became the central repository for all official documents, including the registration of land titles and conveyances. In 1609, Santa Fe became the provincial capital.

From 1610 to 1680, many settlers and others, such as Franciscan missionaries, migrated to New Mexico. The settlers came to farm and raise livestock, and they established towns and small communities. The missionaries came to convert the Indians living in the province, and they founded missions to teach the Indians Christianity and the Spanish culture and language. In an effort to encourage Spanish settlement and collect tribute, Spain awarded an *encomienda* to deserving subjects. Under the *encomienda* system, a Spanish settler obtained the right to collect an annual tribute from each head of family. The *encomendero* was obligated to defend the province, give religious instruction to the natives, and collect tribute from them.

The *encomienda* system, which relied on the labor and conversion of the Indians, bred deep resentment. The Pueblo people soon developed a common hatred for the *encomienda* and the suppression of Pueblo religious practices by missionaries. In 1680, the Pueblos revolted and within 11 days, all Spaniards living in New Mexico had fled to the El Paso area. The Spaniards finally returned to New Mexico in 1693, and found that part of the official archives—which had served as the central repository of land grant documentation, along with privately held documents that had not been taken by the Spaniards in the evacuation of Santa Fe—had been among the revolt's casualties. As a result, a good part of the official documentation regarding ownership of land within New Mexico at that time was lost.

A decree of 1684 appointing Don Domingo Jironza Petriz de Cruzate as Governor and Captain General of New Mexico specifically authorized the issuance of land grants in New Mexico. As in other provinces, Governor Cruzate was assisted by *alcaldes mayores*, or mayors, who served multiple functions, including investigating new petitions for land grants and placing

grantees in possession. *Alcaldes* also served as justices of the peace, probate judges, sheriffs, tax collectors, and captains of the militia.

From the late 1600s until 1821, Spain made land grants to individuals, groups, towns, and *pueblos*. These grants served several purposes: to encourage settlement and colonial industries, to reward patrons of the Spanish government, and to create a buffer zone between hostile Indian tribes and more populated regions. Grants that were awarded to towns and other group settlements in New Mexico were modeled on similar communities created in Spain. In Spain, the King typically granted lands adjacent to small towns to the community, for common use by all town residents. Each settler received, in addition to use of common lands, private lots for a home and farming and stock raising. Although neither Spanish law nor Spanish land grant documents used the term "community land grant," many grants referred to lands set aside for general communal use or for specific communal purposes such as hunting, grazing, wood gathering, and watering. As a result, scholars, the land grant literature, and popular terminology have commonly used the phrase "community land grants" to denote grants that set aside common lands for the use of the entire community, and we have adopted this term for our reports. The principal difference between a community land grant and an individual grant was that the common lands of a community land grant were held in perpetuity and could not be sold or otherwise alienated, while an individual grant could be transferred. Spain also declared itself guardian of the *pueblo* communities, issuing grants to these settlements in recognition of their communal nature. The Pueblo of San Felipe, shown in figure 1, is an example of a *pueblo* community that was awarded such a land grant.

Figure 1: San Felipe Pueblo, New Mexico, c. 1880

Source: Photograph by John K. Hillers, courtesy Museum of New Mexico, Negative No. 16094.

The procedure for obtaining a grant of land from the New Mexico provincial governor typically involved several steps. First, prospective landowners submitted a written petition to the governor describing the requested area and asserting that it was vacant. The governor then, usually writing in the margin of the petition itself, directed the *alcalde mayor* with jurisdiction over the land to develop a sketch map of the proposed grant area, noting the distance from neighboring settlements or pueblos and reporting on whether there were other parties making claims adverse to the petition. Depending on the information provided by the petitioner and the *alcalde mayor*, a title of possession would be prepared by the governor and delivered by the *alcalde mayor* to the petitioner. The *alcalde mayor* then submitted a second report of these proceedings, called "the juridical act," to document the delivery of possession. After 4 years of continuous possession by the petitioner, the grant became final. The petition, *alcalde mayor* reports, title of possession, and grant were then assembled into a single official package called the *expediente*. The *expediente* for a community land grant was rarely complete because many

claimants preferred to keep records in their private possession. In addition, many original grant records were simply lost.

New Mexico during the Mexican Period, 1821-1848

In 1821, México (including the province of New Mexico) secured its independence from Spain with the signing of the Treaty of Cordova. Augustine Iturbide was subsequently elected Emperor of México and a national council was established, although a revolution ousted Iturbide after a year. The first 25 years of Mexican sovereignty were riddled with instability and frequent changes in political leaders, organization, and laws. Only one Mexican president served a full term in office during this period. The changes in governments generally brought with them changes in laws; for example, each government typically repealed and nullified the laws of its predecessors. Thus, although the Treaty of Cordova had initially adopted existing Spanish law for the Mexican nation, the legal requirements changed repeatedly.

This continually changing legal regime made it difficult to ascertain which official was authorized to make land grants at any given time. A 1681 Spanish law had given such authority only to the provincial governor, but in 1813, Spanish law extended grant-issuing authority to a provincial *diputación* (legislative body). In 1823, the Mexican Colonization Law of Iturbide authorized *ayuntamientos* (town councils) to grant lands, but regulations issued in 1828 to implement an 1824 Mexican Colonization Law returned all grant-making authority to the governor.[2] Later, the Mexican government passed still more legislation concerning land grants. The enactment of these various laws also created uncertainties about whether earlier laws had been repealed. As the U.S. Supreme Court later described this situation in *Ely's Administrator v. United States*, 171 U.S. 220, 223 (1898):

> Few cases presented to this court are more perplexing that those involving Mexican grants. The changes in the governing power as well as in the form of government were so frequent, there is so much indefiniteness and lack of precision in the language of the statutes and ordinances, and the modes of procedure were in so many respects different from those to which we are accustomed, that it is quite difficult to determine whether an alleged grant was made by officers who, at the time, were authorized to act for the government, and

[2] The Mexican government also entered into agreements with *empresarios*, who contracted to provide settlers with tracks of land.

was consummated according to the forms of procedure then recognized as essential.

Meanwhile, in the early 1800s, pioneers from the United States had begun arriving in New Mexico. In 1807, a U.S. expedition led by Lieutenant Zebulon M. Pike was intercepted by Spanish troops, arrested, and escorted south to Chihuahua, México. Pike and his men were released near San Antonio, Texas. By the 1820s, commerce had developed along the Santa Fe Trail, extending from Independence, Missouri, west to Santa Fe. In New Mexico, officials issued land grants to individuals and communities in an effort to accommodate the expanding population. For example, in 1835, México issued a community grant to the Town of Las Vegas. (See figure 2.) México identified the Governor of New Mexico as the political chief, and the territorial *diputación* (later the *asamblea departmental*) served as the governor's collective principal advisor. Larger towns in New Mexico had *ayuntamientos*. In 1837, the *prefectura* (jurisdiction) system, in which a prefect administered a geographical area and reported directly to the governor, subsumed the *ayuntamientos* system of administration. As of 1844, New Mexico had three *prefecturas*: Rio Arriba in the north, Santa Fe in central New Mexico, and Rio Abajo in the south.

Figure 2: Town of Las Vegas, New Mexico, c.1890

Source: Photograph by F. E. Evans, courtesy Museum of New Mexico, Negative No. 50798.

All told, from the end of the 17th century to the mid-19th century, Spain and México made a total of 295 land grants—141 grants to individuals and 154 grants to communities, including 23 grants to Indian *pueblos*. The Indian *pueblos* and most of the land grants were located in northern New Mexico. The community land grants usually contained sufficient land and water resources to facilitate settlement and establish communities. The *pueblo* grants allowed the settled Indian tribes to continue to sustain their communities through agriculture and animal husbandry, both of which required land. México continued to recognize the communal nature of Pueblo settlements of land and considered the residents to be Mexican citizens. Water being an important commodity in an otherwise arid landscape, most *pueblo* communities had been founded along the Rio Grande and its tributaries.

The United States' Westward Expansion and Manifest Destiny

After the establishment of the U.S. government in 1789, the United States steadily acquired land and promoted settlement and expansion south to Florida and west to California. The relative ease with which the United States acquired the Louisiana Purchase and Florida territories, among other areas, helped to propel additional U.S. land acquisition, settlement, and expansion farther west. In 1845, John L. O'Sullivan, editor of *United States Magazine* and *Democratic Review*, coined the phrase "manifest destiny" to describe what had become a national movement to promote expansion and "civilize" persons encountered along the way. In the years since, some land grant heirs have contended that this Manifest Destiny ideology contributed to a form of racism and arrogance detrimental to Mexicans living in the New Mexico territory. According to O'Sullivan, the claim to new territory was:

> by the right of [America's] manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federative self-government entrusted to us. It is a right such as that of the tree to the space of air and earth suitable for the full expansion of its principle and destiny of growth.[3]

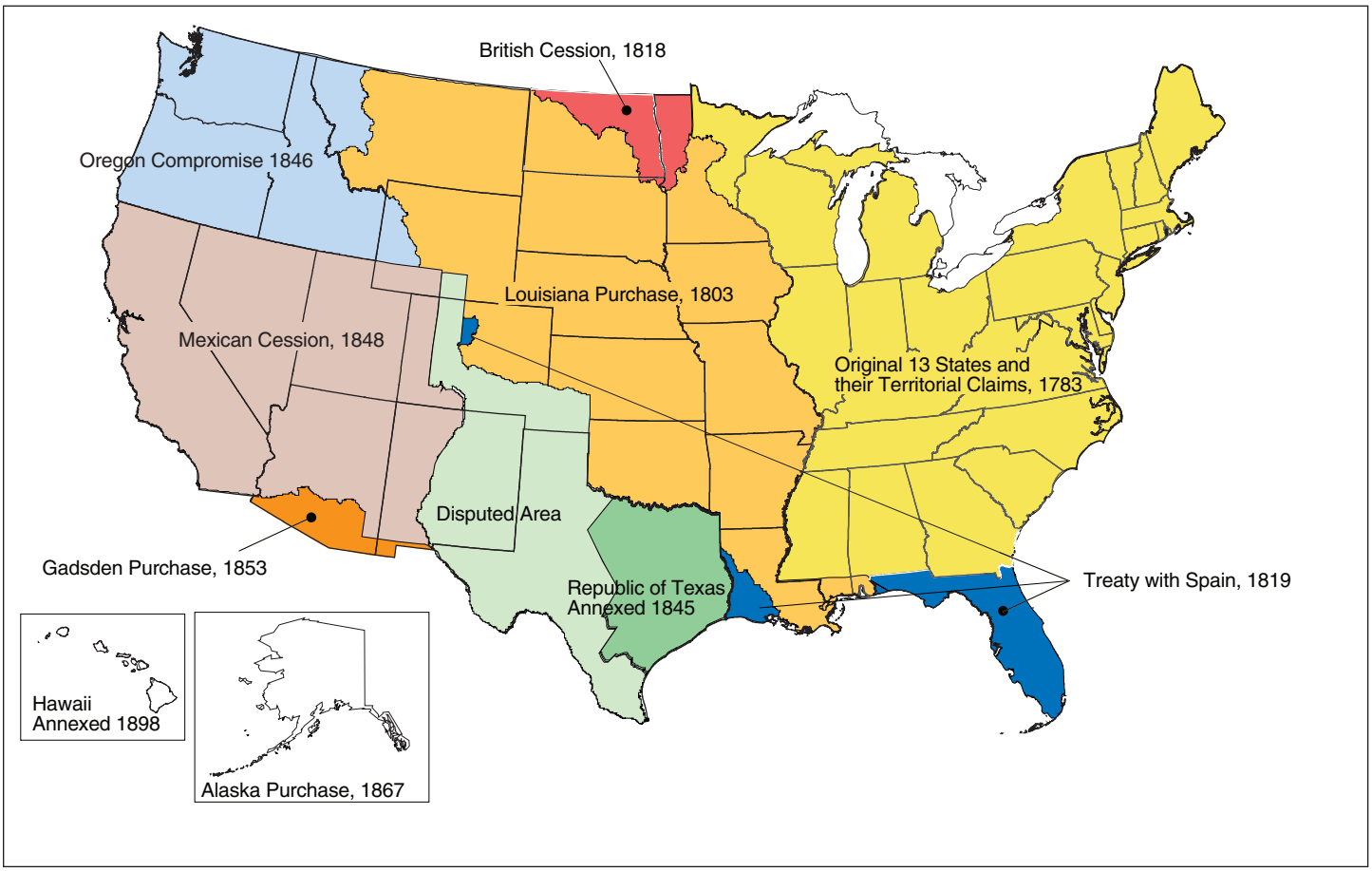
O'Sullivan called on Americans to resist any foreign power that attempted to thwart "the fulfillment of our manifest destiny to overspread the continent allotted by Providence for the free development of our yearly multiplying millions." O'Sullivan further argued that such providential

[3] Alan Brinkley, *American History: A Survey* (McGraw Hill College, 10th ed. 1999), p. 430.

favor gave Americans the right to bring the benefits of democracy to what he considered more backward peoples, meaning Mexicans and Indians, and if necessary, to do so by force.

Americans initially set their sights on establishing just a two-ocean boundary. By 1900, however, U.S. territorial expansion had spread beyond North American borders to non-contiguous areas, such as Alaska, Hawaii, the Philippines and Puerto Rico. While most U.S. citizens celebrated their self-proclaimed manifest destiny, Indian tribes, Mexicans, and Europeans with claims in the Western Hemisphere did not. For them, the overwhelming public support for expansion could only be interpreted as a promise of conflict. Historians have surmised that a growing concern about the future of the U.S. economy might have been behind the manifest destiny ideology. In that vein, economic uncertainties may have led politicians to assert that a new direction was needed and that the nation's prosperity depended on a vast expansion of trade with Asia. Figure 3 depicts the expansion of the United States as it acquired land from France, England, and Spain.

Figure 3: Generalized Depiction of U.S. Expansion



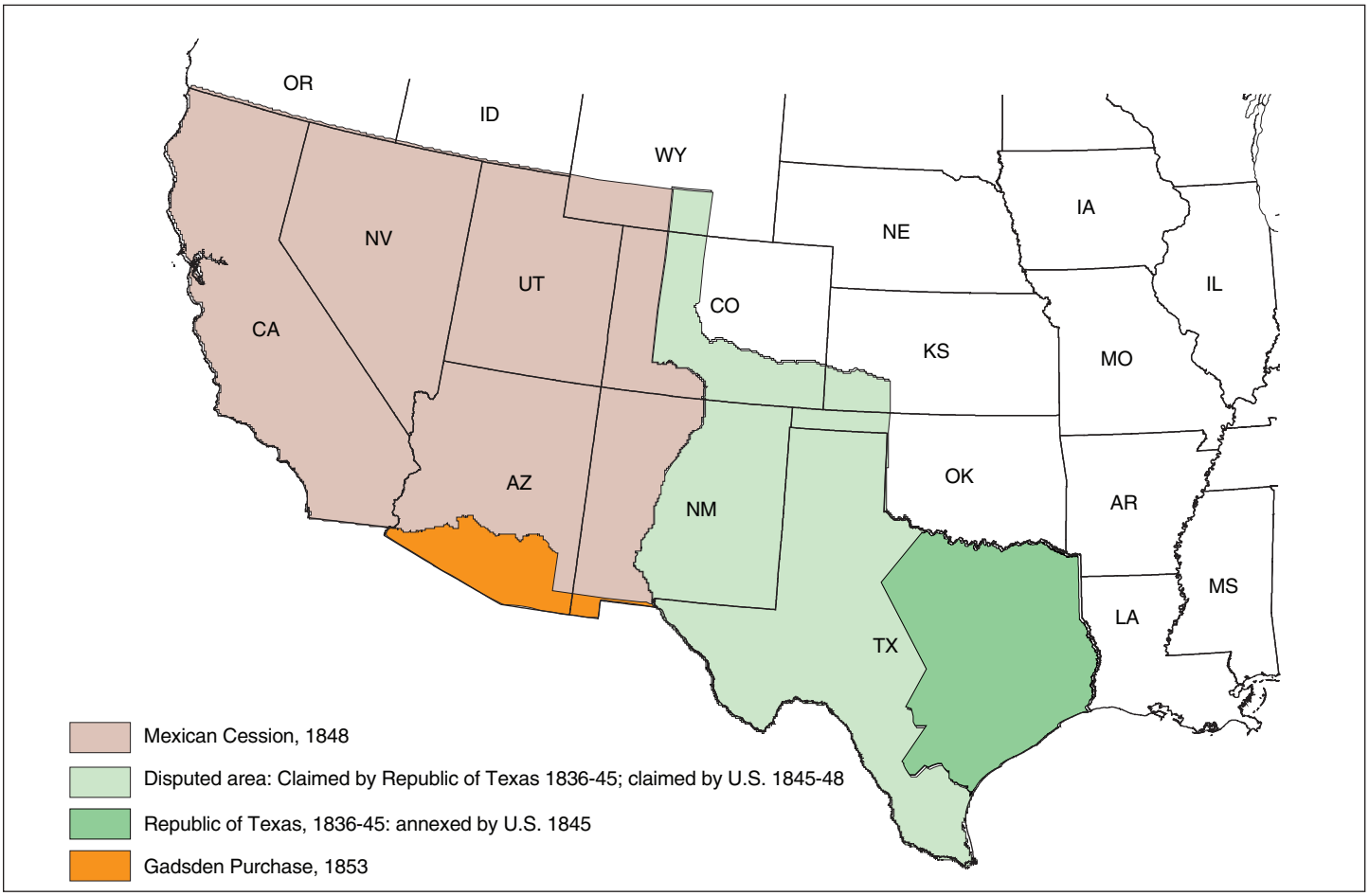
Source: U.S. Geological Survey.

Texas Independence and Statehood and the Resulting Boundary Disputes between the United States and México

Persistent disputes between the Mexican and U.S. governments over the Texas boundary led to deterioration of the nations' relationship. Spain had laid claim to Texas in 1519 with the expedition of Alonso Alvarez de Pineda, and in 1690, established it as a separate Spanish province with undefined boundaries. When México gained its independence from Spain in 1821, there were several Spanish settlements in Texas including Laredo, Nacogdoches, La Bahia, and San Antonio. Meanwhile, in 1820, Moses Austin, and later his son Stephen Austin, had petitioned Spain for permission to found and promote a colony in Texas. Spain approved the petition, and the colony proved to be successful and prosperous. In 1824, México combined Texas and Coahuila as a new department and, under its new colonization laws that offered liberal land grants, invited more immigrants to Texas. The influx of immigrants increased the population of Texas from 3,000 in 1821 to over 38,000 in 1836.

Concerned by the growth of an immigrant population, in 1830, México barred further immigration from the United States. In 1835, Mexican General Antonio Lopez de Santa Anna established himself as dictator of México. After México refused to grant Texans' request for independence and made efforts to reduce the size of the Texas militia, a convention of Texas delegates declared independence from Mexican control. Santa Anna responded with armed intervention. Texans suffered an initial defeat at the Alamo, but won decisively at the battle of San Jacinto. In 1836, the Republic of Texas claimed independence from México, and in 1845, Congress passed a resolution inviting Texas to join the Union as a state. On December 29, 1845, Texas became the 28th state. Figure 4 shows the area claimed by both the Republic of Texas and México at the time Texas became a state.

Figure 4: U.S. Land Acquisitions from México, 1845-1853



Source: U.S. Geological Survey.

The Mexican-American War

The beginnings of the Mexican-American War occurred on April 5, 1846, when U.S. General Zachary Taylor was ordered to occupy the area in dispute between Texas and México. President James K. Polk believed that the disputed area belonged to the United States, and on May 13, 1846, he declared that a state of war existed between the two countries. Brigadier General Stephen Watts Kearny led the U.S. Army of the West out of Fort Leavenworth, Kansas, for the conquest of New Mexico and California. In August 1846, as General Kearny's troops arrived in Santa Fe, the Acting

Governor of New Mexico, Juan Bautista Vigil y Alarid, officially surrendered New Mexico to the United States.

In September 1846, General Kearny issued a collection of laws, known as the "Kearny Code," to govern the territory of New Mexico under military rule. At the same time, General Kearny issued a "Bill of Rights," modeled closely on the protections contained in the U.S. Constitution. Based partly on the laws of México, Texas, and Missouri, the Kearny Code provided for the establishment of a government led by an appointed governor and supported by a court system, which included the appointment of *alcaldes* to resolve minor legal matters. The Kearny Code also established the Office of Registrar of Lands to record all papers and documents in the new territory "concerning lands and tenements" issued by the Spanish and Mexican governments and located in the archives of the former Mexican government in Santa Fe. Any person claiming lands in New Mexico under a Spanish or Mexican land grant could file a notice with the Registrar, stating the nature and extent of the claim and including the grant to be recorded, the deed of conveyance, an order of survey, or other written evidence of the claim. The claimant could provide any official authorized to administer oaths with evidence indicating the nature and extent of the claim; how much land had been planted and inhabited; the chain of title; and whether a grant document still existed and, if not, why or how it had been lost or destroyed. If a claimant failed to provide written evidence of the claim or statement under oath within 5 years from January 1, 1847, such claim would be void. As discussed below, Congress enacted other legislation starting in the 1850s that superseded the Kearny Code.

Meanwhile, shortly after war broke out in 1846, the military had moved into California. On January 10, 1847, General Kearny and Commodore Robert E. Stockton captured Los Angeles. In 1848, the discovery of gold in California precipitated one of the largest and most unforeseen population shifts in history. Hundreds of thousands of people from all over the world poured into California, laying claim to lands already occupied by Mexicans. Overwhelmed, U.S. military governors in California took steps to protect Mexican ownership of land until the establishment of a U.S. tribunal to confirm land titles. In the interim, claimants were advised to have their lands surveyed by a qualified surveyor.

The Treaty of Guadalupe Hidalgo (1848)

In August 1847, after the U.S. Army occupied Mexico City, Mexican General Santa Anna agreed to enter into negotiations for a peace treaty. President Polk appointed Nicholas P. Trist to negotiate the treaty with México, and provided him with specific instructions and a copy of a proposed treaty. Then, as now, international law generally required a successor sovereign to recognize the property rights of a former sovereign's citizens to the same extent provided under the laws and practices of the prior sovereign.[4] The proposed treaty between Mexico and the United States contained no provision explicitly addressing the recognition of Spanish and Mexican land grants, but Trist's instructions specified that if the subject of grants was raised during negotiations, a clause modeled on the 1803 treaty between the U.S. and France governing the Louisiana Purchase could be included. Article III of that treaty provided that the "inhabitants of the acquired territory shall be incorporated into the United States and admitted as soon as possible, according to the federal Constitution, to the enjoyment of all the rights, advantages, and immunities of American citizens. In the meantime, they shall be maintained and protected in their liberty, *property* and religion."[5]

The Mexican government was concerned that the proposed U.S. treaty did not provide sufficient protection for the property and other rights of its citizens who now resided in American territory. The instructions given to the Mexican negotiators directed them to seek various protections for these interests, specifically, achievement of statehood or territorial status for the area being transferred; preservation of property and other rights of Mexicans who became U.S. citizens and continued to reside in the acquired lands, as well as the rights of Mexicans residing outside such lands; immediate U.S. citizenship for inhabitants of the acquired lands; recognition of the validity and effect of land concessions; and protection of the property of the Catholic Church and maintenance of relations between Catholics residing in the United States and their ecclesiastic authorities in México.

Trist's initial efforts to negotiate a treaty were unsuccessful, and President Polk recalled him from México. Trist disobeyed the President's order, however, and over the next several months, he negotiated a draft treaty that was based partly on a Mexican version that had contained many of the

[4] *See United States v. Percheman*, 32 U.S. 51, 86-87 (1833); *Restatement of the Law, Third, Foreign Relations Law of the United States* (1987) §§ 208-09.

[5] Louisiana Purchase Treaty, Article III (emphasis added).

aims of the Mexican negotiators. For example, Article VIII of Trist's draft protected the property of former Mexican citizens who chose to reside in the new U.S. territory, allowing them to sell their property and leave the territory without paying taxes on the proceeds. Article VIII also provided protections for the property of Mexicans not residing in the territory and gave persons remaining in the territory a year in which to designate whether they wished to become U.S. citizens or remain expatriated Mexican citizens living in the United States. If no designation was made, all Mexicans living within the ceded territory would automatically become citizens of the United States.

Article IX of Trist's draft treaty, similar to Article III of the Louisiana Purchase Treaty, provided that persons who elected to become American citizens under Article VIII would become citizens of the United States as soon as possible and enjoy all of the rights and benefits of citizenship. In the meantime, the draft stated, "their liberty, property, and civil rights shall be maintained and protected." Article X of Trist's draft made specific reference to Mexican land grants and stated that grants made by either the Mexican government or other competent authorities would be respected to the same extent as if the acquired territories had remained under Mexican rule. In addition, grantees of lands in Texas who had not been able to satisfy all of the conditions of their grants, because of the conflicts between México and Texas, were to be provided additional time to fulfill these conditions. A similar opportunity was provided with respect to grants located in the other areas ceded to the United States under the Treaty, including New Mexico and California. These two provisions pertaining to incomplete grants were based on language in the United States' 1819 treaty with Spain for the purchase of Florida.[6]

Although Trist exceeded his authority in continuing to negotiate with México, President Polk accepted most of Trist's draft as substantially consistent with the original proposal that the President had given him. President Polk did not accept Article X, however, which addressed Mexican land grants, and he sent the treaty to the U.S. Senate for approval

[6] Appendix I to this report discusses the confirmation processes that Congress established regarding grants of land covered by the Louisiana Purchase Treaty and the 1819 U.S.-Spain treaty, known as the Adams-Onis Treaty or the Transcontinental Treaty. Both treaties served as possible models for the Treaty of Guadalupe Hidalgo.

with a recommendation that it reject Article X.[7] President Polk was concerned about Article X because he believed it would reopen the question of ownership of lands in Texas, which had been considered settled once Texas became independent from México in 1836. The Senate, which also believed Trist had exceeded his authority, approved Article VIII, amended Article IX, and rejected Article X.[8]

As approved, Article VIII provided, among other things, that:

> In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

Regarding Article IX, as specified in President Polk's original negotiating instructions, the Senate substituted a provision based on Article III of the Louisiana Purchase Treaty and Articles V and VI of the Florida Purchase Treaty. Amended Article IX assured that persons who did not preserve their Mexican citizenship would, at the proper time—when the respective territories were admitted as U.S. states—become citizens of the United States and enjoy all of the rights of U.S. citizenship under the U.S. Constitution. Until then, such persons would "be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction." Article IX also was modified to make clear that it was Congress, rather than the President, that decided when the inhabitants of a territory were to be made citizens of the United States. For persons living in the New Mexico Territory, this interim status would last 62 years, until New Mexico and Arizona achieved statehood in

[7]Under Article II, Section 2, Clause 2 of the U.S. Constitution, the President is authorized to negotiate treaties, the terms of which must then be approved by at least two-thirds of the U.S. Senate. After Senate approval, the President, acting as the chief diplomat of the United States, ratifies the treaty. The ratifications of the U.S. and other parties to the treaty are then exchanged. *See generally Restatement of the Law, Third, Foreign Relations Law of the United States* (1987) § 303. As discussed in chapter 3, in order for provisions of ratified treaties to be given effect in the United States, they must either be "self-executing" or implemented by an act (such as an act of Congress) having the effect of federal law.

[8]Appendix II to this report contains Articles VIII and IX of the Treaty of Guadalupe Hidalgo and Article X as negotiated by Mr. Trist but deleted before ratification. The complete Treaty as approved by the U.S. Senate and ratified by the President and by Mexico is set forth at 9 Stat. 922 (1848).

1912. Persons living in California were able to become U.S. citizens much earlier, because California became a state in 1850.

With these revisions—and with provision, among other things, for payment by the United States to México of $15 million and assumption by the United States of over $3.2 million in claims against México[9]—the Senate approved the Treaty, the President ratified it, and it was sent it back to México for ratification.[10] Unsure whether México would ratify the Treaty as amended, the United States sent two commissioners to México to explain the revisions the United States had made. The commissioners delivered an explanatory note to the Mexican foreign minister from U.S. Secretary of State Buchanan; the note specifically addressed the language in Article IX, which designated Congress as the branch of the U.S. government that would decide when a territory would be incorporated into the United States. The note stated that "it cannot be doubted" that Congress "will always exercise the power as soon as the condition of the inhabitants of any acquired territory may render it proper. . . Congress will never lend a deaf ear to the people anxious to enjoy the privilege of self-government. Their application to become a State of the Union will be granted the moment it can be done safely."[11] In explaining the deletion of Article X, Secretary Buchanan stated that it would be unauthorized and unjust for the United States to disturb the title to lands in Texas by allowing unfulfilled grant conditions to be completed. Similarly, the Secretary explained that it would be unfair to revive dead titles to land in this manner in upper California and New Mexico. He stated that Articles VIII and IX secured property of every kind belonging to Mexicans, whether held under Mexican grants or otherwise.

Based on the recommendation of the Mexican president, both houses of the Mexican Congress approved the Treaty as amended by the United States. The U.S. commissioners then held conferences with their Mexican

[9] *See* Treaty of Guadalupe Hidalgo, Art. XII; Christine Klein, *Treaties of Conquest: Property Rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M.L. Rev. 201, 208 (1996).

[10] When the Senate approves a treaty on the basis of a particular understanding of its meaning, the President, if he ratifies the treaty, must do so on the basis of the Senate's understanding. *Restatement, Foreign Relations Law*, footnote 7 above, § 314. In the case of the Treaty of Guadalupe Hidalgo, the President agreed with the Senate's changes and his ratification reflected support for these changes.

[11] *See* Letter from Secretary of State Buchanan to the Minister of Foreign Relations of the Mexican Republic (Mar. 18, 1848).

counterparts to discuss the meaning of these amendments. At the conferences, the Mexicans presented a draft protocol, known as the Protocol of Querétaro, summarizing what they believed were the explanations of the revisions.[12] The Mexican Minister of Foreign Affairs stated that with these explanations, the Mexican government would proceed to ratify the treaty as modified by the United States. Two of the Protocol's three provisions related to land grants. The first provision explained the revisions to Article IX and the substitution of language based on the Louisiana Purchase Treaty, and contained all of the privileges and guarantees that the inhabitants of the ceded territories would have enjoyed under Article IX as it had originally been drafted by Mr. Trist. The second Protocol provision related to the striking of Article X by the United States. The Protocol explained that this was not intended to annul land grants and that Mexican grants preserve "the legal value which they may possess and the grantees may cause their legitimate titles to be acknowledged before the American tribunals." Legitimate titles to every kind of property in California and New Mexico, both real and personal property, that were acquired prior to the commencement of the Mexican-American War in 1846 were to be considered legitimate titles under Mexican law, the Protocol stated.

When the Mexican Congress raised no objections to the Protocol, México's president proceeded to submit all of the instruments of ratification of the Treaty, including the Protocol, to the U.S. commissioners. However, the Protocol had not been included in the ratification documents submitted by the United States to México (it had not yet been drafted), nor did President Polk include the Protocol in the U.S. documents concerning ratification when he sought funds from Congress to implement the Treaty. Some members of Congress questioned the significance of the Protocol and asked whether it modified the Treaty. The administration's position was that the Protocol was not part of the Treaty and that its contents in no way modified the Treaty. México, on the other hand, considered the Protocol to be an essential part of the Treaty and a principal reason that it was ratified. In an exchange of notes between one of the U.S. commissioners, Nathan Clifford, and México's new ambassador to Washington, Mr. Clifford set out three matters on which both countries, in Mr. Clifford's view, had agreed: (1) the Protocol was not an addition to the Treaty; (2) it did not change or modify the Treaty; but (3) the Protocol was a correct interpretation of the treaty. Mr. Clifford's third point led to his

[12] Appendix III to this report contains relevant portions of the Protocol of Querétaro.

recall, and the United States informed México that Mr. Clifford's statement did not represent the position of the United States. México continued to maintain that the Protocol was a correct interpretation of the Treaty, and these conflicting interpretations have continued to the present day. Under U.S. law, therefore, Articles VIII and IX of the Treaty, but not deleted Article X, set forth the property protections given to Mexicans in the newly acquired territories. Article VIII is the Treaty's primary source of property protection and Article IX provides similar protections in the interim period before statehood was granted to the territories.

The Gadsden Purchase Treaty (1853)

Following negotiation of the Treaty of Guadalupe Hidalgo, lower-ranking Mexican and U.S. officials reached a compromise on where to draw the boundary dividing the two countries, which the Treaty had left unresolved. The U.S. government rejected this compromise for several reasons. First, engineers had advised that the most direct and practicable route for the Southern transcontinental railroad extending from El Paso to California would be south of the compromise boundary. Second, the United States wanted to be released from the obligations under Article XI of the Treaty to prevent Indian raids on Mexican settlements on the U.S. side of the border. Third, the United States wanted to have more assurance of its rights of transit across the Isthmus of Tehuantepec, which significantly shortened sea voyages between the Atlantic and Pacific Oceans. The discovery of gold in California made this shortcut all the more pressing.

In an effort to resolve these problems, the United States and México entered into a new treaty in 1853. Under this treaty, popularly known as the Gadsden Purchase Treaty (named after the U.S. negotiator, James Gadsden),[13] the United States purchased about 29 million acres of land from México for an additional $10 million. Articles V and VI of the Gadsden Purchase Treaty specifically addressed land grants that had been made within this area and Article V made the property protection provisions of the Treaty of Guadalupe Hidalgo applicable to this additional purchased land. Unlike the Treaty of Guadalupe Hidalgo's property provisions, however, Article VI of the Gadsden Treaty provided that Mexican grants would be considered valid only if the land conveyed had

[13] The official name of the treaty, signed on December 30, 1853, is the Treaty of Boundary, Cession of Territory, Transfer of Isthmus of Tehuantepec.

been identified and "located" and the grant had been recorded in the Mexican archives.[14]

Organization of the New U.S. Territory and Procedures to Resolve Land Grant Claims

After ratification of the Treaty of Guadalupe Hidalgo, the U.S. government decided to allow existing local governments to stay in operation until Congress could establish territorial governments in the newly acquired lands. Under the Compromise of 1850—a series of congressional acts passed during August and September 1850—Congress provided, among other things, for the federal purchase from Texas of the area east of the Rio Grande, which was included as part of the New Mexico Territory. Congress also provided for the creation of the Territories of Utah and New Mexico and the admission of California into the Union as the 31st state.

In 1851, Congress passed the first legislation implementing the property protection provisions of the Treaty of Guadalupe Hidalgo, addressing Spanish and Mexican grants in California. Congress focused on California's land grants first because it wanted to encourage settlement of U.S. public domain land there. Since the late 1700s, the U.S. government had made federal lands available for ownership by settlers, a policy that first necessitated identification of which lands belonged to the United States. The need to accomplish this became more urgent in California when gold was discovered there in 1848—the same year that the Treaty of Guadalupe Hidalgo was signed—and throngs of people poured into the territory hoping to make their fortunes. By September 9, 1850, when California was admitted to the Union, it had a population of about 92,600 people, and on March 3, 1851, Congress enacted the 1851 Act.[15] The 1851 Act, discussed in more detail below, implemented the property protection provisions of the Treaty in California by creating a three-person commission to evaluate Spanish and Mexican land grant claims in the state. The process also had the effect of identifying which lands were part

[14] Appendix IV to this report contains Articles V and VI of the Gadsden Purchase Treaty. As discussed in chapter 2, footnote 38, land grants which had been made within the Gadsden Purchase territory were not initially treated in the same manner as grants within the territories ceded under the Treaty of Guadalupe Hidalgo, due to the Department of the Interior's initial interpretation of the Act of August 4, 1854 (10 Stat. 575) that added the Gadsden Purchase territory to the New Mexico Territory.

[15] Relevant portions of the 1851 Act, 9 Stat. 631 ("An Act to ascertain and settle the private Land Claims in the State of California"), sometimes referred to as the Mexican Claims Act, are contained in appendix V of this report.

of the U.S. public domain because all lands acquired under the Treaty that were not covered by the land grants became part of the public domain.

By comparison, the need to resolve U.S. land ownership and land grant claims in New Mexico—with a smaller population and fewer natural resources than California—was seen as less pressing, and was addressed by Congress three years later in 1854. That year, Congress enacted the 1854 Act, the first of two principal statutes addressing land grants in the Territory of New Mexico.[16] The 1854 Act, also discussed later in this chapter and in chapter 2, created the Office of the Surveyor General of New Mexico. In addition to the routine task of surveying newly acquired territory, as did his fellow Surveyor General in California,[17] the Surveyor General of New Mexico was charged by the 1854 Act with the considerable responsibility of evaluating private land grant claims and recommending whether Congress should confirm the grants.

Factors Contributing to Different Mexican and U.S. Systems of Land Ownership

The United States' acquisition and settlement of New Mexico in the mid-1800s brought together two distinct societies that differed in language, government administration, legal systems, and land settlement patterns. For the most part, New Mexico consisted of a sparsely populated area of Spanish-speaking subsistence agricultural communities. Except in a few larger settlements like Santa Fe, residents were unfamiliar with the English language and American customs. The New Mexican legal system, which consisted of Spanish and Mexican codes and laws, largely relied on custom-based law in resolving conflicts. Because few individuals with legal training lived in New Mexico, local officials, such as the *alcalde mayor*, often acted as informal judges in resolving community disputes through conciliation and compromise. By contrast, the U.S. legal system introduced into the Territory of New Mexico allowed individuals to resolve certain types of disputes through a formal trial of issues before a judge, sometimes with a jury present and with an opportunity to cross-examine witnesses. Although this system embodied the individual-

[16] Relevant portions of the 1854 Act, 10 Stat. 308 ("An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes"), are contained in appendix VI of this report.

[17] As reflected in table 1 later in this chapter, Congress established the Office of the Surveyor General of California in 1851 and later established Surveyor General positions in Utah, Colorado, Nevada, and Arizona. The 1854 legislation that established the Office of the Surveyor General of New Mexico also established the Office of Surveyor General for Kansas and Nebraska.

centered values characteristic of U.S. society, it differed to some extent from the community-centered values prevalent in New Mexico before its U.S. acquisition.

U.S. land tenure and ownership patterns also differed from those in New Mexico. The U.S. land tenure system was based on viewing the earth's surface as an imaginary grid laid out on a piece of paper. Cartography and surveying were used to identify the physical features of a particular parcel. The exact measurements of parcels were then identified and located on a map. Land ownership was primarily in "fee simple," which is the broadest property right allowed by English and U.S. law. Land titles were recorded in local government offices, which facilitated the use of land as a commodity that could be bought or sold. By contrast, the Spanish and Mexican system was rooted in a rural community-based system of landholding that had been prevalent in medieval Europe. The land tenure system was not based on fee simple ownership but was viewed more in its relationship to the community, although individual parcels might be sold after the land had been used and lived on for a certain number of years. Land was primarily used to sustain a local population rather than as a commodity to be bartered or sold in a competitive market. Land boundaries were defined with reference to terrestrial landmarks on adjoining property, and no standard method for measuring land was employed. At times, these terrestrial markers were difficult to locate. Spanish and Mexican land records also lacked the geographic precision of the U.S. system, and frequently, land transfers were not recorded in local archives, making ownership difficult to ascertain.

The California Commission Legislation (1851 Act)

In July 1848, the U.S. Senate Committee on Public Lands approved a bill providing for a three-member commission and a surveyor general to investigate and report to Congress within 2 years on all private land claims in California. When the bill was considered in 1849, Senator Thomas Hart Benton offered a substitute bill, which authorized the filing of claims with a recorder of land titles. All claims filed would be automatically recognized unless the U.S. Attorney challenged the validity of the grant in U.S. district court, with the court's decision being final for grants valued at less than $5,000. Senator Benton believed that this procedure was necessary if the United States was to honor its pledge under Article VIII of the Treaty to "inviolably respect" Spanish and Mexican land grants. Neither of these bills passed the Senate, and no further legislation was introduced until after California became a state in September 1850.

Meanwhile, in order to gather concrete information about land grants in California for congressional consideration, Congress commissioned a military officer, Captain William Halleck, to collect information, including data from the archives of the former Mexican governor and the laws and regulations governing grants of public lands and mission properties in California. Captain Halleck completed his report, and President Fillmore forwarded it to Congress. At the same time, the Secretary of the Interior appointed Senator Benton's son-in-law, William Jones, to examine records in the archives in California and, if time permitted, in Mexico City and New Mexico, regarding the character and extent of land grant titles in the California acreage acquired by the United States. Mr. Jones was to prepare detailed information about each grant, including its date and area, the name of the original grantee, the granting official, and the date of approval by the territorial legislature. Mr. Jones was also asked to separate *bona fide* grants from those he considered questionable and to study mission lands and Indian titles. President Fillmore transmitted Jones' report to Congress in 1850.

Captain Halleck's report concluded that most of the titles to lands claimed in California, granted both by Spain and México, were in doubt. He therefore urged that land grants be subject to the scrutiny of a trial process, which would examine the grants' validity in accordance with Mexican law. Halleck pointed out that many of the grants had indefinite boundaries, contained double the acreage authorized for the grant, and had not been approved or submitted to the territorial legislature as required by Mexican law. He found that remaining mission lands had been the property of México and became part of the U.S. public domain after the Treaty. Halleck urged that a procedure be established to ensure the prompt and final settlement of land claims in the new state.

By contrast, Mr. Jones found that Mexican and Spanish grants in California had "mostly perfect titles." While conceding that many grants failed to strictly adhere to Mexican procedures, Jones noted that prior to U.S. possession, California had been in an undeveloped state and legal formalities were largely disregarded. With the acquiescence of the highest Mexican authorities, custom supplanted written law. Jones recommended that a survey be made of the grants and that titles be swiftly confirmed upon completion of the surveys. Jones believed that there should be a presumption of validity for Mexican grants and that the government should oppose only those grants which it had reason to believe were invalid.

Senators used the Jones and Halleck reports to support rival bills concerning California land titles. After California became a state, Senator Benton reintroduced his proposed legislation for the registration of land titles, with appeal rights to federal district court. Senators Gwin and Freemont sponsored an alternative bill, creating a three-member commission to evaluate the validity of land grant titles, with a U.S. representative to be present at commission meetings and appeals from commission decisions to be allowed to federal district court and the U.S. Supreme Court. Senator Gwin generally wanted the commission to be similar to that created for resolution of land claims within the Louisiana Purchase, but Senator Benton, who believed that having a U.S. agent present at commission meetings would amount to a *de facto* confiscation of Mexican land titles, noted that there had been no U.S. agent present at the Louisiana Purchase commission hearings.

Ultimately, the Gwin-Freemont bill passed the Senate, followed by the House (with no recorded debate), and the bill was enacted as the 1851 Act. As noted above, the 1851 Act established a three-person commission whose members were appointed by the President with the advice and consent of the Senate. The statute directed "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government" to submit a claim for such lands to the Commission within 2 years of the statute's enactment. Failure to submit a claim by this time would result in the lands being "deemed, held, and considered as part of the public domain of the United States . . ." The Commissioners were to meet "at such times and places as the President of the United States shall direct" and were required to "give due and public notice" of their sessions, although the statute did not specify how this notice was to be given. A presidentially appointed U.S. Agent, "learned in the law, and skilled in the Spanish and English languages," was to be present at all Commission meetings in order to "superintend the interests of the United States." The Act also directed this U.S. Agent to "collect testimony in behalf of the United States" and to attend any depositions conducted by a claimant.

The Commissioners were authorized to administer oaths to witnesses and to examine the witnesses themselves, and testimony before the Commission was to be transcribed in writing. The Commissioners also were to appoint a Commission Secretary to act as an interpreter, maintain records of the proceedings, and, at the request of the U.S. Agent, the local U.S. Attorney, or any claimant, issue subpoenas for attendance of witnesses before the Commission or an individual Commissioner. Although the Commission process nominally involved representatives

from two sides—the claimant and the U.S. government—the Supreme Court later recognized that the Commission was "an administrative body, not a court" and characterized the Commission's proceedings as "not adversary."[18] Either the claimant or the United States (by the local U.S. Attorney) could appeal the Commission's decision to U.S. district court, and the court could consider both the evidence presented to the Commission as well as new evidence. Either party could then appeal the district court's decision to the U.S. Supreme Court.

The 1851 Act directed both the Commission and the courts, in deciding on the validity of a claim, to apply the legal standards contained in the following sources: the terms of the Treaty of Guadalupe Hidalgo, "the law of nations" (international law), "the laws, usages, and customs of the government from which the claim [was] derived" (Spain or México), "the principles of equity,"[19] and, "so far as they are applicable," U.S. Supreme Court decisions. In addition, the Act provided that if a claimant "duly proved" that a city, town, or village had been in existence as of July 1846, this proof was to be considered *prima facie* (presumptive) evidence of a grant to the town to which the grant had been made.[20] As noted, any lands for which claims were rejected by the Commission or the courts, or for which claims were not filed before the 2-year statutory deadline, were deemed to be part of the U.S. public domain available for distribution to settlers. For claims that were confirmed, the grant had to be surveyed by the Surveyor General of California and the survey submitted to the Interior Department's General Land Office, which then issued a "patent" to the claimant.

The 1851 Act provided for challenges by third parties to land grant ownership in at least two different points in the land grant confirmation process. Thus there was to be recourse for communities or individuals who believed that they had superior title to grants being evaluated by the Commission. *First*, Section 13 of the Act specified that after a grant was

[18] *United States v. O'Donnell*, 303 U.S. 501, 523-24 (1938). The *O'Donnell* decision, the "political" nature of the Commission's jurisdiction, and the non-adversarial nature of its proceedings are discussed in greater detail in chapter 3.

[19] Equity principles reflect broad principles of fairness, in addition to technical requirements of the law.

[20] *Prima facie* evidence is evidence that is sufficient to establish a presumption that a particular set of facts are true and to switch the burden of proof to the party seeking to establish that the facts are not true or have a different meaning.

confirmed but before a patent was issued, a third party could file suit in federal district court. The court would decide which of the two claimants held title, and in the meantime, the court could issue an injunction temporarily halting issuance of the patent. *Second*, Section 15 of the Act specified that ownership decisions by either the Commission or the reviewing courts were binding only on the United States and claimants who had appeared before the Commission: "the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons."[21] Originally, the courts interpreted Section 15 to mean that the Commission's decisions were only binding on persons with "imperfect" (incomplete) grants who had filed a claim with the Commission.[22] The decisions were not believed to be binding on persons with perfect grants, because it was thought that the 1851 Act did not require such persons to file claims with the Commission in order to confirm title to their land.[23] In *Botiller v. Dominguez*, 130 U.S. 238 (1889), however, the U.S. Supreme Court ruled that even persons with perfect grants had to file claims with the Commission by the 1851 Act's 2-year deadline. The practical effect of the *Botiller* ruling was that the

[21] Thus the California land grant confirmation process was not to be a strictly "*in personam*" proceeding (determining the rights and obligations of one person over another) or an "*in rem*" proceeding (determining the ownership rights of all persons regarding specific property), but rather a "*quasi in rem*" proceeding (determining the interests of particular persons in particular property). *See generally Restatement*, *Second*, *Judgments* (1982) §§ 2, 5, 6 (a "true" *in rem* proceeding is one "against all the world," *see* § 6, Comment "a"). *Quasi in rem* proceedings include those where a claimant seeks to establish ownership in specific property and extinguish the ownership interests of others, *see Hanson v. Denckla*, 257 U.S. 235, 246 n. 12 (1958). The constitutional due process implications of these different categories of proceedings for land grant claims under the Treaty of Guadalupe Hidalgo are discussed in chapter 3.

[22] A "perfect" grant was a grant made in accordance with Spanish or Mexican legal requirements and for which the conditions attached to the grant have been satisfied. An "imperfect," "incomplete" or "inchoate" grant was a grant either not made in accordance with these legal requirements or for which all conditions had not been satisfied.

[23] *See*, *e.g.*, *DeArguello v. Greer*, 26 Cal. 615 (1864); *Minturn v. Brower*, 24 Cal. 644 (1864).

Commission's decisions became binding on *all* parties, despite the fact that the literal terms of Section 15 seemed to indicate otherwise.[24]

The first several decades of U.S. Supreme Court decisions reviewing appeals from the California Commission were quite liberal in approving land grant claims, and on occasion, the Court even dispensed with conditions essential for valid title under Mexican law.[25] In the Court's view, the United States had an affirmative duty under the Treaty to establish the validity of grants. Thus instead of being a "contentious litigant" before the Commission, the United States was to be motivated by pursuit of information to enable it to carry out its obligation to recognize authentic titles.[26] In 1889, however, after nearly 40 years of liberal awards in California, the Supreme Court began to apply greater scrutiny in evaluating land grant claims. In the *Botiller* case noted above—which one commentator has described as "mark[ing] the decline of judicial activism for the protection of Spanish and Mexican land grants"[27]—the U.S. Supreme Court reversed the California Supreme Court and declared that the 1851 Act required claims for all grants, perfect and imperfect, to be submitted within the statute's 2-year deadline. The *Botiller* Court explained that the Treaty of Guadalupe Hidalgo could be implemented in the United States only through congressional action, and for claims in California, this meant that if the terms of the 1851 Act conflicted with the terms of the Treaty, the statute governed.[28] Also at about this time, as discussed in chapter 2, Congress came to believe that a number of

[24] *See generally* Federico M. Cheever, *Comment: A New Approach to Spanish and Mexican Land Grants and the Public Trust Doctrine: Defining the Property Interest Protected by the Treaty of Guadalupe-Hidalgo*, 33 UCLA L. Rev. 1364, 1389-95 (1986). *See also United States v. O'Donnell*, footnote 18 above (because 1851 Act resolved title between claimants and the U.S., persons later claiming title under the U.S. were not "third parties" entitled to file challenges under Section 15).

[25] *See, e.g.*, *Freemont v. United States*, 58 U.S. 542 (1854); *United States v. Reading*, 59 U.S. 1 (1855); *United States v. Larkin* , 59 U.S. 557 (1855); *United States v. Fossatt*, 62 U.S. 445 (1858); *United States v. Teschmaker*, 63 U.S. 392 (1859); *United States v. Andres Pico*, 63 U.S. 406 (1859); *United States v. Rose*, 64 U.S. 256 (1859); *Luco v. United States*, 64 U.S. 515 (1859); *Stearns v. United States*, 73 U.S. 589 (1867). *But see United States v. Cambuston*, 61 U.S. 59 (1857) (rejecting California land grants not made by Mexican governors, in light of 1824 Mexican statute and 1828 Mexican regulations authorizing only governors to make grants according to terms of the statute and regulations).

[26] *United States v. Fossatt*, footnote 25 above, p. 451.

[27] C. Klein, footnote 9 above, 26 N.M.L. Rev., p. 223.

[28] The *Botiller* decision is discussed in greater detail in chapter 3.

fraudulent claims had been approved in both California and New Mexico. These and other concerns eventually led to creation of a special land court, the Court of Private Land Claims (discussed below), which Congress directed to apply stricter legal standards in evaluating Spanish and Mexican land grant claims in New Mexico and several other territories and states.

The New Mexico Surveyor General Legislation (1854 Act)

As noted above, on July 22, 1854, Congress enacted the 1854 Act, the first of the two principal statutes implementing the property protection provisions of the Treaty of Guadalupe Hidalgo with respect to land grants in New Mexico. The 1854 Act, discussed in greater detail in chapter 2, established the Office of the Surveyor General of New Mexico, responsible for surveying the New Mexico Territory. In addition, Congress directed the Surveyor General to investigate Spanish and Mexican land grant claims in the territory and to recommend, through the Secretary of the Interior, congressional approval or rejection of the claims. The 1854 Act also created the Office of the Surveyor General for the Kansas and Nebraska territories and by 1863, Congress had established such offices in each of the new territories or states. (See table 1.) The Office of the Surveyor General of New Mexico opened in Santa Fe on December 28, 1854, as part of the Department of the Interior's General Land Office,[29] and from 1854 through 1925, there were 16 permanent Surveyors General of New Mexico. (See table 2.)

Table 1: Establishment of Surveyors General for the Southwestern United States

Name of state or territory	Year territory established	Year state admitted	Year Office of Surveyor General established
California	[a]	1850	1851
New Mexico	1850	1912	1854
Utah	1850	1896	1855[b]
Colorado	1861	1876	1861
Nevada	1861	1864	1861[c]
Arizona	1863	1912	1863[d]

Source: GAO analysis.

[29] The General Land Office, created in 1812, was later combined with the Grazing Office on July 16, 1946, to form the Department of the Interior's Bureau of Land Management. Today, the Bureau of Land Management's New Mexico Office, located in Santa Fe, retains some of the historical records and surveys from the Surveyor General of New Mexico.

[a]California was admitted directly as a state in 1850.

[b]The Office of the Surveyor General of Utah was originally opened in Salt Lake City, Utah, on July 27, 1855, but the Office was closed by the Act of March 14, 1862. From 1862 to 1868 when the Office reopened, Utah was under the Surveyor General of Colorado.

[c]The Office of the Surveyor General of Nevada was originally opened in Carson City, Nevada, on June 22, 1861, but the Office was closed by the Act of March 14, 1862. From 1862 to 1866 when the Office reopened, Nevada was under the Surveyor General of California.

[d]The Office of the Surveyor General of Arizona was originally established by the Act of February 24, 1863, and the Office opened in Tucson, Arizona, on January 25, 1864. However, the Office was closed on July 4, 1864, and from July 1864 to March 1867, the Arizona Territory was under the Surveyor General of New Mexico. From March 1867 to 1870, when the Office was reopened, the Arizona Territory was under the Surveyor General of California.

Table 2: Surveyors General of New Mexico, 1854-1925

Name	Appointment or date of commission
William Pelham	Aug. 1, 1854
Alexander P. Wilbar	June 21, 1860
John A. Clark	July 26, 1861
Benjamin C. Cutler	July 29, 1868
T. Rush Spencer	Apr. 15, 1869
James K. Proudfit	July 23, 1872
Henry M. Atkinson	Feb. 10, 1876
Clarence Pullen	July 9, 1884
George Washington Julian	June 1, 1885
Edward F. Hobart	Aug. 3, 1889
Charles F. Easley	June 28, 1893
Quinby Vance	July 26, 1897
Morgan O. Llewellyn	Jan. 20, 1902
John W. March	Jan. 13, 1908
Lucius Dills	Mar. 20, 1914
Manuel A. Sanchez	Apr. 7, 1922

Source: C. Albert White, *A History of the Rectangular Survey System* (Washington, D.C.: U.S. Government Printing Office, 1983).

The Surveyor General of New Mexico was the first U.S. Surveyor General assigned the responsibility of investigating Spanish and Mexican land grant claims in addition to his usual surveying duties. As originally established in 1850, the New Mexico Territory stretched from Texas to California and included part of what is now southern Colorado and the southern tip of Nevada. As the Territory changed shape, however, and other Offices of Surveyor General were established throughout the West, the responsibility to investigate claims was shared by several surveyors

general. The size and shape of the New Mexico Territory changed with the formation of the Colorado and Arizona Territories in 1861 and 1863, respectively. The Surveyor General of Colorado was assigned the responsibility of investigating Spanish and Mexican land grant claims in the Colorado Territory when it was established in 1861,[30] and the Surveyor General of Arizona was assigned the responsibility of investigating claims in the Arizona Territory in 1863 and again in 1870.[31] The Surveyors General of New Mexico, Colorado, and Arizona continued to investigate Spanish and Mexican land grant claims until Congress established the Court of Private Land Claims in 1891.

The Court of Private Land Claims Legislation (1891 Act)

On March 3, 1891, Congress enacted the 1891 Act, the second principal statute implementing the property protection provisions of the Treaty of Guadalupe Hidalgo with respect to land grants in New Mexico.[32] The 1891 Act, also discussed in greater detail in chapter 2, superseded the 1854 Act that had been in effect for 37 years. The 1891 Act created the Court of Private Land Claims (CPLC) to address land grant claims in the Territories of New Mexico, Arizona, and Utah and the States of Nevada, Colorado, and Wyoming. The CPLC was the first federal court especially created by Congress to address land grant claims. Federal courts previously had played a role in evaluating land grant claims in other areas of the country: in the 1851 Act, Congress had authorized federal courts of general jurisdiction to hear appeals of administrative rulings by the California Commission, and Congress previously had directed the federal courts to

[30] *See* Act of Feb. 28, 1861, 12 Stat. 172. The Department of the Interior did not issue instructions for the investigation of land grant claims to the Surveyor General of Colorado until 1877, however.

[31] The Office of the Surveyor General of Arizona was originally established by the Act of the February 24, 1863, and the office opened in Tucson, Arizona, on January 25, 1864. Under the Act of February 24, 1863, 12 Stat. 664, the Surveyor General of Arizona had the same powers and duties as the Surveyor General of New Mexico. However, the Office of the Surveyor General of Arizona closed on July 4, 1864. From 1864 until 1870, when the office reopened, either the Surveyor General of New Mexico or the Surveyor General of California covered the Arizona Territory. The Office of the Surveyor General of Arizona was reopened by the Act of July 11, 1870, 16 Stat. 230, and the Act of July 15, 1870, 16 Stat. 291, reestablished the authority for the Surveyor General of Arizona to investigate land grant claims. The Department of the Interior did not issue instructions for the investigation of land grant claims to the Surveyor General of Arizona until 1877, however.

[32] *See* Act of March 3, 1891, 26 Stat. 854 ("An act to establish a court of private land claims, and to provide for the settlement of private claims in certain States and Territories"). Relevant portions of the 1891 Act are contained in appendix VII to this report.

address claims for European-issued land grants under the Louisiana Purchase and the acquisition of Florida.[33] Bills creating a special land court had been introduced previously, but were never enacted. By the early 1890s, however, the predominant view in Congress, in the face of fraudulent land grants that Congress believed had been approved in both California and New Mexico, was that a special land court was needed to evaluate land grant claims and that this court should apply more carefully circumscribed legal standards.

Land Grant Issues in New Mexico Today

Today, 300 years after Spain made its first land grants in New Mexico and more than 150 years after the Treaty of Guadalupe Hidalgo was signed, concerns and bitterness over the United States' implementation of the Treaty still linger. Deeply rooted convictions and conflicting views of land grant heirs, land grant boards of directors, advocacy organizations, legal and academic experts, and the New Mexico State Attorney General's Treaty of Guadalupe Hidalgo Land Grant Task Force, among others, have focused on the land grant disputes in recent years. At the core of the most wide-ranging complaints about implementation of the Treaty lies the allegation that the U.S. government did not protect individuals' or communities' ownership to the same extent that these lands would have been recognized and protected under the laws and practices of México. As an example of this perceived disparity, scholars and land grant heirs often point to the treatment given the Tierra Amarilla land grant, and they also allege that the Surveyor General of New Mexico failed to comply with U.S. Constitutional requirements of "due process of law" during his investigation of this grant.[34] As a result of these alleged shortcomings, heirs contend, Congress in 1881 incorrectly patented almost 600,000 acres to an individual instead of to the Tierra Amarilla community. Issues associated with the Tierra Amarilla community's perceived loss of land to private individuals still create a sense of bitterness and an atmosphere of general distrust about the federal government, as reflected in a 1967 confrontation between land grant heirs, their advocates, and state and

[33] As noted, appendix I to this report discusses the confirmation processes under the Louisiana and Florida purchase treaties.

[34] As noted, whether the Surveyor General process complied with due process requirements is discussed in chapter 3.

federal authorities at a courthouse in the town of Tierra Amarilla, New Mexico.[35]

In addition to these core complaints, there are collateral issues regarding land grants in New Mexico that are beyond the scope of this report. For example, land grant heirs and their advocates consistently express concern that racial prejudice contributed to shortcomings in the land grant adjudication process and the results of this process. These groups have asserted that the ideology of Manifest Destiny promoted a form of racism and arrogance to the detriment of Mexicans and former Mexicans living in New Mexico territory. Others have claimed that the U.S. government tolerated the ambitions of unscrupulous individuals who exploited the land grant situation, manipulated public land laws, and confused Mexicans unfamiliar with the new U.S. legal system in order to enrich themselves and acquire land.

Land grant heirs and their advocates today have launched a campaign to encourage the U.S. Congress to resolve concerns pertaining to their long-standing community land grant claims in New Mexico. One land grant advocacy group has proposed that some form of government "restitution" of land grants be made and "compensation" provided to heirs for their perceived loss of lands. Another group is attempting to organize land grant communities in New Mexico so that they can achieve recognition and redress for their unresolved concerns. To assist the Congress in deciding whether it may wish to take any additional measures in response to these concerns, and if so, what types of measures it may wish to consider, Senators Jeff Bingaman and Pete Domenici asked us to study a number of issues, and Representative Tom Udall joined in this request.

Objectives, Scope, and Methodology of This Report

To respond to the request by Senators Bingaman and Domenici and Representative Udall, we agreed to review how the United States implemented the Treaty's property protection provisions with respect to community land grants in New Mexico and to identify and evaluate the

[35] In June 1967, a group of armed men took two hostages from the Rio Arriba County courthouse in the town of Tierra Amarilla, in which several *Alianza Federal de Mercedes* members were being arraigned for unlawful assembly. The *Alianza Federal de Mercedes*, headed by Reies Lopez Tijerina, was an organization that sought the return of ownership of Spanish and Mexican land grants to heirs of the grantees. Many of these heirs were concerned about what they believed was the loss of hundreds of thousands of acres of ancestral grant lands through the actions of private parties and the U.S. government.

concerns that have been raised about this implementation process. We agreed to answer these questions in two reports.

GAO's First Report

On September 10, 2001, we issued our first report on community land grants in New Mexico in English and Spanish.[36] The first report defined the concept of community land grants, identified three types of grants that met this definition, and listed the grants for which we found evidence supporting their identification in each category. We limited our review to community land grants made by Spain or México from the late 1600s to 1846 that were partially or wholly situated within the current borders of the State of New Mexico and subject to the Treaty of Guadalupe Hidalgo. We also included grants that México made in the portion of New Mexico affected by the 1853 Gadsden Purchase, because those grants also were subject to the Treaty.

To define "community land grants," we reviewed land grant documents filed with the U.S. government; Spanish colonial, Mexican, and current New Mexico state laws; federal, state, and territorial court cases; and the land grant literature. In our analysis, we found that the land grant documents did not use the specific term "community land grants," nor did Spanish and Mexican laws use this term. We did find, however, that some grants referred to lands set aside for general communal use (*ejidos*) or for specific purposes, including hunting (*caza*), pasture (*pastos*), wood gathering (*leña*), and watering (*abrevederos*). Scholars, the land grant literature, and popular terminology also commonly use the phrase "community land grants" to denote land grants that set aside common lands for the use of the entire community, and we adopted this broad definition in determining which Spanish and Mexican land grants could be identified as community land grants.

Using this broad definition, we identified three categories of community land grants. The first type of grant was a grant in which common lands formed part of the original grant. A grant was included in this category if it met one of the three following criteria:

[36] *See* U.S. General Accounting Office, *Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico*, GAO-01-951 (Washington, D.C.: Sept. 10, 2001); U.S. General Accounting Office, *Tratado de Guadalupe Hidalgo: Definición y Lista de las Concesiones de Tierras Comunitarias en Nuevo México*, GAO-01-952 (Washington, D.C.: Sept. 10, 2001).

- The grant document declared that part of the land was made available for communal use, using such terms as “common lands” or “pasturage and water use”; or

- The grant was made for the purpose of establishing a town or other new settlement. Spanish laws and customs concerning territories in the New World provided that new settlements, cities, and towns would include common lands; or

- The grant was issued to 10 or more settlers. Spanish law governing settlement in the New World stated that 10 or more married persons could obtain a land grant if they agreed to form a settlement indicating that a grant would contain common lands.

The second category of community land grant we identified were grants for which a person or persons had reported the existence of common lands in their grant. No specific existing grant document supported this assertion; claimants stated that the original documentation had been lost or destroyed. Nevertheless, common lands were mentioned in other documents filed with the Office of the Surveyor General of New Mexico or the CPLC. This category also included private grants that set aside land for the common use of settlers.

The third category of community land grant we identified encompassed grants made by Spain to the indigenous *pueblo* cultures in New Mexico to protect communal land that they had used and held for centuries before the Spanish settlers arrived. Spain and México recognized the Pueblo’s communal settlements.

Using these criteria, we identified a total of 154 community land grants, or approximately 52 percent of the total of 295 land grants made by Spain and México within New Mexico. Table 3 identifies the number of Spanish and Mexican land grants by type of category.

Table 3: Spanish and Mexican Land Grants in New Mexico

Grant type	Explanation	Total number of land grants in New Mexico
Community land grants		
Original documentation community grants	Community land grants identified through original grant documentation	78
Self-identified community grants	Grants identified by heirs, scholars or others as having common lands but lacking documentation	53
Pueblo community grants	Grants made by Spain to indigenous pueblo communities	23
Subtotal for community land grants		**154**
Individual land grants	Grants made to individuals	141
Total		**295**

Source: GAO analysis.

GAO's Second Report

In this second and final report, we agreed to: (1) describe the confirmation procedures by which the United States implemented the property protection provisions of the Treaty with respect to New Mexico community land grants and the results produced by those procedures; (2) identify and assess concerns regarding these procedures as they pertain to the government's confirmation of these grants from 1854 to 1904; (3) identify and assess concerns regarding acreage transferred voluntarily or involuntarily after the confirmation procedures were completed; and (4) outline possible options that Congress may wish to consider in response to remaining community land grant concerns. As agreed, GAO does not express an opinion on whether the United States fulfilled its obligations under the Treaty as a matter of international law.

To determine how the United States implemented the property protection provisions of the Treaty, we reviewed archival documentation describing the procedures established and followed by the Surveyor General of New Mexico and the CPLC, as well as numerous books and articles. We also interviewed officials from local, state, and federal agencies and academic experts and historians who were familiar with the implementation of the property protection provisions of the treaty. (Appendix VIII of this report is a complete list of all of the individuals, groups and agencies we contacted.) We examined the legislation creating the Surveyor General and the Department of the Interior's subsequent instructions to the Surveyor General, and the legislation creating the CPLC. We obtained and examined all of the community land grant adjudicative decisions and reports from the Surveyor General of New Mexico, the CPLC, and the U.S.

Supreme Court. We determined the number of grants that were confirmed and awarded at least some acreage and the number of grants that were rejected in total. We also calculated a revised figure for the percentage of acreage approved in New Mexico during the confirmation process, by excluding from our analysis acreage associated with factors we judged inappropriate or misleading, namely: (1) acreage for grants located primarily outside New Mexico; (2) acreage for which claims were filed but never pursued (for example, because the land already had been confirmed to another grant or a court already had rejected similar claims as unsupported); (3) acreage sought under claims for which the courts found they had no jurisdiction; (4) acreage that was double-counted because more than one claimant sought the same land; and (5) grants that appeared to be fully confirmed but where the original amount claimed had been inadvertently overestimated. Furthermore, we identified and reviewed existing studies and published reports, articles and books on the workings of the Surveyor General of New Mexico and the CPLC and compared them with similar activities in California, under the Treaty of Guadalupe Hidalgo, and in Louisiana and Florida, under the Louisiana Purchase and Florida purchase treaties. We also reviewed federal and state cases, including U.S. Supreme Court cases, concerning the confirmation of grants in California and, under the Louisiana Purchase and Florida treaties, in those locations.

To identify and assess the concerns regarding the implementation of the Treaty as it pertains to the confirmation of community land grants in New Mexico, we interviewed officials from the New Mexico Land Grant Forum, the New Mexico Attorney General's Treaty of Guadalupe Hidalgo Land Grant Task Force, the All Indian Pueblo Council, various land grant boards of trustees, and community land grant heirs throughout New Mexico. We identified the reasons why some acreage claimed by community land grant heirs had been rejected by the Surveyor General of New Mexico, the CPLC, and the U.S. Supreme Court. In particular, for each of the 154 community land grants, we documented the rationale behind the rejection or reduction in size of grants or, when the information was available, why claimants had failed to pursue their cases, and then developed categories of grants based on these reasons. We also identified and reviewed existing studies, articles, and published reports on the results and criticisms of the Surveyor General and the CPLC processes, including materials criticizing outcomes for specific grants as well as materials critical of the overall procedures. To determine whether the procedures established to implement the Treaty's property protection provisions regarding New Mexico land grants were in compliance with applicable U.S. laws and requirements, including the U.S. Constitution, we examined the Treaty

provisions, decisions by the federal courts, legal treatises, and the literature.

To identify and assess the concerns regarding acreage lost after the confirmation process, we interviewed land grant legal scholars, land grant heirs, and land grant organizations. We obtained and reviewed studies, and articles that contained information on the various ways in which community land grants lost ownership of much of their land. We attempted to contact representatives of each of the 84 non-Indian community land grants that were confirmed and received some acreage to determine how much land they currently controlled. After an extensive search, we reached representatives for 37 of the grants, and were advised by members of the New Mexico Land Grant Forum that the best estimate of current acreage held by the remaining 47 grants was zero. To determine whether the United States had a fiduciary duty under the Treaty to protect land grant heirs and land grant property from governmental and private actions, we examined the Treaty's property protection provisions, decisions by the federal and New Mexico state courts, legal treatises, and the literature.

Finally, to determine what options Congress may wish to consider if it decides that some sort of additional action may be appropriate in response to continuing concerns, we interviewed local, state, and federal officials, scholars in the land grant area, and land grant heirs. During these interviews, we asked land grant heirs and others to identify specific actions that they believed would resolve their concerns. We also identified and reviewed prior congressional actions designed to resolve land disputes unrelated to the Treaty of Guadalupe Hidalgo, as well as prior congressional bills and hearings addressing land grant disputes under the Treaty. As detailed in chapter 5, in the non-Guadalupe Hidalgo context, congressional actions have ranged from issuance of an apology to creation of government commissions authorized to make financial payments or award federal land; in the Guadalupe Hidalgo context, bills have been introduced starting in 1971 and as recently as 2001 (H.R. 1823, the Guadalupe-Hidalgo Treaty Land Claims Act of 2001, sponsored by Representative Tom Udall) to create a commission to evaluate and address individual claims or categories of claims.

We conducted our work on this second report from September 2001 through May 2004 in accordance with generally accepted government auditing standards.

Summary

In summary, under the 1848 Treaty of Guadalupe Hidalgo, México ceded vast territories to the United States, from California to Texas. The United States agreed in the Treaty to recognize and protect Mexicans' ownership of property within the ceded territory that had previously been obtained under community and individual land grants from Spain and México. The manner in which the United States implemented these Treaty obligations has been the subject of debate and conflict for more than a century, and GAO was asked to study a number of issues to assist the Congress in deciding whether any additional measures may be appropriate in response to continuing concerns. The results of this study are set forth in our first report on these issues in September 2001 and in this second and final report.

Chapter 2: Congress Directed Implementation of the Treaty of Guadalupe Hidalgo's Property Provisions in New Mexico through Two Successive Procedures

Overview

Over a 50-year period starting in 1854, Congress directed implementation of the property protection provisions of the Treaty of Guadalupe Hidalgo in New Mexico for community land grants through two distinct and successive procedures. First, in the 1854 Act, Congress established the Office of the Surveyor General of New Mexico within the General Land Office of the Department of the Interior (Interior). The Surveyor General was charged with investigating the land grant claims and, through Interior, making recommendations to Congress for final action. The 1854 Act directed the Surveyor General to base his conclusions about the validity of land grant claims on the "laws, usages, and customs" of Spain and México and on more detailed instructions to be issued by Interior. These instructions, in turn, directed the Surveyor General to recognize land grants "precisely as México would have done" and to presume that the existence of a city, town, or village at the time of the Treaty was clear evidence of a grant. The Surveyor General investigated claims under this process from 1854 to 1891, and Congress confirmed the vast majority of grants recommended for confirmation before the Civil War in the early 1860s. Congressional confirmation ceased during the war and resumed thereafter in the mid-1860s, but stopped again in the early 1870s because of concern about allegations of fraud and corruption. These concerns finally were addressed with the advent of a new Presidential administration in 1885, which scrutinized the confirmation process and appointed a new Surveyor General. The new Surveyor General reconsidered and reversed some of his predecessor's recommendations to Congress, and a backlog of land grant claims developed.

After several attempts at reform, Congress ultimately revised the confirmation process in 1891 with passage of the 1891 Act. The 1891 Act established a new entity, the Court of Private Land Claims (CPLC), to adjudicate both new and remaining claims for lands in New Mexico (and certain other territories and states). In part to prevent the type of fraud and corruption which had characterized some of the claims filed in New Mexico and California, Congress directed the CPLC to apply a stricter legal standard for approval of land grants than Congress had established for the Surveyor General of New Mexico. Under the new standard, the CPLC could confirm only those grants that claimants could prove had been "lawfully and regularly derived" under Spanish or Mexican law, and the presumption that Interior had directed the Surveyor General to follow—to find in favor of a grant based on the previous existence of a city, town, or village—was eliminated. Either the claimant or the U.S. government could appeal the CPLC's decisions directly to the U.S.

Supreme Court, which could review claims *de novo*, that is, without giving a presumption of correctness to the CPLC's rulings. Like the CPLC, however, the Supreme Court was bound by the same legal standard that a claim must have been "lawfully and regularly derived" under Spanish or Mexican law. The CPLC adjudicated land grant claims from 1891 through 1904. Thus over the 50-year history of the two successive statutory land grant confirmation processes in New Mexico, the legal standards and procedures applied in determining whether a community land grant should be confirmed became more rigorous.

In discussing the results of these two confirmation procedures in New Mexico, land grant scholars often have reported that only 24 percent of the acreage claimed in New Mexico was awarded, for both community and individual grants, in contrast to the percentage of acreage awarded in California of 73 percent. In our judgment, the percentage of claimed acreage that was awarded for New Mexico grants was actually 55 percent, because the acreage that can fairly be viewed as having been "claimed" is considerably smaller than that cited by land grant scholars, with the result that a larger proportion of acreage was actually awarded. For example, scholars include as grant lands claimed in New Mexico acreage that was located outside of New Mexico, acreage that was covered by claims that were withdrawn or never pursued, and acreage that was "double-counted." We believe the acreage attributable to these factors should be excluded from a fair assessment of the confirmation process results.

The claims that were filed and pursued for the 154 community land grants located in present-day New Mexico during this 50-year period encompassed 9.38 million acres of land. The majority of these land grants—105 grants, or over 68 percent—were confirmed, and the majority of acreage claimed under these confirmed grants—5.96 million acres, or 63.5 percent—were ultimately awarded, although a significant amount (3.42 million acres, or 36.5 percent) were not awarded and became part of the U.S. public domain available for settlement by the general population. Some of the confirmed grants were awarded less acreage than claimed, and grants that were wholly rejected were awarded no acreage at all. Land grant heirs and scholars commonly refer to acreage that was not awarded during the confirmation process as "lost" acreage, and thus it is said that community land grants "lost" 3.42 million acres during the confirmation process. The circumstances surrounding this perceived loss have been a concern of land grant heirs for more than a century.

The Surveyor General of New Mexico Investigated Claims from 1854 to 1891

As noted in chapter 1, Congress began implementation of the Treaty of Guadalupe Hidalgo in New Mexico by enactment of the 1854 Act on July 22, 1854, creating the Office of the Surveyor General of New Mexico within Interior's General Land Office. The Surveyor General was assigned surveying responsibilities similar to those of other territorial and state surveyors general.[37] In addition, Congress assigned to the Surveyor General of New Mexico the considerable responsibility of investigating and making recommendations on the validity of Spanish and Mexican land grant claims. Ascertaining the validity of these claims was important to the United States both to fulfill its obligations under the Treaty and to identify which lands were deemed to be public lands of the United States (namely, the lands remaining after the land grant claims had been resolved) so they could be made available for settlement by the general population.

The Surveyor General of New Mexico processed land grant claims from 1854 to 1891.[38] During this 37-year period, claims were filed with respect to 208 of the 295 Spanish and Mexican land grants that had been made within New Mexico. Of these 208 grants, the Surveyor General recommended 181 grants for final action; Congress confirmed 67 of these grants. Congress confirmed most of these before the Civil War in the 1860s, at which point grant confirmation ceased. Congressional confirmation resumed after the war in the mid-1860s, but stopped again in the early 1870s because of concern over allegations of fraud and corruption in land speculation, as exemplified by the confirmation of several very large grants. These

[37] The Surveyor General of New Mexico was established with the same general "power, authority, and duties . . . as those provided by law for the Surveyor-General of Oregon." The Surveyor General of Oregon, in turn, was established in 1850 with the same authority and duties, as the "surveyor of lands in the United States northwest of the Ohio," except as provided otherwise. *See* Act of September 27, 1850, 9 Stat. 496. At the end of 1854, there were a total of 11 surveyors general across the country from Florida to California.

[38] Initially, the Surveyor General's authority to evaluate land grant claims was not considered to include grants located within the Gadsden Purchase. An Act of August 4, 1854 (10 Stat. 575), provided that "until otherwise provided by law, the territory acquired under the late treaty with Mexico, commonly known as the Gadsden treaty, be, and the same is hereby incorporated with the territory of New Mexico, *subject to all the laws of said last named territory*." (Emphasis added.) From 1854 to 1872, however, the Department of the Interior's General Land Office interpreted the phrase "subject to all the laws of said last named territory" to mean local territorial laws and not acts of Congress such as the 1854 Act implementing the Treaty of Guadalupe Hidalgo, and thus the Surveyor General's authority was not deemed to include the Gadsden Purchase. It was not until February 1872, when the Department issued a new interpretation of the Act of August 4, 1854, that the Surveyor General's authority was deemed to extend to the Gadsden Purchase.

concerns were finally addressed with the advent of a new Presidential administration in 1885, which scrutinized the process and appointed a new Surveyor General. The new Surveyor General reconsidered and reversed some of his predecessor's recommendations to Congress.

The Surveyor General Was Assigned Responsibility to Investigate Land Claims in 1854

Three years after Congress created the Commission process to resolve land grant claims in California in the 1851 Act, it enacted the 1854 Act, giving the Surveyor General of New Mexico the responsibility of evaluating land grant claims asserted on lands located within the recently created New Mexico Territory. Section 8 of the 1854 Act (see figure 5) directed the Surveyor General to evaluate, in accordance with instructions to be issued by Interior, all claims to property in New Mexico arising under Spanish and Mexican land grants based on the "laws, usages, and customs" of Spain and México. To carry out these responsibilities, the 1854 Act explicitly authorized the Surveyor General—as the 1851 Act had authorized the Commission or its Secretary—to "issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts" to investigate land grant claims. In contrast to the 1851 Act, however, which set a 2-year deadline for filing of land grant claims, the 1854 Act contained no filing deadline.[39] Once the Surveyor General obtained the pertinent information, the 1854 Act directed him to make recommendations to Congress, through Interior, on the "validity or invalidity" of each claim. Congress would then confirm *bona fide* grants and in the meantime, all claimed lands were to be protected from sale or other disposal.[40] The United States nevertheless considered all land in the New Mexico territory to be part of the public domain unless proven otherwise. This contrasted with treatment of lands making up the Louisiana Purchase and Florida, where only the land that had belonged to the sovereign was treated as part of the United States public domain.

[39] The 1891 Act creating the CPLC also set a 2-year filing deadline, as did the statutes pertaining to filing land grant claims with respect to the Louisiana Purchase and Florida. (The Louisiana Purchase and Florida deadlines were later extended.)

[40] As shown in appendix VI of this report, to encourage settlement of the vast public lands the federal government owned in the western United States, Sections 1 and 2 of the 1854 Act offered to every white male citizen of the United States, and every white male above the age of 21 residing in the territory prior to the first day in January 1853 who had declared the intention to become a citizen, 160 acres of land in the territory.

Figure 5: Provisions of 1854 Act Regarding Spanish and Mexican Claims

"Sec. 8. *And be it further enacted*, That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make 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 titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act."

Source: 10 Stat. at 309.

As directed, a month after enactment of the 1854 Act, Interior issued comprehensive additional instructions to the Surveyor General of New Mexico detailing how he was to investigate land grant claims. Generally, Interior directed the Surveyor General to recognize all private and Indian *pueblo* titles "precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done—to go that far, and no further." Specifically, in addition to being authorized by the statute to summon witnesses and administer oaths, Interior's instructions directed the Surveyor General to perform the following "necessary acts":[41]

- Become acquainted with the land system of Spain, by examining the laws of Spain; its ordinances, decrees, and regulations; and congressional acts and U.S. Supreme Court decisions that had addressed Spanish land grants in other parts of the United States.
- Obtain, organize, and analyze all documents from the territorial archives related to Spanish and Mexican land grants.

[41] Interior's instructions to the Surveyor General, dated August 21, 1854 and entitled, "*Instructions to the Surveyor General of New Mexico*," are contained in appendix IX to this report.

- Give public notice, in both English and Spanish, in the newspaper with the largest circulation in the Santa Fe area and in any other areas in which the Surveyor General held sessions (which were to be "such places and periods as public convenience may suggest"), of the Surveyor General's "readiness to receive notices and testimony in support of the land claims" under the Treaty of Guadalupe Hidalgo.

- Require a written submission from each claimant detailing: (1) the name of the present claimant; (2) the name of the original claimant; (3) the nature of the claim—whether "perfect" or "imperfect";[42] (4) the date the grant was made; (5) the authority from which the original title was derived; (6) the quantity of land claimed; (7) the location, notice, and extent of any conflicting claims; (8) a showing of a transfer of right from the original grantee to the present claimant; and (9) a plat of survey, if conducted, or other evidence showing the precise location and extent of the tract claimed.

- Treat the existence of a city, town, or village at the time the United States took possession as *prima facie* (presumptive) evidence of a grant. (This same presumption had been included in the 1851 Act directing adjudication of Spanish and Mexican land grant claims in California.) Specifically, Interior's instructions provided:

> In the case of any town lot, farm lot, or pasture lots, held under a grant from any corporation or town to which lands may be granted for the establishment of a town, by the Spanish or Mexican government, or the lawful authorities thereof, or in the case of any city, town, or village lot, which city, town, or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claim to the same may be presented by the corporate authorities; or where the land on which the said city, town, or village, was originally granted to an individual, the claim may be presented by or in the name of such an individual; and *the fact being proved to you of the existence of such city, town, or village at*

[42] As noted in chapter 1, a "perfect" grant was a grant that had satisfied all the requirements and conditions for a valid grant under Spanish or Mexican law. An "imperfect" grant, also called an "inchoate" or "incomplete" grant, was one that had not met all these requirements and conditions. In this context, the terms "imperfect grant," "incomplete grant," and "inchoate grant" are equivalent to having "equitable title." A claim based on equitable title gives all of the benefits of ownership even though technical legal title is held by another party. *See Chitimacha Tribe of Louisiana v. Harry L. Laws Co.*, 690 F.2d 1157, 1169-70 (5th Cir. 1982); *Soulard v. United States*, 29 U.S. 511, 512 (1830); *Strother v. Lucas*, 37 U.S. 410, 436 (1838); *Leese v. Clark*, 20 Cal. 387, 421 (1862).

> *the period when the United States took possession, may be considered by you as prima facie evidence of a grant to such corporation, or to the individuals under whom the lot-holders claim*; and where any city, town, or village shall be in existence at the passage of the act of 22d July, 1854, the claims for the land embraced within the limits of the same may be made and proved up before you by the corporate authority of the said city, town, or village. Such is the principle sanctioned by the act of 3rd March, 1851, for the adjudication of Spanish and Mexican claims in California; and I think its application and adoption proper in regard to claims in New Mexico. (Emphasis added.)

- Guard against fraudulent claims. Interior's instructions warned against accepting grants that had been backdated in order to appear valid and directed the Surveyor General to require submission of original title papers, authenticated copies, or a satisfactory explanation of how title papers had been lost.

- List the Spanish and Mexican officials who had been authorized to issue land grants, and describe the extent of their authority, from the time of the earliest Spanish settlement of the territory until the United States acquired the territory.

- Identify all the Indian *pueblos* existing in the Territory, showing the extent and locality of each, stating the number of inhabitants living there, and stating the nature of the residents' titles to the land.

On the basis of the foregoing requirements, the Surveyor General was to prepare a report summarizing his findings on the validity or invalidity of each claim, and submit the report to Interior's General Land Office in Washington, D.C. After reviewing the reports, the General Land Office was to forward them to the Secretary of the Interior for submission to Congress for final action.

The Investigation and Recommendation Process Followed by the Surveyor General

In accordance with the 1854 Act and Interior's instructions, the Surveyor General published the requisite newspaper notice, in English and Spanish, announcing his readiness to receive land grant claims and supporting testimony.[43] In response to these notices, the Surveyor General ultimately received claims involving 208 of the 295 Spanish and Mexican community and individual land grants located partially or entirely in New Mexico.[44] (See table 4.) The Surveyor General found that a number of the claim submissions filed were incomplete, meaning that they did not contain all of the required documents or information necessary to begin an investigation. The Surveyor General's annual report for 1885, for example, identified six pending claims for which no supporting documents had been filed, and his 1890 annual report identified 14 incomplete claims.

[43] The Surveyor General's first annual report, dated September 30, 1855, includes a copy of the Surveyor General's initial newspaper notice, as published in English and Spanish, requesting the information specified in Interior's instructions. No deadline was set for filing of claims; the notice stated that "[t]o enable the surveyor general to execute the duty thus imposed upon him, by law, he has to request all those individuals who claimed lands in New Mexico before the treaty of 1848, to produce the evidences of such claims at this office at Santa Fe as soon as possible." The report does not indicate whether the notice was published only in the Santa Fe newspaper of largest circulation or in other locations as well. The Surveyor General's annual report for 1858 indicates that the notice was published multiple times; as the Surveyor General explained, "The office has been in operation now for four years, and *notice has been constantly given* to the inhabitants from the period of its establishment up to the present time, inviting them to present their claims at as early a day as practicable; notwithstanding all this, but a small proportion of the claims have been filed." (Emphasis added.)

[44] A total of 229 claims were filed with the Surveyor General of New Mexico, including two claims for land grants currently located exclusively in Colorado, two claims for land grants made by Texas in the disputed area of the New Mexico Territory east of the Rio Grande River, and three claims for land grants made after the United States took control of the territory. Except for one of the Texas grants, each of the claims was either assigned a Surveyor General file number from 1 to 213 or a letter from A to V. Not all of the numbers or letters in either sequence were used. In some cases, multiple claims were filed for the same grant or one claim involved multiple land grants. The Indian Pueblo claims were designated alphabetically from A to V. The letter "J" was not used, and the joint claim by the Pueblos of Zía, Jémez, and Santa Ana was designated as "TT."

Table 4: Overview of the Results of the Surveyor General Land Grant Confirmation Process of Spanish and Mexican Land Grants in New Mexico, 1854-1891

Grant type	Total number of land grants in New Mexico	Number of grants for which claims were filed with the Surveyor General	Number of grants reported on by the Surveyor General	Number of grants confirmed by Congress
Community land grants				
Original documentation community grants	78	68	57	21
Self-identified community grants	53	39	32	9
Pueblo community grants	23	23	22	18
Subtotal	**154**	**130**	**111**	**48**
Individual grants	141	78	70	19
Total	**295**	**208**	**181**	**67**

Source: GAO analysis.

To investigate a grant's validity, nature and extent, the Surveyor General looked in part to documents in the territory's archives relating to Spanish and Mexican land grants.[45] In addition, the Surveyor General relied on documents contained in claimants' submissions and on claimants' testimony. The vast majority of claimants were represented by legal counsel in their dealings with the Surveyor General, and either counsel or the claimants themselves sometimes called additional witnesses to give supporting testimony. The evidence also indicates that there was cross-examination of witnesses in some of the proceedings, in at least 20 different instances, either by counsel for a party who disputed the claim, by an attorney for the United States, or by the Surveyor General or his staff.[46]

[45] As detailed in chapter 1, some of the archives had been destroyed during the American military occupation of Santa Fe in 1846. In addition, the Surveyor General of New Mexico, in an 1885 annual report, noted "many grant documents disappeared during the attempted wholesale destruction of the New Mexico Archives by an American Governor in 1870." Also, the Surveyor General reported that other documents related to grants suffered from "wear and tear," were lost, were mutilated, or became illegible.

[46] Docket information contained in reports of the Surveyors General of New Mexico indicates that there was cross-examination of witnesses in at least 20 instances regarding at least the following claims:

Today, as discussed in more detail in chapter 3, some scholars assert that this 1800s process lacked some of the elements of constitutional "due process of law," which they contend would have meant providing actual notice to all persons who might have had a potential interest in a grant. These scholars also assert that due process required giving such potentially interested persons an opportunity to cross-examine witnesses testifying in support of a claim. Several Surveyors General and Commissioners of Interior's General Land Office also were critical of the Surveyor General process, as discussed later in this chapter. However, as discussed in chapter 3, we conclude that the Surveyor General process complied with the fundamental requirements of procedural due process as those requirements were defined by the courts at that time, and even under today's legal standards.

Over the course of the Office of Surveyor General's 37-year activity, the Office reported on a total of 181 grants,[47] 159 of which were addressed

Cross-examination of witnesses supporting the claimant by an attorney for a party contesting claim: (1) Los Trigos grant (Surveyor General Report (SGR) No. 8, 1856); (2) Los Serillos grant (SGR No. 59, 1872); (3) Cañada de los Apaches (Gotera) grant (SGR No. 56, 1871); (4) Town of Galisteo grant (SGR No. 60, 1872); (5) Bartolomé Baca grant (SGR No. 126, 1881); (6) Sierra Mosca grant (Supplemental SGR No. 75, 1886); and (7) José García grant (SGR No. 160, 1888). In addition, in the Ojito de las Gallinas grant (Preston Beck) case (SGR No. 1, 1856), involving a dispute between Preston Beck and settlers on the grant lands, attorneys for both parties presented testimony.

Cross-examination of witnesses supporting the claimant by an attorney for the United States: (1) Jornado del Muerto grant (SGR No. 26, 1859); (2) Bartolomé Baca grant (SGR No. 126, 1881); (3) Rancho de la Santísma Trinidad grant (SGR No. 123, 1881); (4) Sebastián de Vargas grant (SGR No. 137, 1884); and (5) Santo Tomás de Yturbide grant (SGR No. 139, 1885). In addition, in the José Manuel Sánchez Baca grant (SGR No. 129, 1882), an attorney for the United States was present but did not conduct cross-examination.

Cross-examination of witnesses supporting the claimant by the Surveyor General or his staff: (1) Town of Antón Chico grant (SGR No. 29, 1859); (2) Town of Mora grant (SGR No. 32, 1859); (3) San Joaquín de Nacimiento grant (Supplemental SGR No. 66, 1886); (4) Francisco de Anaya Almazán grant (Supplemental SGR No. 115, 1886) (the docket is unclear as to the person conducting the cross-examination; it appears to have been the Surveyor General or his staff because they were in overall control of the proceeding); (5) Pajarito grant (SGR No. 157, 1887); (6) Town of Cieneguilla grant (Supplemental SGR No. 62, 1886); (7) Arroyo Hondo grant (SGR 159, 1888); and (8) Cristóbal de la Cerna grant (SGR No. 158, 1888).

[47] A total of 183 reports were issued, including reports for 2 land grants currently located exclusively in Colorado and 2 reports for the land grants made by Texas in the disputed area of the New Mexico Territory east of the Rio Grande River. Two reports covered multiple grants and three grants were covered by multiple reports. There is no correlation between the Surveyor General file number and the Surveyor General report number. The San Clemente community land grant, for example, was Surveyor General File No. 3 and Report No. 67.

before the confirmation process became more rigorous in 1885 following the fraud and corruption controversy and confirmation of a number of large-acreage grants (discussed later in this chapter). Virtually all of the Surveyor General's reports before 1885 (151, or 95 percent) recommended approval of the grant, while only 8 recommended rejection. (See table 5.) From 1885 to 1891, after a new Surveyor General was appointed, many of the previous Surveyor General decisions were reviewed and "reversed" through supplemental reports, and initial reports were prepared for the remaining 22 grants. Of these 22 grants, 15 (68.2 percent) were recommended for approval and 7 were recommended for rejection.

Table 5: Grants Recommended for Rejection in Original Decisions by the Surveyor General of New Mexico, 1854-1891

Grant name	Report number	Grant type[a]	Reason(s) for recommending rejection
Recommendations for rejection, 1854-1884[b]			
Jornado del Muerto	26	I	Conditions of grant not met.
Galisteo (Town of)	60	C	(1) Insufficient proof of a grant. (2) Copy of grant documents made by official not authorized to make copies.
Ojo del Apache	72	I	Official not authorized to make grant
San Cristóbal	110	OI	(1) Grant not recorded in archives. (2) Conditions of grant not met. (3) Official not authorized to make grant.
Orejas del Llano de los Aguajes	117	I	Forgery.
José Domínguez	120	I	Insufficient proof of a grant.
Bartolomé Baca	126	I	Pasture license; not a grant.
Sebastián De Vargas[c]	137	I	Insufficient proof of a grant.
Recommendations for rejection, 1885-1891			
Domingo Valdez	141	I	Insufficient proof of a grant.
Ocate	143	I	Conditions of grant not met.
San Antonio de las Huertas	144	C	Insufficient proof of a grant.
Guadalupita	152	OI	Official not authorized to make grant.
Las Lagunitas	154	OI	Insufficient proof of a grant.
José García	160	I	Insufficient proof of a grant.
Nuestra Señora del los Dolores Mine	162	I	Mining license; not a grant.

Source: GAO analysis.

Note: Congress acted on only one of these recommendations for rejection. Section 5 of the Act of June 12, 1860 allowed the claimants of the Jornado del Muerto grant to take their claim to the Supreme Court of the Territory of New Mexico. The decision by the New Mexico Supreme Court was appealed to the U.S. Supreme Court, which ultimately rejected the claim in *United States v. Vigil*, 80 U.S. 449 (1871) (discussed in chapter 3). The claimants for the other grants were free to submit their claims to the CPLC because Congress did not act on them. The claimants for the San Cristóbal grant, the José Domínguez grant, and the Las Lagunitas grant did not submit their claims to the CPLC.

[a]"C" refers to community land grants identified through original grant documentation. "OI" refers to grants identified by grant heirs, scholars, or others as having common lands but lacking supporting grant documentation. "I" refers to grants made to individuals.

[b]The Surveyor General originally recommended approval of the Uña del Gato individual land grant in 1874. That decision was reviewed and reversed in 1879. In the 1879 decision, Surveyor General Atkinson determined that the grant documents were forgeries and that the claim was a fraud. Congress did not act on this claim, and it was not submitted to the CPLC.

[c]This was the only grant that originally was recommended for rejection but later was recommended for approval in a supplemental report. Additional documentation was submitted in support of the claim, and in the 1886 supplemental report for the grant, Surveyor General Julian recommended that Congress confirm it.

In evaluating the validity of community land grant claims, the Surveyor General followed Interior's instruction to presume that the existence of a city, town, or village at the time of the Treaty was *prima facie* evidence of a grant. Prior to 1885, the Surveyor General almost always recommended that Congress approve the grants, and most of the small number of recommendations for rejection involved individual land grants rather than community grants. Although the Surveyor General originally recommended that five community land grants be rejected, not all the community land grants, as GAO has defined that term for purposes of our reports, were evidenced by the existence of a city, town, or village.[48] The direct effect of this presumption in favor of towns is illustrated by a comparison of the Surveyor General's recommendations for the Ojo del Apache individual land grant and the San Antonio del Río Colorado community land grant. As shown in table 5, Surveyor General Proudfit recommended that the Ojo del Apache grant be rejected because it was made by a justice of the peace who, under Mexican law, was not authorized to issue land grants. In support of his decision, Surveyor General Proudfit cited *United States v. Cambuston*, 61 U.S. 59 (1857), an 1857 U.S. Supreme Court decision that had rejected a California land grant claim because it was made by a person unauthorized under Mexican law.[49] Shortly after this recommendation to reject, Surveyor General Proudfit

[48] The two alternative criteria that GAO applied in identifying community land grants were that a grant contained common lands and that the grant had been issued to 10 or more settlers.

[49] The *Cambuston* case is discussed in greater detail in chapter 3.

recommended approval of the San Antonio del Río Colorado grant, even though it also had been made by a justice of the peace. As noted in the Surveyor General's January 1874 report, the justice of the peace made the grant to over 30 families, who then established a village. The Surveyor General relied on this additional fact, and the presumption in favor of cities, towns, and villages, in stating that it did not matter "whether all original proceedings were regular or not."

From 1854 to 1891, by enactment of a series of seven confirmation statutes, Congress confirmed 67 of the land grants that the Surveyor General had forwarded, through Interior, for final action. (See table 6.) Congress did not confirm all of the grants that the Surveyor General had recommended, nor did it award all of the acreage claimed for those grants it did confirm. The first confirmation statute, enacted in December 1858, confirmed 22 grants, including 17 Indian *pueblo* grants. By June 21, 1860, Congress had acted on all of the Surveyor General's recommendations pending before it. The Civil War brought the congressional confirmation process to a standstill in the early 1860s. Congressional confirmations resumed after the war, as reflected in table 6, but as discussed below, they quickly became embroiled in controversy over the size of several large-acreage grants. Similar to the provisions of the 1851 Act for grants in California, all of these confirmation statutes for New Mexico land grants specified that they only resolved the title that the United States had as against the claimant, and did not bar others from later asserting that they had title superior to that of the original claimant.[50] Unlike the 1851 Act, however, the courts upheld this limitation on the effect of the New Mexico confirmation statutes, thus enabling later challenges to community land grant ownership.[51]

[50] The 1860 statute, for example, provided that "the foregoing confirmation shall only be construed as quit-claims or relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever." 12 Stat. 71, 71-72 (1860).

[51] *See*, *e.g.*, *Interstate Land Co. v. Maxwell Land Grant Co.*, 139 U.S. 569, 580 (1893); *Jones v. St. Louis Land & Cattle Co.*, 232 U.S. 355, 359-61 (1914). *But see Lobato v. Taylor*, 13 P.3d 821 (Colo. Ct. App. 2000)(citing *Tameling v. U.S. Freehold & Emigration Co.*, 93 U.S. 644 (1876), discussed later in this chapter), *rev'd on other grounds*, 71 P.3d 938 (Colo. 2002) (holding later claimants were bound by 1860 confirmation act despite act's statement that it only affects rights of U.S. and original claimant). *See generally* F. Cheever, footnote 24 above.

Table 6: Statutes Confirming Spanish and Mexican Land Grants in New Mexico, 1854-1891

Confirmation act	Citation	Community land grants confirmed	Individual land grants confirmed	Total number of land grants confirmed
Act of Dec. 22, 1858	11 Stat. 374	22	0	22
Act of June 21, 1860	12 Stat. 71	23	13	36[a]
Act of Mar. 1, 1861	12 Stat. 887	0	1	1
Act of June 12, 1866	14 Stat. 588	0	1	1
Act of Feb. 9, 1869	15 Stat. 438	1	0	1
Act of Mar. 3, 1869	15 Stat. 342	1	4	5
Act of Jan. 28, 1879	20 Stat. 592	1	0	1
Total		**48**	**19**	**67**

Source: GAO analysis.

Note: There were three additional confirmation statutes from 1854 to 1891: (1) the Act of July 1, 1870, which confirmed the Gervacio Nolan land grant in Colorado (16 Stat. 646); (2) the Act of June 6, 1878, which approved a grant located in New Mexico made by Texas for Benjamin E. Edwards (20 Stat. 537); and (3) the Act of Oct. 1, 1888, which approved a grant located in New Mexico made by Texas for Henry Volcker (25 Stat. 1194). Furthermore, Congress retroactively confirmed the Pueblo of Zuñí land grant in 1931 (46 Stat. 1509). The Zuñí land grant was located entirely within the Pueblo's reservation established by executive order in 1877, as modified in 1883, 1885, and 1917.

[a]The Act of June 21, 1860, covered a total of 38 land grants. The act confirmed the Las Animas land grant located entirely in the State of Colorado. The New Mexico Territory as originally created in 1850 included part of what is now southern Colorado. The Colorado Territory was not created until 1861. The act also covered the Jornado del Muerto individual land grant. In 1859, Surveyor General Pelham recommended that Congress reject this grant because the claimants had failed to meet the conditions of the grant. In the Act of June 21, 1860, however, instead of rejecting the claim outright, Congress allowed the claimants to plead their case before the Supreme Court of the Territory of New Mexico. Ultimately, the U.S. Supreme Court rejected the claim in *United States v. Vigil*, 80 U.S. 449 (1871).

The surveying of land grants by the Surveyor General's Office generally occurred only after Congress had confirmed a grant, and was a controversial process. The purpose of a survey was to determine the exact location and size of the grant, but the process was open to abuse because of the vague boundary descriptions used in the original grant documents and the fact that some of the land grants were over 100 years old. In some cases, no documentation of grant boundaries existed; in other cases, the boundary descriptions were vague; and in still other cases, the boundary descriptions conflicted with the narrative descriptions regarding the amount of land granted. Such problems led Surveyors General to rely on claimants themselves to help identify the grant boundaries, a situation that gave rise to a number of potential conflicts of interests. *First*, it was generally in the claimant's interest to try to get as much land approved as possible. *Second*, because the Surveyor General relied on contract surveyors who were paid by the mile, it was in the contract surveyors' interest to make surveys as large as possible. It was not uncommon for

grants to be surveyed multiple times, as claimants and the Surveyor General tried to reach agreement on the grant boundaries. For cities, towns, and villages that lacked finite boundary descriptions, the Surveyor General used a default size of 4 square leagues, or 17,361.11 acres, based on an interpretation of Spanish and Mexican law. For example, nine *pueblos* were approved for grants for about 4 square leagues each. Similarly, the Surveyor General approved land grant claims for the towns of Albuquerque and Santa Fe for 4 square leagues each.

Third, there was controversy involving which party bore the expense of conducting the survey. The U.S. government paid for surveys from 1854 until mid-1862. In May and June 1862, partly in an effort to conserve funds for the Civil War, Congress enacted two statutes requiring claimants to pay the full cost of surveying their land grants.[52] Claimants bore full survey costs until the second law was repealed in March 1875.[53] However, Congress enacted a similar requirement about a year later, in July 1876, and claimants were once again required to pay the full survey cost.[54]

Once the survey had been approved and paid for, a "patent" could be issued, provided that the relevant confirmation statute had directed such issuance. The patent was a document signed by the President of the United States, conveying all of the rights and interests that the United States might have in a Spanish or Mexican land grant. Just as the congressional confirmation statutes were equivalent only to a quitclaim deed from the United States and did not convey fee simple title, the patents also did not eliminate any superior rights to the grant that other persons might have. Such third parties were entitled, according to the terms of the patents, to challenge ownership of the grant land in a separate court action.

[52] Act of May 30, 1862, 12 Stat. 409; Act of June 2, 1862, 12 Stat. 410.

[53] The Act of June 2, 1862 was repealed by the Act of February 18, 1871, 16 Stat. 416. Section 3 of the Act of May 30, 1862 was repealed by the Act of March 3, 1875, 18 Stat. 384.

[54] Act of July 31, 1876, 19 Stat. 121. Under the subsequent CPLC statute enacted in March 1891, the survey cost was split evenly between the claimant and the U.S. government.

Early Criticism of the Land Grant Confirmation Process under the Surveyor General

Among the most vocal critics of the decision to assign the task of reviewing Spanish and Mexican land grant claims to the Office of the Surveyor General of New Mexico were the Surveyors General themselves. The first Surveyor General, William Pelham, who served for almost 6 years, was overwhelmed with the prospect of reviewing more than 250 years of Spanish and Mexican land grant records in addition to his other duties as Surveyor General. Similarly, Surveyor General Pelham and seven of his successors believed that determining the validity of Spanish and Mexican land grants was a "quasi-judicial" (court-like) task that would be best performed by someone with legal training. The Surveyors General therefore strongly advocated that Congress either enact legislation to establish a commission, similar to the one it had established in California, or direct that a court adjudicate the land grant claims. In 1858, 4 years after Congress had assigned the grant evaluation task to the Surveyor General, a bill was introduced to transfer this responsibility to such a commission,[55] but the bill was never enacted and wholesale reform of the land grant confirmation process was not attempted again until the late 1870s.

Another concern that the early New Mexico Surveyors General had about their own process was that the interests of the United States were not being adequately represented. In contrast to the confirmation process in California, where a U.S. Agent was required to be present in order to "superintend" the government's interest in every case, and even though the U.S. had a potential interest in every grant in New Mexico because any rejected grant land was deemed public land of the United States, the U.S. was not required to be separately represented in the Surveyor General process. The Surveyors General believed that at a minimum, an attorney representing the United States should be involved in the process to present the government's case and to refute, as appropriate, legal arguments presented by a claimant's attorney.

In addition to these broad concerns with the process, the early Surveyors General expressed a number of more technical concerns. Noting that the 1854 Act did not specify any deadline for the filing of claims, the Surveyors General recommended that Congress amend the act to create such a deadline. The delay in filing and adjudicating the claims had made it extremely difficult to distinguish between public and private lands in the New Mexico Territory. Surveyor General Pelham, the first Surveyor

[55] *See* H.R. 544, 35th Cong., 1st Sess. (1858).

General, lamented this fact in his first annual report, noting that only 20 claims had been filed during the Office's first 9 months of operation. He noted that by not specifying a filing deadline, Congress had failed to secure the object for which the Surveyor General process was intended, namely, the prompt resolution of land grant claims. Several of Surveyor General Pelham's successors commented on additional reasons that might have contributed to this limited number of filings, such as the expenses involved in filing and pursuing a claim (attorney fees, costs of producing witnesses, and surveying costs).

Some of the Surveyors General themselves were concerned about the burden of survey costs, which as noted above, Congress directed in 1862 should be paid by the claimants. Both claimants and some of the Surveyors General maintained that such a requirement violated the Treaty of Guadalupe Hidalgo, and claimants generally refused to pay for surveying, choosing instead to rely on the respective congressional confirmation statute as proof of title. In his 1874 annual report, Surveyor General Proudfit reported that only six claimants had paid to have their grants surveyed in the previous 12 years.

The annual reports of the Surveyors General consistently echoed the call for a new confirmation process based on all of these difficulties, as shown in figure 6:

Figure 6: Statements by Surveyors General of New Mexico and Commissioners of the General Land Office Regarding the Surveyor General Land Grant Confirmation Process

"The difficulties and expense to which parties filing claims in this office are subjected will account for the limited number which has been filed; and I respectfully recommend further legislation on the subject, as the present law has utterly failed to secure the object for which it was intended."

William Pelham, Surveyor General, 1855

"Under the act of Congress approved June 2, 1862, the claimant, in addition to the expense of establishing his claim by proof, is required to pay the whole cost of survey . . . amounting, with the other expenses, in many cases, to more than the cash value of the land claimed."

John A. Clark, Surveyor General, 1862

"The law now in force, requiring the surveyor general 'to ascertain the origin, nature, character, and extent of all claims to land under the laws, usages, and customs of Spain and Mexico,' . . . after thirteen years' experience, has failed utterly to accomplish the purposes intended by it. Great injustice is liable to be done, as well to claimants as to the government, by this anomalous manner of determining the rights of parties. The surveyor general is not permitted to incur any expense in calling witnesses, no notice is required to be given to any party in interest by publication or otherwise, and, as a consequence, almost all investigations have been *ex parte*. . . .The government in these confirmations may not have done any injustice to individuals, or parted with the title to any lands which properly belonged to it, but its liability to do so under the circumstances is manifest. I have, therefore, again to urge that Congress will make provision for the better security of the rights of individuals and of government in the settlement of these claims."

John A. Clark, Surveyor General, 1867

"I have not unduly magnified the importance to the government and the people of the Territory of an early settlement of these claims. The tide of emigration is setting strongly in this direction. Controversies are constantly arising between new settlers and claimants under these unadjusted titles. Thus immigration is discouraged, the progress of settlement checked, and the development of the resources of the Territory delayed."

John A. Clark, Surveyor General, 1868

"I have become convinced that a new law ought to be enacted by Congress in the matter of these grants from former governments. The act of July 22, 1854, under which they have so far been adjudicated, is very crude and defective . . . it is quite possible that some grants have thus been confirmed that would not have passed the scrutiny of a special commission of legal ability, provided with counsel for the Government, means to compel attendance of witnesses, and other facilities for preventing or disclosing fraud."

James K. Proudfit, Surveyor General, 1873

"However able, competent, and valuable a surveyor-general may be as an executive officer, or to conduct the usual business arising in surveyor-general's office, he may, and probably will, lack the technical legal knowledge which will enable him to cope successfully with voluminous title papers, complicated by the sophistry of skillful attorneys."

S.S. Burdett, Commissioner, General Land Office, 1875

"The experience of the past fully demonstrates that after these claims have been reported to Congress, as required by the aforesaid act of 1854, Congress is loth to take them up and confirm them without more definite knowledge regarding their genuineness, extent, and location; which it is impossible to have under the present defective system."

J.A. Williamson, Commissioner, General Land Office, 1876

Source: U.S. Department of the Interior.

Congressional Confirmations Ended after Controversy over the Size of Large-Acreage Grants (the *Tameling* Case)

Although congressional confirmations of Surveyor General-recommended land grants resumed after the Civil War, Congress again stopped confirming land grants—this time, permanently—after controversy erupted over the confirmation of several large land grants and the U.S. Supreme Court upheld these confirmations by its 1876 decision in *Tameling v. United States Freehold & Emigration Co.*, 93 U.S. 644 (1876).[56] In two earlier Supreme Court decisions (in 1855 and 1859) involving land grant claims in California, the Court had declared that under Mexican law, Mexican governors had only been authorized to grant a maximum of 11 square leagues (about 48,800 acres or 74 square miles) to any one individual.[57] Yet because the Surveyor General of New Mexico was not originally authorized to survey land grant claims until after Congress confirmed them, the area of many land grant claims that the Surveyor General recommended for approval, and Congress confirmed, had never been measured. As a consequence, Congress was confirming grants in a vacuum, without knowledge of how large the grants might be.

The Maxwell and Sangre de Cristo grants in New Mexico illustrate the problems that this arrangement created. Each of these grants was awarded to just two individuals, and under the Supreme Court's rulings in the California cases, each grant should have been limited to a total of 22 square leagues, or 97,650.96 acres (11 square leagues per person multiplied by 2 people). Because the grants had not yet been surveyed, however, Congress confirmed them in 1860 without knowing that they in fact

[56] The *Tameling* decision is also discussed in chapter 3.

[57] *See United States v. Larkin*, 59 U.S. 557 (1855); *United States. v. The Widow, Heirs, and Executors of William E.P. Hartnell*, 63 U.S. 286 (1859).

contained 1.7 million and 1 million acres, respectively.[58] From the late 1860s to early 1870s, the Maxwell and Sangre de Cristo claimants requested that their grants be surveyed according to the way they had been described in the Surveyor General's reports, but Interior rejected these requests and instead authorized surveys of only 22 square leagues for each grant (11 square leagues per claimant).

The Sangre de Cristo claimants appealed this decision and the case ultimately culminated in the U.S. Supreme Court's *Tameling* decision in 1876. In *Tameling*, the Supreme Court upheld the Sangre de Cristo grant for the full amount of acreage contained in the Surveyor General's original description. The Court reasoned that although, under its previous California-grant decisions, the authority of Mexican governors to grant land under Mexican law had been limited to 11 square leagues per person, Congress in its 1860 confirmation statute had independently approved the Sangre de Cristo grant to the extent of the boundaries described by the Surveyor General, without any size limitation. Justice Davis stated that Congress's confirmation statute conclusively confirmed the findings in the Surveyor's General recommendation, which addressed both the entity that received title and the boundaries of the grant. The original claimants were barred from challenging such congressional confirmations.[59] According to Justice Davis, in its confirmation statutes, Congress "passes the title of the United States as effectually as if it contained in terms a grant *de novo*."[60] Based on *Tameling*, the Surveyor General surveyed the entire Maxwell and Sangre de Cristo grants, and the grants were patented in 1879 and 1880, respectively, for about 1.7 million and 1 million acres. A time line of the key events surrounding these two grants is presented in table 7.

[58] The Las Animas grant in Colorado represents the opposite situation: where the original grant was large and was considerably reduced by Congress. The grant was confirmed by the Act of June 21, 1860 along with the Maxwell and Sangre de Cristo grants, and was reduced from its original size of over 4 million acres to about 97,000 acres (22 square leagues, or 11 square leagues per person for 2 people).

[59] By contrast, as noted above and discussed in chapter 3, persons who believed they had title equal or superior to the original claimants could file a separate court challenge.

[60] *Tameling*, 93 U.S. at 663. In this context, the Supreme Court used the term grant *de novo* to mean that congressional confirmation was the equivalent of the United States having awarded a new grant conveying its own property interest. Congress took similar action when, after the Supreme Court had rejected confirmation of the Santa Fé and Town of Albuquerque grants previously confirmed by the Court of Private Land Claims, Congress decided to confirm the two grants itself (see tables 12 and 13 later in this chapter).

Table 7: Time Line of Key Events for the Maxwell and Sangre de Cristo Land Grants

Maxwell grant	Sangre de Cristo Grant
Act of July 22, 1854–Congress creates the Office of the Surveyor General of New Mexico and assigns it responsibility for investigating Spanish and Mexican land grant claims in the New Mexico Territory (10 Stat. 308-309).	
	Oct. 11, 1855–Claim filed for the Sangre de Cristo grant.
December 1855–U.S. Supreme Court rules that under Mexican law, Mexican Governor only had authority to grant 11 square leagues to any one individual (*U.S. v. Larkin*, involving appeal of a decision on a California land grant claim).	
	Dec. 30, 1856–Surveyor General recommends approval of the Sangre de Cristo grant without knowing its size.
Feb. 23, 1857–Claim filed for the Maxwell grant.	
Sept. 17, 1857–Surveyor General recommends approval of the Maxwell grant without knowing its size.	
December 1859–In another California land grant case, the U.S. Supreme Court again rules that grants must be limited to 11 square leagues per person based on Mexican law (*U.S. v. The Widow, Heirs, and Executors of William E.P. Hartnell*).	
Act of June 21, 1860–Congress confirms the Maxwell and Sangre de Cristo land grants without any limitation on their size (12 Stat. 71). The act did not authorize the Surveyor General to survey or patent the grants.	
May 30 and June 2, 1862–Congress enacts laws authorizing the surveying of land grant claims at the claimant's expense (12 Stat. 409, 12 Stat. 410).	
March 3, 1869–Congress authorizes the Surveyor General to patent previously confirmed land grants in New Mexico (15 Stat. 342).	
May 31, 1869–Claimants' request for a survey forwarded to the Department of the Interior.	
Dec. 31, 1869–Decision by the Secretary of the Interior to limit the survey to 22 square leagues (11 square leagues per person for 2 people) based on prior U.S. Supreme Court decisions. The claimants do not accept the decision.	
July 27, 1871–A new Secretary of the Interior confirms the prior decision to limit the survey. The claimants do not accept this decision.	
	Oct. 30, 1872–Claimants request a survey.
	Dec. 5, 1872–Response by the Department of the Interior to limit the survey to 22 square leagues (11 square leagues per person for 2 people).
	Feb. 1874–Decision by the Colorado Territory Supreme Court that Congress approved the grant without any size limitation (*Tameling v. United States Freehold Land and Emigration Co.*).
	Oct. 1876–The U.S. Supreme Court, in the *Tameling* decision, affirms the Colorado court's ruling.
March 16, 1877–Based on the U.S. Supreme Court's *Tameling* decision, in which the Court held that Congress is not limited in the amount of acreage it could include in a *de novo*, or new, grant, the Surveyor General is directed to survey the entire Maxwell grant.	
May 19, 1879–The Maxwell grant is patented for over 1.7 million acres.	

Maxwell grant	Sangre de Cristo Grant
1880s–The patent for the Maxwell grant is challenged in the mid-1880s and is upheld by the Supreme Court, in the *Maxwell Land-Grant* Case, based on the *Tameling* decision.[a]	Dec. 20, 1880–The Sangre de Cristo grant is patented for about 1 million acres.

Source: GAO analysis.

[a]*See Maxwell Land-Grant* Case, 121 U.S. 325, *reh'g denied*, 122 U.S. 365 (1887). The Supreme Court based its decision in *Maxwell* on the fact that all land in excess of 11 square leagues belonged to the United States as part of the public domain. In effect, therefore, the Supreme Court confirmed 11 square leagues based on the amount allowed to each grantee under Mexican law and granted an additional 1.6 million acres of U.S. public lands.

The surveying and patenting of the Maxwell and Sangre de Cristo grants for such substantial acreage caused a political uproar and gave rise to an anti-land grant movement in northern New Mexico and southern Colorado. Settlers within the boundaries of the two grants engaged in open conflict with the new owners, who began taking steps to evict the settlers as "squatters." The settlers organized and tried to fight their evictions through the political process and the courts, but without success. Thousands of settlers had moved onto the Maxwell grant between the time it was made in 1841 until the time it was patented in 1879, particularly after January 1874, when the Secretary of the Interior ordered the grant to be opened for homesteading (after the Secretary rejected the claimants' request for a survey of the entire grant). Similar events occurred on the Sangre de Cristo land grant. The settlers on these two grants claimed that the government had been defrauded out of over 2.5 million acres of land because the grants should have been restricted to 22 square leagues each (97,650.96 acres per grant). As shown in table 8, the *Tameling* decision affected three other Mexican land grants confirmed by Congress, in addition to the Maxwell and Sangre de Cristo land grants.

Table 8: Mexican Land Grants Confirmed by Congress in Excess of 11 Square Leagues per Person in New Mexico, 1854-1891

Grant name	Acreage limit under Mexican law	Acreage awarded	Excess acreage awarded
Maxwell	97,650.96	1,714,764.94	1,617,113.98
Sangre de Cristo	97,650.96	998,780.46	901,129.50
Pablo Montoya	48,825.48	655,468.07	606,642.59
Preston Beck, Jr.	48,825.48	318,699.72	269,874.24
Bosque Del Apache	48,825.48	60,117.39	11,291.91
Total	**341,778.36**	**3,747,830.58**	**3,406,052.22**

Source: GAO analysis.

Note: All of the grants had been confirmed by the Act of June 21, 1860, except the Pablo Montoya grant, which was confirmed by the Act of March 3, 1869.

In the meantime, after controversy over the Maxwell grant erupted in late 1869, when the claimants sought to have the grant surveyed for the entire acreage covered by the Surveyor General's description, Congress virtually stopped confirming any additional land grants in New Mexico. Congress had confirmed 67 grants in New Mexico and Colorado by that time, but after the *Tameling* decision in 1876, it confirmed only 2 additional Spanish and Mexican land grants—one in Colorado and one in New Mexico. Aware of the legal significance of its confirmation decisions in the wake of *Tameling*, Congress confirmed the Gervacio Nolan grant in Colorado in July 1879 for only 11 square leagues. Congress also confirmed the Mesita de Juana López grant in New Mexico in January 1879, the only grant approved by Congress in New Mexico after *Tameling*, but the size of the grant was not affected by *Tameling* because, unlike many other grants, the Mesita de Juana López grant had been surveyed in 1877, *before* Congress confirmed the grant, and Congress confirmed it at its surveyed acreage of 42,022.85 acres.[61]

The Surveyor General's Investigation of Land Grant Claims Became More Rigorous in 1885

Following the controversy surrounding the size of the Maxwell and Sangre de Cristo grants, and allegations of fraud and corruption in claims being submitted to the Surveyor General, the Surveyor General's investigation of land grant claims became more rigorous. The 1885 annual report for the Commissioner of Interior's General Land Office noted that in many sections of the country, entries for public lands had been fictitious and fraudulent. An earlier commissioner had noted that investigations by his bureau had found "that great quantities of valuable coal, and iron lands, forests of timber, and the available agricultural lands in whole regions of grazing country have been monopolized." President Grover Cleveland led a change of administrations in Washington, D.C. in 1885, and to address these allegations of fraud and corruption and reform the land grant confirmation process, he appointed George Washington Julian as the new Surveyor General of New Mexico the same year. Interior's General Land

[61] Congress appropriated $25,000 for the fiscal year ending June 30, 1877, for the surveying of land grant claims in the United States. Most of the funding—$17,000—was allocated to New Mexico, the remainder being divided between Arizona, California, and Nevada. The funding allowed the U.S. government to determine the size of the grants awaiting congressional action. The claimants were still ultimately responsible for the surveyor costs and had to reimburse the U.S. government for these costs if their grant was eventually confirmed. The Mesita de Juana López grant was one of the first grants to be surveyed with this new funding.

Office instructed Surveyor General Julian to reexamine many of the land grants that had already been favorably reported to Congress, and over the next 4 years—from 1885 to 1889—Surveyor General Julian reviewed many of his predecessors' recommendations for approval and "reversed" 28 of them by issuing supplemental reports. (See table 9.)

As with his predecessor's original recommendations, Surveyor General Julian recommended approval of community land grants at a significantly higher rate than approval of individual land grants. Surveyor General Julian recommended approval of about half of the community land grants under review (11 out of 21) but recommended rejection of almost all of the individual land grants. The presumption in favor of cities, towns, and villages that Interior had directed Surveyors General to apply was clearly reflected in these supplemental reports. In particular, the new Surveyor General noted that even though seven community land grants did not satisfy all of the strict legal requirements, he nevertheless recommended their approval as equitable claims. For example, in the case of the town of Cieneguilla, the original Surveyor General had found that although the claimants did not legally prove their claim, "it would seem that a settlement was founded at Cieneguilla some seventy or eighty years ago at least, and that the original settlers, and those holding under them, have believed they had a grant to the land claimed." In his supplemental report, Surveyor General Julian approved the claim for the town of Cieneguilla land grant as an equitable claim.

Table 9: Results of Surveyor General Julian's Supplemental Reports, 1885-1889

Results of supplemental reports	Community land grants	Individual land grants	Total number of land grants
Recommendations for approval changed to recommendations for rejection	10	18	28
Recommendations for approval changed to qualified recommendations for approval[a]	7	0	7
Recommendations for approval that remained recommendations for approval[b]	4	1	5
Recommendation for rejection changed to recommendation for approval	0	1	1
Total	**21**	**20**	**41**[c]

Source: GAO analysis.

[a]Surveyor General Julian determined that seven community land grantees had no legal right to the land they were claiming but instead had an "equitable claim."

[b]The Santo Tomás de Yturbide community land grant (SGR No. 139) is included in this category. The original report recommended approval of the grant. Surveyor General Julian's supplemental report, dated August 25, 1885, recommended that the grant be rejected, after which additional supporting information was submitted. On July 1, 1886, Surveyor General Julian noted that had this additional information been available when he issued his supplemental decision, he would have reached a different conclusion.

[c]Surveyor General Julian prepared a total of 43 supplemental reports. The two supplemental reports for the Juan Bautista Valdez land grant are consolidated in the above table, and the supplemental report for the Gaspar Ortiz land grant is not included in the table. The Juan Bautista Valdez community land grant had two original reports (SGR Nos. 55 and 113) and two supplemental reports. Both of the original reports recommended approval, and both of the supplemental reports recommended rejection. The Gaspar Ortiz individual land grant had two original reports (SGR Nos. 31 and 87) and one supplemental report. Both of the original reports recommended approval, and the Gaspar Ortiz land grant (SGR No. 31) was congressionally confirmed by the Act of June 21, 1860. Because the claim for the Gaspar Ortiz land grant in SGR No. 31 had been congressionally confirmed, the claim in SGR No. 87 was recommended for rejection in the supplemental report.

Repeated Attempts to Reform the Land Grant Confirmation Process Were Finally Successful

As described above, throughout the 37-year period that community land grants in New Mexico were evaluated by the Surveyor General, numerous pleas were made to reform the process. Overall, Congress acted on just 68 of the 181 land grants that the Surveyor General had reported; 67 of these were confirmed, and the other was ultimately rejected by the U.S. Supreme Court. Of the remaining 113 land grants awaiting congressional action, the Surveyor General had recommended approval of 71 grants and rejection of the other 42. Almost every Surveyor General of New Mexico had recommended legislative amendments to improve the land grant claim review process, including the establishment of a filing deadline as Congress had enacted for land grant claims in California, in order to compel claimants to file their claims. After Congress stopped confirming land grants altogether in 1879 and a growing backlog of recommendations accumulated, there was mounting pressure to find a permanent solution. Congress was concerned about the large size of some of the grants that had been confirmed, the speculation and fraud in land titles that was taking place, and the reliability of information contained in the Surveyors General reports.

Beginning in 1858, therefore, a number of bills were introduced in Congress proposing a solution to these problems. None of these bills was enacted, however, because the Senate and the House of Representatives could not agree on how the problems should be addressed. The House favored creation of a commission similar to the one established in California, while the Senate favored adjudication of claims in local courts. The Senators envisioned that the courts would focus primarily on the perfection of imperfect title by curing grants of their defects and furnishing the claimant with clean legal title. In the words of Senator Ransom from North Carolina, land courts would be "a court of law and a

court of equity—a court expressly to consider equitable claims and titles."[62] In President Benjamin Harrison's annual message to Congress in 1889, he called attention to the fact that the unsettled state of land titles seriously hindered the development of Arizona and New Mexico; he therefore recommended passage of legislation for the prompt resolution of the problem. In an attempt to break the stalemate between the Senate and House, President Harrison reminded Congress in a message on July 1, 1890, that the United States owed a duty to México to confirm all grants protected under the Treaty of Guadalupe Hidalgo.[63] Repeated attempts to reform the process were finally successful with the establishment of the CPLC in 1891.

The Court of Private Land Claims Adjudicated Claims from 1891 to 1904

In 1891, Congress passed the 1891 Act creating the Court of Private Land Claims (CPLC). The CPLC was charged with addressing all unresolved land claims in the Territories of New Mexico, Arizona, and Utah and the States of Nevada, Colorado, and Wyoming. During its 13-year history, the CPLC addressed claims involving 211 of the 295 Spanish and Mexican community and individual land grants made in New Mexico.[64] The CPLC did not address the substantive merits of 72 of these 211 land grants, however, either because claimants did not pursue their cases before the CPLC or because the CPLC determined that it did not have legal authority (jurisdiction) to hear the claims. The CPLC decided the remaining 139 grants on their merits, and either claimants or the U.S. government, both of whom had the right to appeal the CPLC's decisions to the U.S. Supreme Court, appealed decisions regarding a total of 57 grants. The Supreme Court reversed the CPLC's rulings in 10 instances and upheld the decisions for the other 47 grants. In total, the courts (the CPLC and the Supreme Court) confirmed and awarded at least some acreage to 84 land grants and rejected the remaining 55 grants. For community land grants in particular, the courts confirmed 56 grants (73 percent) and rejected 21 grants (27 percent). Our review of eight selected community grants that were rejected shows that those living within a grant's boundaries usually were allowed to keep their individual home lot under small-holding claims

[62] 21 Cong. Rec. 10415 (Sept. 25, 1890).

[63] J.J. Bowden, "Private Land Claims in the Southwest" (unpublished L.L.M. thesis), Vol. I (Dallas, Tex.: Southern Methodist University, 1969), p. 230.

[64] Appendix X of this report lists all 295 Spanish and Mexican land grants made in New Mexico and for each grant, identifies the grant type, the Surveyor General file and report number, and the CPLC docket number.

provisions in the 1891 Act, but no longer had access to the common lands.[65]

The CPLC Legislation Established Specific Requirements for Land Grant Adjudication

The 1891 Act establishing the CPLC imposed specific requirements and procedures for the CPLC to follow. Congress gave the CPLC authority to adopt all necessary rules and regulations to carry out its operations, but as discussed below, it authorized the CPLC to confirm only those land grants that claimants could prove were "lawfully and regularly derived" under the laws of Spain or México. The 1891 Act repealed Section 8 of the 1854 Act directing the Surveyor General of New Mexico to investigate and report on the validity of land grant claims, but the Surveyor General remained responsible for conducting surveys of confirmed grants. The 1891 Act also established the composition of the CPLC—a chief justice and four associate justices—all of whom were to be appointed by the President with the Senate's consent. The President also was required to appoint a U.S. Attorney, confirmed by the Senate, to represent the United States in the CPLC's proceedings. The CPLC in turn was required to appoint a clerk, a deputy clerk, a stenographer, and a translator fluent in both English and Spanish. Once the CPLC was organized, it was required to publish newspaper notice of its existence, in English and Spanish, for a period of 90 days in Washington, D.C., and the capitals of the Territories of New Mexico and Arizona and the State of Colorado. In addition, as necessary, the CPLC was required to hold sessions in the states and territories over which it had jurisdiction and to publish newspaper notice of its sessions, in both English and Spanish, once per week for 2 weeks, in a newspaper in the capital of the state or territory where the sessions would take place. The second notice had to appear at least 30 days before the CPLC was to meet.

The 1891 Act required all claimants whose grants were not complete and "perfect" to file claims with the CPLC; those with perfect grants could file claims but were not required to do so. Section 6 of the 1891 Act required those with imperfect grants to submit the following information in their petitions for the CPLC's review: (1) the nature of the land claims; (2) the date and form of the grant; (3) the name of the granting official; (4) the name of the claimants; (5) the quantity of land claimed; (6) the boundaries of land claimed; (7) the location of the grant and a map showing the

[65] Sections 16-18 of the1891 Act authorized small-holding claims of up to 160 acres per person. (See appendix VII to this report.)

location; and (8) notation of whether the claim already had been confirmed, considered, or acted upon by Congress or other U.S. authorities. Claims that had been acted upon by Congress could not be reconsidered by the CPLC. The U.S. Attorney for the CPLC was responsible for representing the interests of the United States, principally by making appropriate challenges to claims that were filed. The 1891 Act set a two-year deadline after the Act became effective for filing petitions, meaning they had to be filed no later than March 3, 1893. Failure to file within that time meant that claims for imperfect grants would be considered abandoned and forever barred. The Act authorized both claimants and the U.S. government to appeal the CPLC's decisions directly to the U.S. Supreme Court within 6 months of the decision.[66]

Under the 1891 Act, the CPLC was also required to comply with the following requirements:

- In deciding on the validity of a claim, the act directed the CPLC to apply the technical legal requirements of Spain, México, or any of the Mexican states "having lawful authority to make grants of land." Specifically, as required by "the principles of public [international] law" and the Treaty of Guadalupe Hidalgo, Section 13 of the 1891 Act required the CPLC to approve only claims based on "a title lawfully and regularly derived from the Government of Spain or Mexico," or the Mexican states, which—except for the transfer of sovereignty from México to the United States—the claimant would have had "a lawful right to make perfect."

- The CPLC could not confirm a grant if: (1) the lands claimed had already been acted on and confirmed to another party by Congress or under its authority; (2) the claim interfered with any Indian title or right to land; or (3) any "condition . . . precedent or subsequent" (conditions that had to be satisfied either before or after a grant would become valid) were not completed within the time and in the manner stated.

- The CPLC could not confirm an imperfect claim for more than 11 square leagues (about 48,800 acres or 74 square miles) to any one grantee or claimant. (This was consistent with the limits set under

[66] Although section 9 of the 1891 Act authorized the U.S. Supreme Court to conduct an entirely new trial on the claim if "truth and justice required," it never exercised this authority.

Mexican law on the grants that Mexican governors could make, as discussed above.)

- The CPLC's "practice" was to be conducted as closely as possible according to the procedures followed by U.S. courts of equity. (This aspect of the CPLC's operations is discussed in more detail below.)

- The burden of proof was on claimants. According to the Supreme Court's decisions in *Whitney v. United States*, 167 U.S. 529, 547 (1897), and *United States v. Elder*, 177 U.S. 104, 109 (1900), claimants had to demonstrate by a "preponderance of the evidence" (the general standard applied in civil cases in the United States) that their claims were valid.

- As in the 1851 and 1854 Acts, the 1891 Act provided that decisions of the CPLC (and, on review, the U.S. Supreme Court) were binding only on persons making claims to the courts, and resolved the rights of those persons only against the United States. The CPLC's and Supreme Court's decisions did not bind third parties not involved in the court proceedings who believed they had superior title to a land grant. Those persons could—and in fact, have—filed subsequent actions in federal or state court to establish their ownership interests.[67]

Although the 1891 Act did not technically require those who held perfect grants to file claims with the CPLC in order to confirm title to their grants, they had the option of filing voluntarily if they wished to have their grants confirmed and patented. A grantee with a perfect grant might consider that

[67] As detailed in chapter 3, heirs have filed suit against the Tecolote Land Grant in New Mexico state court over what they assert is their superior title to portions of the grant based on both Mexican law and state adverse possession statutes. *See Montoya v. Tecolote Land Grant*, No. D-412-CV-9900322, Fourth Judicial District, County of San Miguel. The doctrine of adverse possession allows a person to gain complete, fee simple title to real property owned by another person through open, continuous, and uninterrupted possession of the real property for a period of years, and New Mexico has enacted legislation specifically addressing land grants, allowing title to be obtained in this manner after 10 years. *See* N.M.S.A. § 37-1-21. Thus a person with inferior title who has occupied a land grant for at least 10 years in compliance with the New Mexican adverse possession statute might be able to defeat the challenge of a party with superior title, *see*, *e.g.*, *Montoya v. Gonzales*, 232 U.S. 375 (1914) (applying previous New Mexico statute). There appears to be no statute-of-limitations deadline under New Mexico law for bringing challenges based on either superior Spanish or Mexican title or adverse possession, and on September 17, 2003, the court in the *Montoya v. Tecolote Land Grant* suit ruled that the claims there also were not barred by the doctrine of laches (injury or prejudice resulting from the lapse of time).

CPLC confirmation would add validity to his claim, and thus decide to file voluntarily. (In addition, the U.S. Attorney could file a case before the CPLC contesting the title of a grantee who claimed to hold a perfect grant. Such cases would be decided according to "law, justice and the provisions of [the 1891 Act].") Nevertheless, there was a practical incentive for holders of perfect grants to file claims with the CPLC. Unlike the 1854 Act establishing the Surveyor General process and the 1851 Act establishing the California Commission process, land claimed under the 1891 Act was not set aside from the public domain pending conclusion of a land grant claim case. Consequently, while a case was pending, the government could still patent the land covered by the claim under its regular land-grant legislation, including the homestead acts.[68] The only recourse a claimant had if his grant were confirmed but already had been settled upon before being patented was to seek compensation from the government for $1.25 an acre. While the CPLC's term was originally set to expire on December 31, 1895, Congress extended its existence seven times until the court ceased operation in June 1904.

The "lawfully and regularly derived" legal standard that Congress established for the CPLC to apply in evaluating claims was more stringent than the legal standard it had established for either the Surveyor General of New Mexico or the California Commission. As discussed above, the Surveyor General was to apply the "laws, usages, and customs" of Spain or México in evaluating the validity of a claim, as well as the presumption in favor of community grants where the existence of a town or other settlement could be demonstrated. Similarly, the California Commission was to apply the same two requirements, as well as "the principles of equity," the provisions of the Treaty, decisions of the Supreme Court, and the law of nations (international law).

The Scope of the CPLC's Equity Authority Was Unclear

Whether and to what extent Congress authorized the CPLC to consider substantive principles of "equity" in evaluating claims, in addition to considering strictly "legal" principles, was unclear. The 1851 Act creating the California Commission had explicitly authorized the Commission and reviewing courts to consider equity principles in assessing grant claims, and in some cases, grants based solely on equitable rights were

[68] As noted above, to encourage new settlers, the 1854 Act offered up to 160 acres to every white male citizen of the United States and every white male above the age of 21 who had declared the intention to become a citizen and was residing in the territory prior to the first day in January 1853.

confirmed.[69] The 1891 Act creating the CPLC, by contrast, only stated that the court's proceedings must be conducted as nearly as possible "according to the *practice* of the courts of equity of the United States," rather than stating that the court should apply the substantive rules of the courts of equity.[70] Nevertheless, in one sense, the substantive role that Congress assigned to the CPLC might be considered equitable in nature: the court was to make "imperfect" grants "perfect" by reviewing materials submitted by the claimant to determine whether the grant could be considered "lawfully and regularly derived." Yet the 1891 Act limited this authority to cases in which the claimant could show that he would have had the "*lawful*"—not equitable—right to make the grant perfect if the land had remained under Mexican rule. The juxtaposition of these two provisions in the 1891 Act raises the question of how the CPLC's substantive authority to confirm only "legal" title was to be exercised according to the procedural "practice" of the courts of equity.

The rulings of the Supreme Court do not provide a straightforward answer to this question. In *Cessna v. United States*, 169 U.S. 165, 188 (1898), the Court ruled that the CPLC did not have substantive equity authority. Shortly after the *Cessna* decision, however, in *Ely's Administrator v. United States*, 171 U.S. 220 (1898), the Court ruled that the CPLC could employ its equity power to broaden the evidence introduced to establish legal title to a grant.[71] Similarly, even before the *Ely's Administrator* case, the Supreme Court had ruled that under the 1891 Act, oral evidence

[69] *See United States v. Elder*, above, 77 U.S. at 123; *Peralta v. United States*, 70 U.S. 434, 441 (1865).

[70] Equity courts developed in England in response to the rigid nature of English law. Although at one time in the United States there were separate courts of law and courts of equity, modern courts exercise both of these powers.

[71] *Ely's Administrator* involved a grant located in the Gadsden Purchase, and the Supreme Court held that CPLC could use its equity powers to locate the area covered by the grant:

> Therefore in an investigation of this kind [the CPLC] is not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico. It was doubtless the purpose of congress by this enactment, to provide a tribunal which should examine all claims and titles, and that should, so far as was practicable in conformance with equitable rules, finally settle and determine the rights of all claimants.

171 U.S. at 240.

(versus documentary evidence) could be used to prove that a grant was "legally and regularly derived" when records were not available.[72]

The Supreme Court spoke most clearly on this issue, however, in *United States v. Sandoval*, 167 U.S. 278 (1897), discussed in more detail later in this chapter and in chapter 3. The Court concluded in *Sandoval* that the 1891 Act did not authorize the CPLC to confirm land grants based solely on a claimant's equitable rights. In rejecting the claim for common lands within the San Miguel del Vado grant because none of the claimants had legal title to those lands, the *Sandoval* Court explained that in light of the restrictions in the 1891 Act, "[i]t is for the political department"—that is, for Congress, rather than the courts—"to deal with the equitable rights involved."[73]

The Land Grant Confirmation Process As Implemented by the CPLC

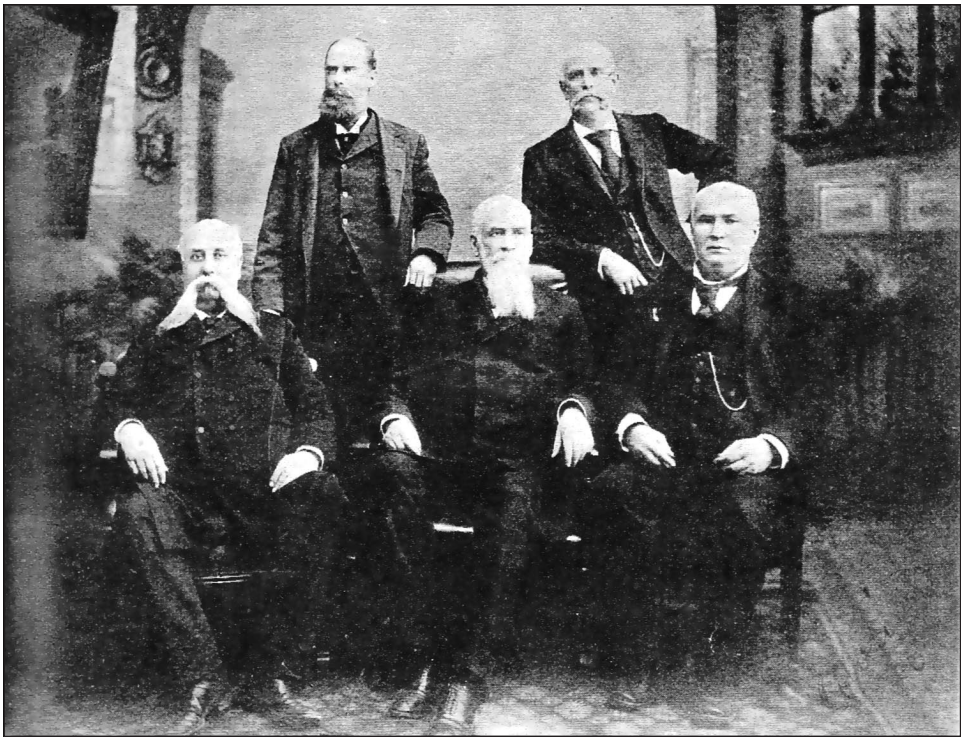
The CPLC conducted its work for the six covered territories and states in two geographical districts: the New Mexico District and the Arizona District. The CPLC first met in Santa Fe on December 1, 1891, and first met in Tucson a year later, on December 6, 1892. As the original five-member court, President Benjamin Harrison appointed Joseph R. Reed as Chief Justice and Thomas C. Fuller, William M. Murray, Wilbur F. Stone, and Henry C. Sluss as Associate Justices.[74] (See figure 7.) The President also appointed Matthew G. Reynolds to serve as the U.S. Attorney representing the government in the CPLC's proceedings.

[72] *See United States v. Chaves*, 159 U.S. 452, 456 (1895); *see also Sena v. United States*, 189 U.S. 233, 240 (1903).

[73] *See Sandoval*, 167 U.S. at 298. *See also Rio Arriba Land & Cattle Co. v. United States*, 167 U.S. 298, 309 (1897) (applying *Sandoval* decision to Cañón de Chama grant).

[74] On December 5, 1901, President Theodore Roosevelt appointed Frank I. Osborne to fill the vacancy created by Associate Justice Fuller's death.

Figure 7: The CPLC, 1891



Standing (left to right): Wilburn F. Stone, Henry C. Sluss;
Sitting: Thomas C. Fuller, Joseph R. Reed, William M. Murray

Source: Ralph Emerson Twitchell, Esq., *The Leading Facts of New Mexican History,* Vol. II (Cedar Rapids, Iowa: The Torch Press, 1912) p. 473.

By the end of its first year of operations in 1891, the CPLC had completed its organization by appointing a clerk, a translator, and a stenographer, and had published three newspaper notices announcing its existence. In addition, by 1892, 3,000 circulars in Spanish had been distributed throughout the territory, and an equal number in English, to provide notice of the establishment of the CPLC.[75] From 1891 to 1904, claims were filed with the CPLC involving 211 of the 295 Spanish and Mexican community

[75] See U.S. Attorney's annual reports for 1891and 1892. The U.S. Attorney for the CPLC was required to submit an annual report outlining the workings of the court, and these were incorporated into the Department of Justice's annual report of the Attorney General of the United States.

and individual land grants located partially or entirely in New Mexico.[76] (See table 10.) Nearly 60 percent of the claims involved land grants for which claims had previously been filed with the Surveyor General of New Mexico.

Table 10: Spanish and Mexican Land Grants in New Mexico for Which Claims Were Filed with the CPLC, 1891-1904

Grant type	Number of grants with claims refiled from the Surveyor General	Number of grants for which new claims were filed	Total number of grants for which claims were filed with CPLC	Total number of land grants in New Mexico
Community land grants				
Original documentation community grants	45	10	55	78
Self-identified community grants	25	13	38	53
Pueblo community grants	3	0	3	23
Subtotal	**73**	**23**	**96**	**154**
Individual grants	52	63	115	141
Total	**125**[a]	**86**[b]	**211**	**295**

Source: GAO analysis.

[a]Claims involving 17 of the 208 Spanish and Mexican grants filed with the Surveyor General of New Mexico were not re-filed with the CPLC. Congress had not acted on 140 of those grants, and the claims re-filed with the CPLC involved 123 of the 140 grants, as well as 2 grants in New Mexico that Congress had already acted on.

[b]The majority of these new claims were withdrawn when the claims came to trial. Only 12 of the 86 land grants for which new claims were filed with the CPLC were ultimately confirmed.

The vast majority—almost 75 percent—of the new claims filed with the CPLC for grants in New Mexico involved individual grants rather than community grants. A substantial proportion of all of the New Mexico-based claims were filed immediately before the 2-year deadline. Over 40 percent of the claims filed with the CPLC's New Mexico District, for example, were filed in the final 3 days preceding the March 3, 1893 deadline. It appears that a number of these claims were filed "protectively," simply to meet the statutory filing deadline. As discussed below, many claimants never developed or pursued their claims: 11 claims were filed covering a total of 2.7 million acres, from as far away as California, but were never pursued.

[76] A total of 282 claims were filed with the CPLC's New Mexico District, including 12 claims that were subsequently transferred to the Arizona District and 5 claims for the Las Animas land grant in Colorado. Multiple claims were filed for a number of grants.

In contrast to the Surveyor General process, which had placed most of the investigation workload on the Surveyor General and his staff (and which resulted in recommendations of approval for most of the land grants), the CPLC process assigned considerable responsibility to the U.S. Attorney's Office for the CPLC to gather and evaluate vast amounts of testimony and evidence. The result was that the CPLC was able to analyze land grant claims more thoroughly than the Surveyor General, at least with respect to the interests of the United States. When a claim was filed with the CPLC, the U.S. Attorney evaluated the petition to determine whether it presented a proper case against the United States. Among other things, the U.S. Attorney determined whether the documents filed were genuine and correctly translated, and whether the boundaries and locations of the claim were properly located and stated.[77] The U.S. Attorney gathered evidence by researching materials in the archives, identifying and questioning witnesses, and issuing subpoenas and taking depositions. Spanish and Mexican law was researched to determine whether the land grant had been "lawfully and regularly derived."[78] The U.S. Attorney sometimes searched out other parties affected by a claim in order to include them in the case. When a claim came to trial, the U.S. Attorney or an Assistant U.S. Attorney presented the government's case and the claimant's attorney presented the claimant's case. Both sides were able to examine and cross-examine witnesses, object to inadmissible evidence, and make any necessary motions.

Many cases that the CPLC ultimately rejected were not rejected on their merits, but because claimants later decided not to pursue their claims. When cases came to trial, for example, claimants often announced to the CPLC that they no longer wished to pursue their claims, at which point the CPLC rejected them. In addition, the CPLC rejected claims because the

[77] For example, special agent Will M. Tipton, who remained with the U.S. Attorney's Office for 9 years, was fluent in Spanish and an expert in handwriting. He examined and advised upon papers involved in land grant cases and was considered an expert because he had served for 16 years in the New Mexico Surveyor General's office as a clerk, copyist, translator, and custodian of the archives.

[78] According to Bowden, footnote 63 above, the CPLC discovered that many of the potentially relevant laws and statutes had never been translated into English. The U.S. Attorney, Matthew Reynolds, therefore compiled and published translations of the Spanish and Mexican *cedulas* and laws that were most frequently referred to in the land grant claims, and Mr. Reynolds and the CPLC used these translations in their work. The U.S. Supreme Court also used these and other translations in its review of the CPLC's decisions. Scholars have criticized the use of Reynolds's translations on the ground that they did not include all laws pertaining to land grants.

CPLC determined that they were outside the jurisdiction that Congress had established for the court in the 1891 Act. For example, the 1891 Act did not authorize the CPLC to hear claims for grants to the extent that they conflicted or overlapped with other grants already confirmed by Congress. For this reason, the court rejected claims for the Rancho el Rito individual grant, the Cañón de San Diego community grant, and the Las Animas grant in Colorado, all of which Congress had addressed. All told, about 34 percent of the 211 New Mexico-based claims that came before the CPLC (72 claims) were rejected for these procedural reasons. (See table 11.)

Table 11: Number of New Mexico Grants for Which Claims Were Filed and Ultimately Decided on Their Merits by the CPLC

Grant type	Total number of grants for which claims were filed with the CPLC	Number of grants that were not pursued or that had jurisdictional questions	Total number of grants decided on the merits by the CPLC
Community land grants			
Original documentation community grants	55	8	47
Self-identified community grants	38	11	27
Pueblo community grants	3	0	3
Subtotal	**96**	**19**	**77**
Individual grants	115	53	62
Total	**211**	**72**	**139**

Source: GAO analysis.

For the claims involving the remaining 139 New Mexico-based land grants, the CPLC reached a decision based on the facts of each case. Ultimately, the CPLC confirmed and awarded at least some acreage to 84 grants (about 60 percent) of the 139 grants on which it ruled. (See table 12.) A number of the confirmed grants received less acreage than claimed because of boundary disputes, conflicts with previously confirmed grants, and certain other legal reasons including the 1891 Act's requirement to restrict certain grants to 11 square leagues. The CPLC rejected the remaining 55 grants (or about 40 percent) for a variety of reasons, including that the grants had been made by officials without authority to make a grant, that the claimants failed to comply with the conditions of the grant, and that there was insufficient evidence of a grant's existence. Overall, for the 77 New Mexico community land grants for which decisions were made, the CPLC confirmed 56 grants (73 percent) and rejected 21 grants (27 percent).

Table 12: Number of Grants in New Mexico Confirmed or Rejected by the CPLC, 1891-1904

Grant type	Number of grants that were confirmed and awarded some acreage	Number of grants that were rejected and awarded no acreage	Total number of grants decided on the merits of the claim by the CPLC
Community land grants			
Original documentation community grants	34[a]	13	47
Self-identified community grants	20	7	27
Pueblo community grants	2	1	3
Subtotal	**56**	**21**	**77**
Individual grants	28	34	62
Total	**84[a]**	**55**	**139**

Source: GAO analysis.

Note: The data presented in this table are based on the final result for each land grant, including actions by the U.S. Supreme Court and Congress.

[a]This figure includes the towns of Albuquerque and Santa Fé community land grants. Both grants were approved by the CPLC, then rejected by the U.S. Supreme Court, then confirmed by Congress through legislation in 1901 (31 Stat. 796) and 1900 (31 Stat. 71), respectively.

Both claimants and the U.S. government had a right to appeal the CPLC's decisions to the U.S. Supreme Court. Although the Supreme Court reviewed the CPLC's decisions *de novo* in evaluating the law and facts—that is, by applying its own judgment without deference to the CPLC's decision—the Supreme Court was bound by the same "lawfully and regularly derived" standard and other conditions in the 1891 Act as the CPLC. Decisions involving 57 land grants were appealed to the U.S. Supreme Court: claimants appealed decisions involving 34 of the grants, the U.S. government appealed decisions involving 22 grants, and both sides appealed one grant. The Supreme Court reversed the CPLC's decision on 10 of these 57 grants and upheld the decisions on the remaining 47 grants. In two instances—regarding the Santa Fé and the Town of Albuquerque grants—Congress later decided to confirm the grants after the Supreme Court had rejected them, in effect making grants *de novo* from the government's own land. (See table 13.)

Table 13: CPLC Decisions Reversed by the U.S. Supreme Court

Grant name	Citation	CPLC original decision	Decision on appeal to the U.S. Supreme Court
Decisions appealed only by the U.S. government			
Santa Fé[a]	*U.S. v. Santa Fe*, 165 U.S. 675 (1897)	Confirmed; 4 square leagues	Rejected; insufficient proof of a grant
San Miguel del Vado	*U.S. v. Sandoval*, 167 U.S. 278 (1897)	Confirmed	Confirmed; restricted to individual allotments
Albuquerque (Town of)[a]	*U.S. v. City of Albuquerque*, 171 U.S. 685 (1898)	Confirmed; 4 square leagues	Rejected; insufficient proof of a grant
Cuyamungué	*U.S. v. Conway*, 175 U.S. 60 (1899)	Confirmed	Confirmed; to the extent not in conflict with Indian Pueblos
Petaca	*U.S. v. Peña*, 175 U.S. 500 (1899)	Confirmed; restricted to 11 square leagues	Confirmed; restricted to individual allotments
Sierra Mosca	*U.S. v. Ortiz*, 176 U.S. 422 (1900)	Confirmed; restricted to 11 square leagues	Rejected; genuineness of grant questioned
Cebolla	*U.S. v. Elder*, 177 U.S. 104 (1900)	Confirmed; boundary dispute	Rejected; insufficient proof of a grant
Baltazar Baca	*U.S. v. Baca*, 184 U.S. 653 (1902)	Confirmed	Rejected; contained within previously congressionally confirmed grants
Decisions appealed only by the claimants			
Cañada de Cochití	*U.S. v. Whitney*, 167 U.S. 529 (1897)	Confirmed; boundary dispute	Confirmed; enlarged boundary
Decisions appealed by both the U.S. government and the claimants			
Bartolomé Baca	*Bergere v. U.S.*, 168 U.S. 66 (1897)	Confirmed; restricted to 11 square leagues	Rejected; grant not lawfully and regularly derived

Source: GAO analysis.

[a]As noted in table 12, while the U.S. Supreme Court rejected the grants for the towns of Albuquerque and Santa Fé, Congress later decided to confirm both grants.

The U.S. Supreme Court's reversal of the CPLC's confirmation of the San Miguel del Vado land grant, in the *United States v. Sandoval* case noted above, deserves close attention and is discussed in detail in chapter 3. In brief, the Court ruled that the grant's common lands belonged to the sovereign—México and then the United States—rather than to the community, thereby deeming over 300,000 acres of land claimed by the community to be public lands of the United States following signing of the Treaty of Guadalupe Hidalgo.

After the CPLC confirmed a land grant, the Surveyor General of New Mexico surveyed the grant in accordance with the CPLC's decree of confirmation. Half of the survey costs were to be borne by the claimant. As

required by Section 10 of the 1891 Act, when the survey was completed, the Surveyor General issued a public notice in the local newspaper of the survey results and requested any comments within 90 days. If objections were filed, the CPLC had to decide whether the survey should be approved or rejected. The CPLC also had to examine the survey to determine whether it had been executed in accordance with the decree of confirmation. If the CPLC did not approve the survey, a new survey was ordered, and the surveying process would start again.

The CPLC rejected a large number of surveys at least in part, but the Surveyor General of New Mexico believed that most of the responsibility for these rejections lay in the CPLC's vague and indefinite descriptions of the confirmed lands, which made it extremely difficult to survey the lands accurately.[79] Once the survey was completed and approved, the Commissioner of the Department of the Interior's General Land Office issued a patent to the claimants. As noted above, the 1891 Act provided that the patent only established title as between the claimant and the United States. Third parties who believed they had superior title could still file suit in another forum, such as in territorial or federal courts, to establish their interest.

Today, some scholars assert that the CPLC process was improper because it did not give appropriate consideration to principles of equity. One commentator has stated that the CPLC defined its equitable powers so narrowly that it refused to recognize grants that México would have considered valid before the 1846 cession of territory to the United States.[80] As discussed in chapter 3, however, the CPLC and the U.S. Supreme Court acted within the limitations that Congress established in the 1891 Act—to confirm only grants supported by strict legal title, not equitable title. Those criteria were stricter than the legal standards Congress had set for the Surveyor General of New Mexico and for the California Commission, but this was a policy choice within Congress' prerogative. Notwithstanding this legal compliance, the CPLC process, like the Surveyor General process, was burdensome and created hardships for at least some grantees, and Congress may wish to consider, as a matter of policy,

[79] *See generally* Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque, N. Mex.: University of New Mexico Press, 1975).

[80] *See* F. Cheever, footnote 24 above, 33 UCLA L. Rev., p. 1388.

whether additional measures may be appropriate to address remaining concerns.

The Federal Government Awarded Small-Holding Claims within Rejected Land Grants

For grants that the CPLC or the U.S. Supreme Court rejected, claimants or anyone living on the grant had the option of acquiring title to their individual tracts as a "small-holding" land claim. Sections 16 through 18 of the 1891 Act authorized small-holding claims of up to 160 acres of land per person. Under these provisions, claimants originally had 2 years from March 3, 1891, to file an application with the Surveyor General of New Mexico, seeking a patent for up to 160 acres of land where the claimant, his ancestors, grantors, or their lawful successors in title or possession had been in "actual continuous adverse possession" for 20 years.[81] The filing deadline for small-holding claims was ultimately extended for 14 years until March 4, 1917, possibly to account for the fact that claimants were waiting for final adjudication of their Spanish and Mexican land grant claims.[82] Today, Interior's Bureau of Land Management (the successor to the General Land Office which housed the Surveyors General) estimates that about 73,000 acres of land were awarded on the basis of small-holding claims. Although the exact acreage of these claims is unknown, we reviewed eight selected community land grants that had been rejected and found that small-holding claims were awarded in every case. For example, within the Embudo community land grant that was rejected for 25,000 acres, residents of the grant were able to obtain over 900 acres of land as small-holding land claims.

[81] *See* 1891 Act, Sec. 17. As discussed in footnote 67 above, the doctrine of adverse possession allows a person to gain complete, fee simple title to real property owned by another person through open, continuous, and uninterrupted possession of the real property for a period of years.

[82] Congress later passed three additional acts in 1922, 1926 and 1932 authorizing the Commissioner of the General Land Office or the Secretary of the Interior to issue patents for up to 160 acres for tracts of land that had been held in adverse possession.

The Percentage of Acreage Awarded during the Two Confirmation Processes Is Substantially Higher Than Commonly Reported

In discussing the results of the Surveyor General and CPLC processes in New Mexico, land grant scholars have often reported that only 24 percent of the acreage claimed for community and individual land grants in New Mexico was awarded.[83] Scholars then compare this 24 percent figure for New Mexico to 73 percent of claimed acreage approved in California, with the disparity allegedly demonstrating that the land grant confirmation process in New Mexico must have been improper in some way. As discussed below, however, in GAO's judgment, the many differences between the situations in California and New Mexico, including differences in the confirmation procedures and other factors, make these mathematical comparisons inappropriate. Moreover, the more accurate figure for community and individual land grant acreage awarded in New Mexico, in our judgment, was actually 55 percent,[84] not 24 percent, and the more accurate figure for the number of community and individual grants confirmed was actually 73 percent, not 52 percent. In addition, of the community grants in New Mexico, we found that 83 percent of the grants claimed were confirmed rather than 68 percent, and 64 percent of the acreage claimed was awarded, rather than 44 percent. Table 14 summarizes the acreage commonly reported as confirmed for community and individual grants in New Mexico during the Surveyor General period (about 9.4 million acres, from almost 12 million acres claimed) and the CPLC period (over 1.9 million acres, from almost 35 million acres claimed), as well as our adjusted figures for the acreages claimed and confirmed under each process.

[83] *See, e.g.*, Malcolm Ebright, *Land Grants & Law Suits in Northern New Mexico* (Albuquerque, N. Mex.: University of New Mexico Press, 1994), p. 37.

[84] Of this 55 percent (9.98 million acres) awarded, the Surveyor General awarded 80 percent of the acreage and the CPLC awarded the remaining 20 percent.

Table 14: Acreage Awarded for Spanish and Mexican Community and Individual Land Grants during the Surveyor General and the CPLC Land Grant Confirmation Processes in New Mexico with and without Adjustments (Subtractions) by GAO

Confirmation process	Total acreage commonly reported as claimed	Total acreage commonly reported as confirmed	Percentage of acreage commonly reported as confirmed	Total adjusted acreage claimed	Total adjusted acreage confirmed	Adjusted percentage of acreage confirmed
Surveyor General	11,993,307.91	9,446,108.16	78.8	9,915,634.69	7,915,634.69	80.1
Court of Private Land Claims	34,653,340.62	1,934,986.39	5.6	7,997,756.21	1,961,789.17	19.9
Total	**46,646,648.53**	**11,381,094.55**	**24.4**	**17,913,390.9**	**9,877,423.86**	**55.1**

Source: GAO analysis.

Note: The data presented in this table are based on the final results for each land grant, including actions by the U.S. Supreme Court and Congress.

The 24-percent figure cited by scholars for acreage awarded in New Mexico was, in our judgment, calculated incorrectly. It compares acreage awarded (the "numerator") to acreage claimed (the "denominator"), but the latter includes acreage that should be excluded for a number of reasons from an assessment of the confirmation processes. The effect of this error is that it indicates a lower rate of confirmed acreage than actually occurred. *First*, acreage claimed outside New Mexico was included in the calculation. Two large grants falling in this category were the Los Conejos grant in Colorado and the "Peralta (2)" grant in Arizona; combined, these grants accounted for almost 15 million acres. (See table 15.) *Second*, the acreage claimed included claims that were filed but never pursued. The CPLC's final report, issued in 1904, shows 68 grants, accounting for 4.9 million acres, as rejected acreage, but our analysis shows that claims for these 68 grants were dismissed by the CPLC "without prejudice" (meaning that they could be re-filed) or were dismissed because claimants failed to pursue their claims in the first instance. *Third*, the acreage claimed included four grants totaling 4.7 million acres that the CPLC was not authorized to adjudicate because a claim for those grants had previously been acted on and decided by Congress. *Fourth*, the claimed acreage included 20 claims for grants that were "double counted." Multiple petitioners filed claims for the same area of land, and the CPLC rejected grants for which land had already been confirmed. As a result, the rejected acreage for these grants—1.8 million acres—was counted twice: once when it was confirmed and a second time when it was rejected with respect to a second claimant. *Fifth*, although the 1904 CPLC report indicates that claims for another 300,000 acres were rejected, our analysis shows that these grants were actually fully

confirmed. Excluding the acreage associated with all of the foregoing factors, the acreage awarded in New Mexico for community and individual grants increases from 24 to 55 percent of the acreage claimed. (See table 16.)

Table 15: Summary of Adjusted Acreage Claimed in the CPLC's 1904 Report

Basis for GAO adjustment	Acreage adjustment (subtraction)
Grants located primarily in other states	-14,967,456
Grants which claimants failed to pursue	-4,919,763
Grants with jurisdictional questions	-4,682,726
Grants that were double counted	-1,777,722
Grants that were fully confirmed	-307,917
Total	**-26,655,584**

Source: GAO analysis.

Table 16: Percentage of Acreage Awarded for Community and Individual Spanish and Mexican Land Grants in New Mexico, As Adjusted by GAO

Type of grant	Adjusted acreage claimed	Adjusted acreage confirmed	Percentage of acreage awarded
Community land grants			
Original documentation community grants	6,545,194.53	4,083,720.98	62.4
Self-identified community grants	1,782,434.15	1,273,245.93	71.4
Pueblo community grants	1,051,725.50	602,035.03	57.2
Subtotal	**9,379,354.18**	**5,959,001.95**	**63.5**
Individual land grants	8,534,036.72	3,918,421.91	45.9
Total	**17,913,390.90**	**9,877,423.85**	**55.1**

Source: GAO analysis.

Note: Numbers may not add up because of rounding.

Our adjusted figure of 55 percent of acreage approved in New Mexico, as well as the commonly cited 24 percent figure, is lower than the grant acreage approved in California of 73 percent. These figures, however, do not lend themselves to an easy comparison. The processes that Congress and Interior established for confirming land grant claims in California and New Mexico were different in several important respects and were implemented under different circumstances. As discussed in chapter 1, California's statehood and the state's population boom during the Gold Rush made settlement of land issues a priority for the U.S. government. As

a result, Congress quickly established the three-member Commission to evaluate and resolve land grant claims, so that it could identify the remaining U.S. public domain land and make it available for settlement. Furthermore, although the California Commission process yielded high rates of confirmation, there were also many allegations of fraud and abuse regarding the claims filed and approved there. By comparison, for the Territory of New Mexico, Congress established the Surveyor General and the CPLC processes, and most of the land grants that these tribunals addressed were different from those in California. For example, once *pueblos* and *presidios* (forts) were established in California, Spanish and Mexican officials made grants of lands there, known as "rancho grants," to encourage agriculture and industry. These rancho grants, which comprised most of the land grants in California, were similar in size and were generally limited to a maximum of 11 square leagues. The land grants in New Mexico, by contrast, ranged in size and type. They included individual grants, grants to 10 or more settlers, and grants to *pueblos*, towns, or other settlements.

In addition, also as discussed in chapter 1, the first 40 years of grant decisions made by the California Commission and the reviewing courts were considered to be very liberal, with grants being approved even though they did not always meet the legal standards Congress had established in the 1851 Act. Indeed, it was largely the concerns about some of the decisions by the California Commission (and later the Surveyor General of New Mexico) that led to creation of the CPLC and its more rigorous substantive and procedural standards.

For similar reasons, our analysis shows that similar corrections are warranted when calculating the confirmation rate for numbers of grants (rather than amount of acreage) claimed in New Mexico. During the 50-year confirmation period in New Mexico, Congress and the CPLC confirmed 152 (52 percent) of the 295 land grants. However, these 295 grants included 86 grants where claimants failed to pursue their claims or where the CPLC dismissed the claims with permission to refile. Excluding these 86 grants, the overall confirmation rate for land grants in New Mexico, both community and individual grants, increases from 52 to 73 percent. (See table 17.) With respect to community land grants only, our analysis shows that Congress and the CPLC confirmed 105 of the 154 community land grants in New Mexico, for a 68 percent confirmation rate. Excluding the 27 land grants where claimants failed to pursue their claims, the confirmation rate increases from 68 to 83 percent.

Table 17: Percentage of Spanish and Mexican Land Grants Confirmed in New Mexico, with and without Adjustments for Claims Not Pursued

Grant type	Total number of confirmed grants	Unadjusted total number of grants	Unadjusted confirmation rate in percents	Number of grants that claimants failed to pursue	Adjusted total number of grants	Adjusted confirmation rate in percents
Community land grants	105	154	68	27	127	83
Individual land grants	47	141	33	59	82	57
Total	**152**	**295**	**52**	**86**[a]	**209**	**73**

Source: GAO analysis.

[a]This number includes claims involving 16 land grants that were filed with the Surveyor General, not acted on by Congress, and not re-filed with the CPLC, and one grant that was not filed with the Surveyor General or the CPLC. For the remaining 69 grants, claimants filed their petitions with the CPLC, but then did not pursue the claim.

Summary

In summary, the New Mexico community land grant claims that were filed and pursued during the 50-year confirmation period encompassed 9.38 million acres of land in present-day New Mexico. The majority of the acreage claimed (5.96 million acres, or 63.5 percent) was awarded to confirmed community land grants, but a significant amount (3.42 million acres, or 36.5 percent) was not awarded and became part of the U.S. public domain, available for settlement by the general population. Some of the confirmed grants were awarded less acreage than claimed, and rejected grants were not awarded any acreage at all. The circumstances underlying this perceived loss of 3.42 million acres during the confirmation process have been a concern of land grant heirs for more than a century.

Chapter 3: Heirs and Others Are Concerned That the United States Did Not Protect Community Land Grants during the Confirmation Process, but the Process Complied with All U.S. Laws

Overview

A number of land grant heirs, legal scholars, and other experts have charged that activities under the two federal statutory New Mexico community land grant confirmation procedures did not fulfill the United States' legal obligations under the Treaty's property protection provisions. Of the 154 community grants in New Mexico, 105 grants—over 68 percent—were confirmed at least in part and the remaining 49 grants—about 32 percent—were wholly rejected. With respect to the confirmed grants, heirs and others have voiced concern about whether the full amount of acreage that they believe should have been awarded was in fact awarded, as well as whether the acreage awarded was confirmed and patented to the rightful owners. With respect to the rejected grants, the heirs' principal concern is that no acreage was awarded at all. Published studies have identified three core reasons for rejection of claims for New Mexico land grants, all involving decisions by the Court of Private Land Claims (CPLC) or, on appeal, the U.S. Supreme Court: (1) that under the Supreme Court's decision in the *United States v. Sandoval* case, the courts confirmed grants but restricted them to their so-called "individual allotments" that is, to acreage actually occupied by the claimants; (2) that under the Supreme Court's decisions in the *United States v. Cambuston* and *United States v. Vigil* cases, the courts rejected grants because they had been made by unauthorized officials; and (3) that under the Supreme Court's decision in the *Hayes v. United States* case, the courts rejected grants because they were supported solely by copies of documents that had been made by unauthorized officials. These three reasons resulted in rejection of claims for approximately 1.3 million acres of land in 17 different grants. If Congress had established less stringent standards in the 1891 Act for the CPLC to apply in evaluating claims for the New Mexico community land grants, such as those it established for the California Commission under the 1851 Act or the Surveyor General of New Mexico under the 1854 Act, these results might have been different. Congress had discretion in how it implemented the Treaty provisions, however, so long as it did so within constitutional and other U.S. legal limitations (which it did, as discussed below). Thus the fact that Congress established different standards for grant confirmation at different times does not reflect any legal violation or shortcoming.

In addition to these concerns about how specific claims were adjudicated, some heirs and legal scholars have contended that there were two more general problems underlying the Surveyor General and Court of Private

Land Claims processes. *First*, with respect to the Surveyor General procedures, heirs and scholars contend that they did not meet the "fairness" requirements of due process of law under the U.S. Constitution. We found that the procedures did, in fact, meet constitutional due process requirements, as the courts at that time defined them and even under today's standards. All potential land grant claimants were provided with the requisite notice of the establishment of the Office of the Surveyor General and the requirement to submit claims for any land grant for which they sought government (congressional) confirmation. Persons who filed claims with the Surveyor General were then given the requisite opportunity to be heard in defense of their claimed land grants. Even persons who disputed claims that had been filed with the Surveyor General based on their allegedly superior Spanish or Mexican title, but who did not themselves file a claim, had opportunity to be heard, both during the Surveyor General process and thereafter—including to the present day. *Second*, with respect to the CPLC process, heirs and scholars assert that it did not appropriately consider principles of equity, particularly in comparison to the Surveyor General process, but instead applied standards that were overly technical and "legal." We found that the CPLC did apply more stringent standards in deciding whether to approve community land grants than the Surveyor General had, but that these differences resulted from differences in the authority and mandates that Congress established for the two entities. Under the 1854 Act, the Surveyor General was directed to look to the "laws, usages, and customs of Spain and México" in recommending a grant for Congress' confirmation, while under the 1891 Act, the CPLC was directed to confirm only those grants which had been "lawfully and regularly derived" under the laws of Spain, México, or any of the Mexican states. As the U.S. Supreme Court explained in the *United States v. Sandoval* case, the CPLC—and the Supreme Court in reviewing the CPLC's decisions—was required as a matter of U.S. law to act within the boundaries that Congress had established in confirming grants under the 1891 Act. Because the 1891 Act directed the CPLC to apply more stringent standards than the 1854 Act had established for the Surveyor General, the Court explained in *Sandoval*, claimants had to look to "the political department" of the U.S. government—the Congress—to address any remaining concerns about consideration of "equitable rights." Whether the 1891 Act appropriately considered equitable rights was a policy judgment for the Congress in 1891, and it remains so today.

Finally, some scholars and legal commentators have raised questions about whether the statutory confirmation procedures that Congress established for New Mexico grants fulfilled the United States' obligations under the Treaty and international law. They contend that the substantive requirements of the statutes—the standards that Congress set for determining when a grant would be confirmed—were inconsistent with the terms of the Treaty and international law, and thus even if the United States carried out the statutory requirements, these allegedly did not satisfy all of the government's obligations. Under established U.S. law, however, as articulated by the U.S. Supreme Court in the *Botiller v. Dominguez* case and other decisions, courts are required to comply with the terms of federal statutes that implement a treaty such as the Treaty of Guadalupe Hidalgo that is not self-executing. (A treaty is not self-executing if it requires implementing legislation before becoming effective.) If an implementing statute conflicts with the terms of the treaty, it is an issue to be resolved as a matter of international law or by enactment of additional legislation. In the case of the Treaty of Guadalupe Hidalgo, the evidence indicates that the substantive requirements of the implementing statutes were, in fact, carried out, through the Surveyor General of New Mexico and the CPLC procedures. Thus any conflict between the Treaty and the 1854 or 1891 Acts—which we do not suggest exists—would have to be resolved today as a matter of international law between the United States and México or by additional congressional action. As agreed, we do not express an opinion on whether the United States fulfilled its Treaty obligations as a matter of international law. By contrast, any concerns about the specific procedures that Congress, the Surveyor General, or the CPLC adopted cannot be addressed under the Treaty or international law but only under U.S. legal requirements such as the Constitution's procedural due process requirements, and as noted, we conclude that these requirements were satisfied.

Notwithstanding the compliance of the two New Mexico confirmation procedures with these statutory and constitutional requirements, we found that the processes were inefficient and created hardships for many grantees. For example, as the New Mexico Surveyors General themselves reported during the first 20 years of their work, they lacked the legal, language, and analytical skills and financial resources to review grant claims in the most effective and efficient manner. Moreover, delays in Surveyor General reviews and subsequent congressional confirmations meant that some claims had to be presented multiple times to different entities under different legal standards. The claims process also could be burdensome after a grant was confirmed but before specific acreage was awarded, because of the imprecision and cost of having the lands

surveyed—a cost that grantees had to bear for a number of years. For policy or other reasons, therefore, Congress may wish to consider whether further action may be warranted to address remaining concerns.

Land Grant Heirs and Others Have Concerns about the Results of the Confirmation Procedures for Community Land Grants

Land grant heirs, legal scholars, and other experts have expressed concern both about the procedures that Congress established for assessing claims to community land grants in New Mexico and the results of these confirmation procedures. Of the 154 community land grants in New Mexico, 105 grants—over 68 percent—were confirmed at least in part and the remaining 49 grants—about 32 percent—were wholly rejected. With respect to the 105 partially confirmed grants, two principal issues have been raised: (1) whether the full amount of acreage that land grant heirs and others believe should have been awarded was in fact awarded; and (2) whether the acreage was awarded and patented to the rightful owners. For the remaining 49 community land grants, the principal issue is that they were rejected in their entirety and thus the claimants received no acreage at all. These issues and the reasons underlying them are discussed in detail below.

Acreage and Patenting Issues Regarding the 105 Confirmed Community Land Grants

Although each land grant in New Mexico has its own unique history and concerns, table 18 summarizes the overall results of the confirmation processes for the 105 community land grants that were at least partially confirmed.[85] As table 18 indicates, these results fell into eight basic categories.

[85] Appendix XI to this report contains a detailed summary of the results for each of the 154 community land grants.

Table 18: Results for the 105 Community Land Grants in New Mexico Confirmed in Part or Whole

Results for community land grants confirmed in part or whole	Original documentation community grants	Self-identified community grants	Pueblo community grants	Total
Surveyor General confirmation process, 1854-1891				
Grants confirmed by Congress	21	9	18	48[a]
CPLC process, 1891-1904				
Grants that appear to have been awarded complete acreage to the extent possible[b]	11	8	0	19
Grants with boundary disputes	6	6	2	14
Grants awarded complete acreage	8	4	0	12
Grants restricted to individual allotments only	7	0	0	7
Grants confirmed by special congressional action[c]	2	0	0	2
Grants restricted to 11 square leagues[d]	0	2	0	2
Subtotal for the CPLC	**34**	**20**	**2**	**56**
Pueblo of Zuñí (confirmed by Congress in 1931)[e]	0	0	1	1
Total	**55**	**29**	**21**	**105**

Source: GAO analysis.

[a]All 48 grants except the John Scolly grant were confirmed without any size limitation. There was a dispute over whether the John Scolly grant was 5 square leagues or 5 leagues square, which would equal 25 square leagues. In confirming the grant, Congress restricted the size of the grant to 5 square leagues.

[b]This category includes: (1) grants that appear to have been awarded complete acreage even though the CPLC's 1904 Annual Report lists some "rejected" acreage for these grants, and (2) grants that were awarded complete acreage to the extent possible. Upon filing a claim with the CPLC, claimants were required to estimate the size of their claim. Some of these estimates were too low and others were too high. In those cases where the claimed acreage estimate was lower than the actual acreage awarded, the acreage claimed figure was ultimately increased to match the actual acreage awarded, as reflected in the CPLC's 1904 Annual Report. Thus no grant is shown to have received more acreage than was claimed. For example, the CPLC's 1892 Annual Report lists the claimed acreage for the Doña Ana Bend Colony community land grant as 19,323.57 acres. This estimated claimed acreage was based on a survey approved by the Surveyor General of New Mexico in 1879. In the CPLC's 1904 Annual Report, however, the claimed acreage was increased to 35,399.017 acres to match the actual acreage awarded—35,399.017 acres claimed, 35,399.017 acres awarded, zero acres rejected.

In contrast, when the reverse happened, and the estimates were too high, it appears that corresponding changes were not always made to match the estimated claimed acreage with the actual acreage awarded. Therefore, the CPLC's 1904 Annual Report lists some grants with "rejected" acreage even though it appears that the claimants received all of the land within the grant boundaries. For example, the CPLC's 1892 Annual Report lists the Cristóbal de la Serna community land grant with an estimated claimed acreage of 30,000 acres and an estimated approved acreage of 30,000 acres. Although the Surveyor General had recommended approval of this grant, it had not been surveyed prior to being filed with the CPLC. The Surveyor General reported the claimed acreage as only 20,000 acres. After the grant was confirmed by the CPLC and surveyed by the Surveyor General, the actual acreage was determined to be 22,232.57 acres. In the CPLC's 1904 Annual Report, the Cristóbal de la Serna grant is listed as 30,000 acres claimed, 22,232.57 acres awarded, and 7,767.43 acres rejected. This grant appears to have been awarded all the land being claimed. We were unable to determine a reason for the "rejected" acreage other than that the estimated acreage differed from the actual acreage. The second major group of grants in this category is grants that partially overlapped existing congressionally confirmed land grants. It appears that the CPLC approved grants in this category for all acreage claimed and not in conflict with the congressionally confirmed grants.

[c]The grants for the towns of Albuquerque and Santa Fé were approved by the CPLC, then rejected by the U.S. Supreme Court, and finally confirmed by Congress through legislation in 1901 (31 Stat. 796) and 1900 (31 Stat. 71), respectively.

[d]The CPLC restricted two land grants—Chaca Mesa (CPLC No. 34) and Antonio Baca (CPLC No. 70)—to 11 square leagues. In three other cases—Bartolomé Baca (CPLC No. 58), Sierra Mosca (CPLC No. 87), and Petaca (CPLC No. 99, No. 153, and No. 233)—the CPLC confirmed the grants but restricted them to 11 square leagues or about 48,825 acres. The United States appealed three of these five cases to the U.S. Supreme Court, where two grants were rejected—Bartlomé Baca (*see* 168 U.S. 66 (1897)) and Sierra Mosca (*see* 176 U.S. 422 (1900))—and the other grant, Petaca, was restricted to its individual allotments (*see* 175 U.S. 500 (1899)). The CPLC restricted the two remaining grants—Chaca Mesa and Antonio Baca—to 11 square leagues, and these decisions were not appealed.

[e]The reservation for the Pueblo of Zuñí was established by Executive Order in 1877, and was modified in 1883, 1885, and 1917. In 1931, Congress retroactively confirmed the Pueblo of Zuñí land grant for 4 square leagues, to be located within their existing reservation.

Heirs Are Concerned about Several Issues Affecting the Acreage Awarded for Confirmed Land Grants

Heirs contend that three sets of issues adversely affected the acreage awarded for confirmed land grants in New Mexico: (1) inaccuracy of land surveys; (2) boundary disputes; and (3) legal rulings. With respect to land survey issues, heirs contend that imprecise surveying techniques inappropriately reduced the acreage awarded for some of the 105 confirmed community land grants.[86] Surveying disputes exist for the Town of Tomé grant, the Pueblo of Sandía grant, and the Los Trigos grant, for example, all of which Congress confirmed without imposing any size limitations. The heirs for the Town of Tomé grant contend that the survey for their land grant should have reflected an additional 100,000 acres.

[86] As discussed in chapter 2, the surveying of land grants was controversial and open to abuse because of: (1) vague or nonexistent boundary descriptions; (2) the Surveyor General's reliance on claimants to help identify the grant boundaries; and (3) using contract surveyors who were paid by the mile. While some heirs claim that their grants were inappropriately reduced in size due to inaccurate surveys, allegations also have been made by numerous Surveyors General and the public that grants were inappropriately enlarged during the surveying process.

Similarly, the Pueblo of Sandía claims that because of an incorrect survey of their grant—they contend that the survey should have, but did not, extend to the crest of the Sandía mountains (see figure 8)—10,000 acres of their grant were not awarded. The Los Trigos grant was surveyed three times—in 1860, 1877, and 1893—each time resulting in a different acreage figure.[87] Although the original claimants for the Los Trigos grant did not have a specific estimate of the size of the grant when they filed their claim, the heirs today claim that they lost land through the surveying process.

Figure 8: Sandía Mountain Range behind the Pueblo of Sandía, New Mexico, c.1880

Source: Photograph by John K. Hillers, courtesy of Museum of New Mexico, Negative No. 3371.

[87] The surveys reduced the acreage from 12,546 acres, to 9,647 acres, to 7,342 acres, respectively. The grant was awarded 7,342 acres based on the final survey. The first survey was defective because the lines of the survey did not close to form an enclosed land area. A boundary conflict with the San Miguel del Vado grant led to the final adjustment, from 9,647 acres to 7,342 acres.

With respect to boundary disputes, these sometimes arose during the adjudication of a grant, even before the grant was approved and surveyed. (See table 19.) In these cases, the CPLC heard testimony and ruled on the boundary dispute as part of its decision on the grant. For example, the CPLC found the grant papers for the Cañada de Santa Clara grant to be genuine but disputed the area of the claim. The claimants and the government disagreed on the location of the western boundary and the width of the grant from north to south. In its decision, the court held that the grant papers limited the grant to the area claimed by the government and confirmed the grant to that extent.

Table 19: Community Land Grants with Boundary Disputes Adjudicated by the CPLC, 1891-1904

Grant name	CPLC docket number(s)	Claimed acreage	Awarded acreage	Difference (acres)
Bartolomé Sánchez	264	10,000.00	4,469.83	5,530.17
Bernalillo (Town of)	146, 208, 217, 258	11,674.37	3,404.67	8,269.70
Cañada de Santa Clara	17	90,000.00	490.62	89,509.38
Francisco de Anaya Almazán	214, 243	45,244.00	3,202.79	42,041.21
Juan Bautista Valdez	179	60,000.00	1,468.57	58,531.43
Ojo Caliente	88, 94	40,000.00	2,244.98	37,755.02
Ojo de San José	130, 182, 259	30,000.00	4,336.91	25,663.09
Plaza Colorado	2	19,200.00	7,577.92	11,622.08
Pueblo of Laguna	133	101,510.00	17,328.91	84,181.09
Ranchito	157	87,360.00	4,945.24	82,414.76
Refugio Civil Colony	150, 193	26,000.00	11,524.30	14,475.70
San Antonio de las Huertas	90, 269	130,000.00	4,763.85	125,236.15
San Clemente	64	95,000.00	37,099.29	57,900.71
Santa Rosa de Cubero	267	5,000.00	1,945.50	3,054.50
Total: 14 grants		**750,988.37**	**104,803.38**	**646,184.99**

Source: GAO analysis.

Finally, with respect to the impact of the courts, several legal decisions resulted in restrictions on the acreage awarded for some of the confirmed community land grants. For example, the CPLC and the U.S. Supreme Court ruled that certain community grants should be limited to their so-called "individual allotments," that is, to acreage actually occupied by the claimants. In imposing this limitation in its 1897 *United States v. Sandoval* decision, 167 U.S. 278 (1897), the U.S. Supreme Court explained that the common lands within the grant had been owned not by the community but by the prior government sovereign—México. Consequently, when the Treaty of Guadalupe Hidalgo was signed, these lands transferred from the

prior sovereign to the new sovereign—the United States—and became part of the U.S. public domain. Seven land grants were restricted to their individual allotments for this reason, resulting in the loss of about 1 million acres of land claimed. *Sandoval* and the six CPLC decisions reaching this same result are discussed in more detail later in this chapter.

Heirs Also Are Concerned about Whether Acreage Awarded Was Confirmed and Patented to the Rightful Owners

Heirs and others also have raised concerns about whether the grants that were confirmed were in fact confirmed and patented to their rightful owners. Heirs contend that some of the grants that were confirmed and patented as individual grants should instead have been confirmed and patented as community grants. An illustration of this concern is the Tierra Amarilla grant in northern New Mexico. This land was granted in 1832 to "Manuel Martinez, together with eight male children, and others who may voluntarily desire to accompany him." In August 1856, Francisco Martinez, one of the sons of Manuel Martinez, filed a claim with the Surveyor General of New Mexico. The Surveyor General investigated the claim and in September 1856 recommended that it be approved to the present claimant—Francisco Martinez. The Martinez family and others had been unable to establish a permanent settlement on the grant because of the presence of hostile Indians. Congress confirmed the grant on June 21, 1860, as an individual grant, but Francisco Martinez then established the grant as a community land grant, giving out individual lots to settlers with access to common lands. The Martinez family later sold the common lands, and a dispute arose between the settlers of the Tierra Amarilla grant and the purchasers of the common land, resulting in the settlers losing their rights to use the common land. Today, the settlers' heirs claim that the U.S. government should have approved and patented the Tierra Amarilla land grant as a community grant rather than as an individual grant.

Some of these challenges to confirmed individual grants, as well as challenges to confirmed community grants, have been turned back by the courts without reaching the merits of the claims. Where the grants had been evaluated under the Surveyor General process and subsequently confirmed by Congress, the courts found that they lacked legal authority to review Congress' previous confirmation decisions. Only Congress itself, the courts ruled, could rectify any perceived errors by enacting additional legislation. The U.S. Supreme Court established this basic precedent in its 1876 decision in *Tameling v. U.S. Freehold & Emigration Co.*, 93 U.S. 644 (1876), where the Court affirmed the right of a claimant who held ownership through the 1860 confirmation act to evict settlers living on 160 acres located within the boundaries of the confirmed Sangre de Cristo grant. As discussed in chapter 2, the original grant was made to two

individuals but was issued for an area far larger than the 11 square leagues per individual permitted under Mexican law. Thus the New Mexico Surveyor General arguably should not have recommended approval of the grant for this size and Congress arguably should not have confirmed it at this size. Nevertheless, the *Tameling* Court ruled that "[t]he final action on each claim reserved to Congress, is, of course, conclusive, and therefore not subject to review in this or any other forum." *Tameling*, 93 U.S. at 662.

The *Tameling* Court explained that it was Congress' right and obligation to establish the procedures by which the property protection provisions of the Treaty of Guadalupe Hidalgo would be implemented: "[t]he duty of providing the mode of securing [property rights] and fulfilling the obligations which the treaty of cession imposed, was within the appropriate province of the political department of the government [Congress]." *Id.* at 661. Because the procedure that Congress had established for the specific grant under review in *Tameling* was the New Mexico Surveyor General/congressional confirmation process created by the 1854 Act—which resulted in decisions that could not be appealed to any court, rather than, for example, the Commission process used in California resulting in decisions that could be appealed to the courts—the Supreme Court found that it was bound by the confirmation decision that Congress had made in the 1860 statute. This decision had the effect of a "grant *de novo*" by the United States, the Court explained, conveying to the grantee whatever title the United States held to the property with the same effect as a patent. *Id.* at 663.[88] The same reasoning and results of *Tameling* were followed in four other court decisions, involving disputes over the Tierra Amarilla grant and three other grants.[89] Each of these decisions

[88] As the Court noted, "[t]his was matter for the consideration of Congress; and we deem ourselves concluded by the action of that body. The phraseology of the confirmatory act is, in our opinion, explicit and unequivocal." *Id.* at 663.

[89] For cases involving the Tierra Amarilla grant, see *Martinez v. Rivera*, 196 F.2d 192, 193-94 (10th Cir.), *cert. denied*, 344 U.S. 828 (1952); *Flores v. Brusselbach*, 149 F.2d 616, 617 (10th Cir. 1945); *Payne Land & Livestock Co. v. Archuleta*, 180 F. Supp. 651, 654-55 (D.N.M. 1960); and *H.N.D. Land Co. v. Suazo*, 44 N.M. 547 (1940). *See also Martinez v. Mundy*, 61 N.M. 87, 90 (1956) (following *Suazo* and holding that whether Congress confirmed the Tierra Amarilla grant as an individual grant or made a grant *de novo* of its common lands, it vested "absolute title" in the grantee). For cases involving challenges to congressional confirmation of *community* grants, see *Mondragon v. Tenorio*, 554 F.2d 423, 425 (10th Cir. 1977), and *Reilly v. Shipman*, 266 F. 852, 859 (8th Cir. 1920) (both involving the Town of Antón Chico grant), and *Yeast v. Pru*, 292 F. 598, 605-07 (D.N.M. 1923) (involving the towns of Casa Colorado and Belén grants).

addressed the issue of whether Congress had confirmed the grant to the correct party.

It is important to note that *Tameling* and these other court decisions addressed only the question of which entity, as between the United States and the claimants, was entitled to land under the *same* Spanish or Mexican land grant. With the Tierra Amarilla grant, for example, the question was whether the grant was a community grant or an individual grant and thus today belongs to the town or to individuals. This is different from the situation addressed by the 1851 and 1891 Acts and the confirmation statutes issued under the 1854 Act, all of which provided that confirmation decisions made under those authorities were binding on the United States and claimants under the grant at issue, but were *not* binding on persons claiming they had *superior* rights under a *different* grant or a different aspect of Spanish or Mexican law.[90] Thus, for example, although Congress confirmed the Tecolote land grant in 1858 in its first confirmation statute passed pursuant to the 1854 Act, and a patent was subsequently issued to the town for over 48,000 acres, several heirs have filed suit against the grant in New Mexico state court in the case of *Montoya v. Tecolote Land Grant*, alleging among other things that they have superior title under Mexican law. Because Congress' 1858 confirmation statute provided that it conveyed only the title held by the United States and did not affect the title of any other person, the heirs have asserted—based in part on a grant by the Mexican government in 1825 and a Mexican administrative decision in 1838 (the *Repartimiento* of 1838)—that their ancestors received superior title to a portion of the grant. As of the date of this report, the Tecolote Land Grant has agreed that the

[90] As discussed in chapter 1, however (see footnote 24), although the 1851 Act provided that decisions resulting from the California Commission process were not binding on certain "third persons" who had not filed a claim, the Supreme Court's *Botiller v. Dominguez* decision effectively eliminated this provision of the statute and made the Commission's decisions binding on all parties.

heirs have superior title to some of the acreage in dispute,[91] and the court has ruled that the heirs have superior title to other acreage in dispute.[92]

Issues Regarding the 49 Wholly Rejected Community Land Grants

Heirs have raised concerns about the remaining 49 New Mexico community land grants that were wholly rejected by the government. The grants were rejected for a variety of reasons, most commonly that claimants failed to file or to pursue their claims. In table 20, we have grouped the results for the 49 wholly rejected community land grants into four categories based on the reason for rejection. As table 20 shows, 27 of the 49 rejected grants, or 55 percent, were rejected for reasons unrelated to the merits of the claim, either because claimants failed to pursue their claims or because the CPLC had no authority to adjudicate an already congressionally-confirmed claim.

Table 20: Results for the 49 Wholly Rejected Community Land Grants in New Mexico

Results for wholly rejected community land grants	Original documentation community grants	Self-identified community grants	Pueblo community grants	Total
Grants for which claimants failed to pursue and grants dismissed by the CPLC because the court had no authority to adjudicate already congressionally-confirmed land grants	9	17	1	27
Grants rejected for a variety of legal reasons other than those relating to unauthorized officials or unauthorized copies	7	3	1	11
Grants rejected because they were made by unauthorized Mexican officials	6	2	0	8
Grants rejected because the claimants relied solely on copies of grant documents that were made by unauthorized officials	1	2	0	3
Total	**23**	**24**	**2**	**49**

Source: GAO analysis.

[91] *See Montoya v. Tecolote Land Grant*, No. D-412-CV-9900322, Fourth Judicial District, County of San Miguel, Partial Stipulated Order and Judgment (May 2, 2003).

[92] *See Montoya v. Tecolote Land Grant*, footnote 91 above, Findings of Fact and Conclusions of Law (Sept. 17, 2003). The court found two independent grounds for the heirs' superior title: Mexican law (the 1825 grant and the 1838 administrative decision) and state adverse possession statutes. The court also ruled that the heirs' claims were not barred by the doctrine of laches (injury or prejudice resulting from the lapse of time). At the time of this report, the Land Grant has indicated that it plans to appeal the court's September 17, 2003 decision.

CPLC reports and other documents we reviewed did not always detail why claimants failed to pursue their claims before the CPLC. In some instances, it appears that claimants withdrew their claims after learning that Congress or the CPLC had already confirmed the land under another grant, or that the CPLC had previously rejected similar claims. For example, lands claimed in the José Ignacio Alarí, Angostura de Pecos, and Bartolomé Trujillo grants were located within other grants that Congress had already confirmed and thus claims for these lands fell outside the court's jurisdiction. In addition, some heirs told us that claimants might not have pursued their claims because they lacked the necessary funds or did not speak English and did not fully understand the workings of the CPLC. Table 21 lists the 27 community land grants for which claims were not pursued, as well as possible reasons why they were not pursued.

Table 21: Community Land Grants That Claimants Failed to Pursue and Possible Explanations for This Failure

Grant name	CPLC docket number(s)	Possible explanation for failure to pursue
Original documentation community land grants		
Angostura del Pecos	[a]	Located within the Town of Antón Chico and Preston Beck Jr., land grants
Bartolomé Trujillo	257, 263	Located within the Juan José Lovato land grant
Cadillal	[a]	Located within the Domingo Fernández land grant
Chaperito (Town of)	[a]	Located within the Antonio Ortiz land grant
Los Manuelitas	242	Located within the Town of Las Vegas and Town of Mora land grants
Mesita Blanca	159	Grant made by an unauthorized Mexican official
Pueblo of Quemado	171, 212	U.S. Supreme Court had rejected similar awards to the Town of Albuquerque (171 U.S. 685 (1898)) and Santa Fé (165 U.S. 675 (1897))
Santo Toribio	256	Conflict with the Ojo de San José land grant
Vallecito (de San Antonio)	141	Located predominantly within the Juan José Lovato land grant
Self-identified community land grants		
Antonio de Salazar	235	Conflict with the Bartolomé Sánchez, Juan José Lovato, Pueblo of San Juan, and Pueblo of Santa Clara land grants
Arkansas	[a]	Conflicts with Maxwell Grant rejected by Colorado Federal Circuit Court (41 F. 275 (Colo. Cir. Ct. 1889)) and the U.S. Supreme Court (139 U.S. 569 (1891))
Arquito	145	Grant made by an unauthorized Mexican official
Candelarios (Town of)	[a]	Unknown
El Rito (Town of)	224	Unknown
Guadalupita	131	Grant made by an unauthorized Mexican official and ¾ of the grant conflicts with the Town of Mora land grant
Hacienda del Álamo	155	Unknown
José Ignacio Alarí	227	Located within Ojo Caliente land grant

Grant name	CPLC docket number(s)	Possible explanation for failure to pursue
José Trujillo	115, 268	Conflict with Pueblo of Pojoaque, Pueblo of San Ildefonso, and Pueblo of Santa Clara land grants
Juan de Ulibarrí	253	Grant revoked and land regranted as part of the Bartolomé Sánchez land grant
Las Lagunitas	[a]	Recommend for rejection by Surveyor General because of insufficient proof of grant
Montoya	[b]	No claim filed with Surveyor General or CPLC
Ojito de Galisteo	164	U.S. government claimed that the grant documents were forgeries
Río del Oso	177	Located within the Juan José Lovato land grant
San Cristóbal	[a]	Recommended for rejection by the Surveyor General because grant not recorded in the archives; conditions of the grant were not met; and official not authorized to make grant
Santa Rita del Cobre	[a]	Mining claim, not a land grant
Tacubaya	239	Located within the Domingo Fernández land grant
Pueblo community land grants		
Pueblo of San Cristóbal	[a]	Extinct Pueblo
Total: 27 grants		

Source: GAO analysis.

[a]Claims for this grant were filed only with the Surveyor General of New Mexico, not with the CPLC.

[b]No claims were filed for this grant, either with the Surveyor General of New Mexico or the CPLC.

The CPLC and the U.S. Supreme Court rejected 11 additional community land grants for a variety of legal reasons. For example, as table 22 shows, claims were rejected because the grants were located outside New Mexico, because the grants lacked sufficient proof, and because the claims pertained to a pasturing license rather than a land grant.

Table 22: Community Land Grants Rejected for a Variety of Legal Reasons Unrelated to Authority of Granting Official or Grant-Copying Official

Grant name	CPLC docket number(s)	Acreage	Reasons for rejection
Original documentation community land grants			
Barranca	97, 265	25,000	Grant revoked by Mexican Governor
Cebolla	108	17,159	Rejected by the U.S. Supreme Court because of insufficient proof of a grant (*United States v. Elder*, 177 U.S. 104 (1900))
Gervacio Nolan	46	575,968	Claim barred under the Act of July 1, 1870 (16 Stat. 646) that awarded Gervacio Nolan 11 square leagues of land in Colorado
Los Conejos	109	[a]	Conditions of the grant were not met and official had no authority to re-grant or validate the claim
Rancho de Ysleta	33	[b]	Located in Texas
San Joaquín del Nacimiento	144, 203, 213, 252	131,000	Grant revoked by the Spanish Government and official had no authority to re-grant the land
Vallecito de Lovato (Town of)	142, 204, 236	114,000	Insufficient proof of a grant; CPLC decision affirmed by U.S. Supreme Court (*Peabody v. United States*, 175 U.S. 546 (1899))
Self-identified community land grants			
Heath	59	108,000	Grant revoked by Mexican Government and re-granted to other parties; CPLC decision affirmed by U.S. Supreme Court (*Cessna v. United States*, 169 U.S. 165 (1898))
Real de Dolores del Oro (Town of)	111	17,361	Insufficient proof of a grant; located within the Ortiz Mine land grant; CPLC decision affirmed by U.S. Supreme Court (*Real de Dolores del Oro v. United States*, 175 U.S. 71 (1899))
Río Tesuque (Town of)	123, 215	7,300	Insufficient proof of a grant
Pueblo community land grants			
Pueblos of Zía, Jémez, & Santa Ana	50	276,000	Claim for pasture license, not a land grant; affirmed by U.S. Supreme Court (*Pueblo of Zía v. United States*, 168 U.S. 198 (1897))
Total: 11 grants			

Source: GAO analysis.

[a]The claimed acreage was 2.5 million acres, and was located primarily in Colorado. We did not include this claimed acreage in our analysis of acreage awarded and rejected for New Mexico.

[b]The claimed acreage was about 67,000 acres and was located in Texas. We did not include this claimed acreage in our analysis of acreage awarded and rejected for New Mexico.

The final two reasons why grants were rejected are, according to land grant heirs and scholars, of particular concern. The CPLC rejected eight community land grants after determining that the Mexican officials who

made them were not authorized to do so, and rejected two community land grants because the claimants relied solely on copies of grant documents that were made by officials who were not authorized to make such copies. These two categories of rejected grants, together with confirmed grants restricted to their individual allotments under the Supreme Court's *Sandoval* decision, are discussed in more detail below.

Studies Have Focused on Three Core Reasons for Rejected Acreage

Several published studies have focused on three of the reasons noted above as core reasons why New Mexico community land grant claims were either restricted in acreage or wholly rejected.[93] All of these reasons are reflected in decisions by the CPLC or, on appeal, the U.S. Supreme Court. We found that collectively, these reasons resulted in rejection of claims for about 1.3 million acres of land in 17 different grants. As discussed below, the three reasons were: (1) restriction of confirmed grants to their individual allotments (affecting 7 grants and approximately 1.1 million acres); (2) rejection of grants because they were made by unauthorized officials (affecting 8 grants and approximately 93,000 acres); and (3) rejection of grants because the claims for them were based solely on copies of documents made by unauthorized officials (affecting 2 grants and approximately 69,000 acres). The Surveyor General of New Mexico had recommended confirmation of most of these grants, but when Congress did not act on the Surveyor General's recommendations, the claims were presented again to the CPLC. If Congress had established a less stringent standard for the CPLC—similar, for example, to the mandate it established for the Surveyor General of New Mexico or the California Commission—the results for these grants might have been different. As the U.S. Supreme Court recognized in the *Sandoval* case in 1897, however, Congress limited the authority of the CPLC to confirming only those grants that had been "lawfully and regularly derived" under Spanish or Mexican law. It placed the issue of dealing with any "equitable rights" claimants might have in the lands with the "political department"—the U.S. Congress. *See Sandoval*, 167 U.S. at 298.

[93] *See* University of New Mexico School of Law, Natural Resources Center (submitted to the Farmers Home Administration in Washington, D.C.), *Remote Claims Impact Study: Lot II-A, Study of the Problems That Resulted from Spanish and Mexican Land Grant Claims* (Albuquerque, N. Mex.: 1980); Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque, N. Mex.: University of New Mexico Press, 1975); Plácido Gómez, Comment, *The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants*, 25 Nat. R. J. 1039 (1985).

The Courts Restricted Seven Confirmed Grants to Their Individual Allotments (the *Sandoval* Case)

Collectively, the CPLC and the U.S. Supreme Court restricted 7 of the 105 confirmed community land grants to their individual allotments. As a result, the claimants for these seven grants did not acquire approximately 1.1 million acres of land to which they believed they were entitled. (See table 23.) The issue before the courts was whether the community or the prior sovereign—México—had owned the common lands within the boundaries of a community land grant. As noted above, in 1897, the U.S. Supreme Court resolved this issue in the *Sandoval* case by concluding that México, the former sovereign, not the community, had owned the common lands. The Court held that these lands (in the particular *Sandoval* case, the common lands within the San Miguel del Vado grant) passed to the new sovereign—the United States—when the United States assumed control of the territory under the Treaty of Guadalupe Hidalgo, and became part of the U.S. public domain. Land grant heirs, scholars, and legal experts do not agree with this decision because, as discussed below, they believe it reflects an inaccurate application of Spanish and Mexican law.

Table 23: Community Land Grants Restricted to Their Individual Allotments

Grant name	CPLC docket number(s)	Claimed acreage	Awarded acreage	Difference (acres)
Cañón de Carnue	74	90,000.00	2,000.59	87,999.41
Cañón de Chama	107	472,737.00	1,422.62	471,314.38
Don Fernando de Taos[a]	54	1,889.00	1,817.24	71.76
Galisteo (Town of)	149	22,000.00	260.79	21,739.21
Petaca	99,153, 233	186,977.00	1,392.10	185,584.90
San Miguel del Vado	25, 60, 198	315,300.00	5,024.30	310,275.70
Santa Cruz	181, 194	48,000.00	4,567.60	43,432.40
Total: 7 grants		**1,136,903.00**	**16,485.24**	**1,120,417.76**

Source: GAO analysis.

[a]In the CPLC's 1897 Annual Report, the Don Fernando de Taos land grant was listed with an estimated claimed acreage of 38,400 acres, an estimated approved acreage of 1,000 acres, and an estimated rejected acreage of 37,400 acres. The grant was confirmed by the CPLC on October 5, 1897. The acreage figures presented in table 23 are from the CPLC's 1904 Annual Report.

Claims involving all seven of these grants originally had been filed with the Surveyor General of New Mexico. The Surveyor General investigated and reported on six of the grants (all except the Santa Cruz grant) and of these six grants, the Surveyor General recommended five for confirmation by Congress and one—the Town of Galisteo grant—for rejection. Surveyor General Spencer reported that the Galisteo grant was "destitute of legitimate origin and foundation and had no legal existence." In 1886, Surveyor General Julian reexamined three of the original five positive

recommendations and issued supplemental reports for all three: the Cañón de Chama grant, the Petaca grant, and the San Miguel del Vado grant. In each case, Surveyor General Julian found that the preliminary surveys had been incorrect and had grossly extended the true grant boundaries. While Surveyor General Julian still recommended that the three grants be approved by Congress, he stated that they should be restricted to the land actually occupied by the inhabitants (*i.e.*, restricted to their individual allotments) and should not exceed 4 square leagues. Congress did not act on the Surveyor General's recommendations for any of the six grants, and claims involving all seven grants were later presented again to the CPLC.

The San Miguel del Vado land grant was the first of these seven grants adjudicated by the CPLC. In April 1894, the CPLC confirmed the grant in its entirety for over 315,000 acres. The U.S. government appealed the CPLC's decision to the U.S. Supreme Court, arguing that the United States had title to these lands. Five months later, in September 1894, while the United States' appeal was pending before the Supreme Court, the CPLC issued decisions for the Cañón de Carnue grant, the Cañón de Chama grant, and the Town of Galisteo grant. (See table 24.) In contrast to its earlier ruling on the San Miguel del Vado grant, the CPLC agreed with the U.S. government's argument as to these three additional grants and ruled that title to the common lands belonged to the sovereign. The CPLC therefore restricted the grants to their individual allotments and claimants for the Cañón de Chama grant appealed the CPLC's decision to the U.S. Supreme Court, where the government's appeal of the CPLC's Miguel del Vado grant decision was pending.

The Petaca land grant was the fifth of these seven grants adjudicated by the CPLC. The court confirmed the grant in September 1896 but restricted it to 11 square leagues. The U.S. government appealed the ruling to the Supreme Court on the grounds that the grant should have been restricted to the land covered by 36 individual allotments. Lastly, the CPLC restricted the remaining two grants—the Don Fernando de Taos and Santa Cruz land grants—to their individual allotments in 1897 and 1899, respectively.

Table 24: Decisions by the CPLC for Seven Community Land Grants That Were Ultimately Restricted to Their Individual Allotments

Grant name	CPLC docket number(s)	Date of decision	CPLC decision
Grants decided by the CPLC prior to the 1897 U.S. Supreme Court *Sandoval* decision			
San Miguel del Vado[a]	25, 60, 198	Apr. 26, 1894	Confirmed; awarded complete acreage
Cañón de Carnue	74	Sept. 29, 1894	Confirmed; restricted to individual allotments
Cañón de Chama[b]	107	Sept. 29, 1894	Confirmed; restricted to individual allotments
Galisteo (Town of)	54	Sept. 29, 1894	Confirmed; restricted to individual allotments
Petaca[c]	99, 153, 233	Sept. 5, 1896	Confirmed; not to exceed 11 square leagues
Grants decided by the CPLC after the 1897 U.S. Supreme Court *Sandoval* decision			
Don Fernando de Taos	149	Oct. 5, 1897	Confirmed; restricted to individual allotments
Santa Cruz	181,194	Sept. 5, 1899	Confirmed; restricted to individual allotments

Source: GAO analysis.

[a]The U.S. Supreme Court in *Sandoval* reversed the CPLC's decision and ruled that only land allotted to individual settlers could be confirmed.

[b]On the same day it decided *Sandoval*, the U.S. Supreme Court affirmed the CPLC's decision to restrict the grant to individual allotments in *Río Arriba Land & Cattle Co. v. United States*, 167 U.S. 298 (1897).

[c]In *United States v. Peña*, 175 U.S. 500 (1899), the U.S. Supreme Court reversed the CPLC's ruling and confirmed the grant to include only individual allotments.

The first of these Supreme Court appeals to be decided was the San Miguel del Vado grant case, which the Court ruled on in 1897 in *Sandoval*. The Court reversed the CPLC's decision, which had confirmed the entire grant for over 315,000 acres, and instead approved only about 5,000 acres in individual lots. Relying on its recent decision in the *United States v. Santa Fe* case, 167 U.S. 278 (1897), where the Court had concluded that under both Spanish and Mexican rule, ownership of town lands in New Mexico had remained in the sovereign (Spain and then México), the *Sandoval* Court concluded that common lands within the San Miguel del Vado grant likewise had passed to the new sovereign—the United States—under the Treaty of Guadalupe Hidalgo. As a result, the Court confirmed only the non-"common" lands within the grant, that is, lands that had been allotted to individual settlers. Although the claimants argued that their "equitable rights"[94] in the common lands should have been recognized and confirmed, the Court found that it had no legal authority to make such recognition.

[94] An "equitable right" in property is a right to benefit from the use of property to which another entity holds legal title.

The Court explained that under the 1891 Act creating the CPLC, Congress had restricted the authority of the CPLC (and thus the Supreme Court when reviewing decisions of the CPLC) to confirming land in which claimants had strict legal title: "At the date of the treaty of Guadalupe Hidalgo," the Court declared, "neither these settlers nor this town could have demanded the legal title to such lands of the former government, and the Court of Private Land Claims was not empowered to pass the title to either." *Sandoval*, 167 U.S. at 298. The effect of this congressional limitation, the Court explained, is that it was "for the political department"—Congress—"to deal with the equitable rights involved with this case." *Id.*

The Supreme Court next issued decisions concerning the Cañón de Chama grant, in 1897 (in *Río Arriba Land & Cattle Co. v. United States*, 167 U.S. 298), and the Petaca grant, in 1899 (in *United States v. Peña*, 175 U.S. 500). Based on its reasoning in the *Sandoval* decision, the Court in the *Río Arriba* decision (issued the same day as *Sandoval*) affirmed the CPLC's decision to restrict the Cañón de Chama grant to individual allotments. Although Congress had confirmed grants similar to the Cañón de Chama grant as part of the Surveyor General process under the 1854 Act, the Court explained, Congress had authority under the Constitution's Property Clause to dispose of public domain lands as it saw fit.[95] Because Congress had not given such authority to the CPLC or the Supreme Court, but instead had restricted their authority to confirming grants held by legal title, the Supreme Court determined that it was bound to follow the limitations Congress had established. For the same reasons, the Supreme Court in its *Peña* decision reversed the CPLC's ruling on the Petaca grant, and confirmed it to include only individual allotments to the 36 original claimants.

Sandoval and these related court decisions have generated a substantial amount of the current controversy surrounding New Mexico land grants. Land grant heirs regard *Sandoval* as the most blatant example of the U.S. government's alleged failure to properly implement the property protection provisions of the Treaty of Guadalupe Hidalgo. Some scholars have argued that the Supreme Court misunderstood Spanish and Mexican law, asserting that: (1) the town or settlement, not the sovereign, owned

[95] Article IV, Section 3, Clause 2 of the U.S. Constitution, known as the Property Clause, provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property *belonging to the United States*." (Emphasis added.)

the common lands under Spanish and later Mexican law;[96] and (2) even if the town did not own the common lands, the settlers had a permanent right to use these lands (a "usufruct") that the United States was required to recognize under the Treaty and international law.[97] As noted in chapter 1 of this report, the principal difference between a community land grant and an individual grant is that the common lands of a community land grant were held in perpetuity and could not be sold. Scholars note that medieval Spanish towns, for example, which owned their common lands, served as models for Hispanic towns or settlements in the New World. In addition, scholars refer to the Plan of Pitic, prepared in 1789 for a town in Sonora, México, which influenced later settlements in New Mexico and which provided for community ownership of the common lands. Spanish settlements in New Mexico also were influenced by the pattern of land ownership of the Pueblos, whose lands were owned communally and where many Spanish settlers lived in close proximity to these settlements.[98]

[96] *See* M. Ebright, *Land Grants and Law Suits in Northern New Mexico*, footnote 83 above, p. 24 and chapter 5; Michael C. Meyer with Michael M. Brescia, *The Contemporary Significance of the Treaty of Guadalupe Hidalgo to Land Use Issues in Northern New Mexico* (Taos, N. Mex.: Northern New Mexico Stockman's Association and the Institute of Hispanic American Culture, 1998), pp.15-41; Daniel Tyler, "Ejido Lands in New Mexico," in *Spanish and Mexican Land Grants and the Law* (Manhattan, Kan.: Sunflower University Press, Malcolm Ebright, ed., 1989), pp. 24-35.

[97] *See* M. Meyer and M. Brescia, footnote 96 above, p. 80; C. Klein, footnote 9 above, 26 N.M.L. Rev., pp. 236-37; Richard Garcia and Todd Howland, *Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values*, *Legal Pluralism and Demystification of the Sangre de Cristo/Rael Case*, 16 Chicano-Latino L. Rev. 39, 41-44, 52-57, 60-63 (1995). Public land was owned either by the King, *tierras realengas* or *tierra baldías*, or by a town or village, *tierras concegiles*. *Tierras baldías* were available for everyone's use, either in common as grazing land, or by a few individuals for planting as long as the lands were in continuous use. The *tierras concegiles* of the towns and villages fell into two categories: (1) common property set aside by all the settlers, for example, *ejidos*, *montes*, and *dehesas*; and (2) the *propios*, which were rented out by the towns to earn income to cover town expenses.

In addition, although none of the property provisions of the Treaty of Guadalupe Hidalgo defined the term "property," in other cases concerning land grants in Florida and Missouri, under different treaties, the U.S. Supreme Court has defined the term to include all kinds of land title—legal and equitable, perfect and imperfect—which attaches to land according to local custom and usage. *See Hornsby v. United States*, 77 U.S. 224, 242 (1869); *Strother v. Lucas*, 37 U.S. 410, 436 (1838). *See also Mitchell v. United States*, 34 U.S. 711, 734-35 (1835); *United States v. Repetigny*, 72 U.S. 211, 259-60 (1866); *Knight v. United States*, 142 U.S. 161, 184 (1891); *West v. Multibanco Commermex, S. A.*, 807 F.2d 820, 830 (9th Cir. 1987).

[98] *See* P. Gómez, footnote 93 above, pp. 1051-53.

Yet despite the fact that the Supreme Court in *Sandoval* suggested that it might have wanted to recognize such extra-legal property rights as "equitable rights," it acknowledged that it lacked legal authority to do so because of the limits that Congress had placed on its jurisdiction. Thus the Court effectively placed the issue of dealing with any such "equitable rights" with Congress to address as a matter of policy.

The CPLC Rejected Grants Made by Unauthorized Officials (the *Cambuston* and *Vigil* Cases)

Eight of the 49 community land grants that were wholly rejected—totaling about 93,000 acres—were rejected by the CPLC because they had been made by Mexican officials unauthorized to issue such grants. (See table 25.) Claims involving seven of these eight grants (all except the Badito grant) had originally been filed with the Surveyor General of New Mexico, who investigated and recommended four of the grants for approval—Cañada de San Francisco, Gotera, Maragua, and San Antonio del Río Colorado. Surveyor General Julian filed a supplemental report on the San Antonio del Río Colorado grant in 1886, in which he declared that although the claimants had no legal basis for their claim, the claims nevertheless should be approved as "equitable claims." When Congress did not act to confirm these grants, they were presented again to the CPLC.

Table 25: Community Land Grants Made during the Mexican Period That Were Rejected by the CPLC Because the Granting Official Lacked Authority to Make Land Grants under Mexican Law

Grant name	CPLC docket number	Year granted	Granting official	Acres rejected
Badito	197	1835	Alcalde	1,350
Cañada de Los Mestaños	163	1828	Alcalde	16,000
Cañada de San Francisco	98	1840	Prefect	1,590
Gotera	83	1830	Territorial Deputation	1,800
Maragua	276	1826	Territorial Deputation	1,042
Río del Picurís	65	1832	Territorial Deputation	20,000
San Antonio del Río Colorado	4	1841	Prefect	18,955
San Antoñito[a]	27	1840	Prefect	32,000
Total: 8 grants				**92,737**

Source: GAO analysis.

Note: Individual land grants made during the Mexican period, like community land grants, were also rejected because Mexican officials lacked authority to make them. Two of the decisions on individual land grants were appealed to the U.S. Supreme Court. In both cases, the Supreme Court upheld the CPLC's decisions: *Hayes v. United States*, 170 U.S. 637 (1898), and *Chavez v. United States*, 175 U.S. 552 (1899).

[a]The U.S. Supreme Court upheld the CPLC's decision in *Crespin v. United States*, 168 U.S. 208 (1897).

In rejecting the eight grants, the CPLC relied on two earlier U.S. Supreme Court decisions, *United States v. Cambuston*, 61 U.S. 59 (1857), and *United States v. Vigil*, 80 U.S. 449 (1871). *Cambuston* was a California land grant case in which the Supreme Court had concluded that an 1824 Mexican statute and its 1828 implementing regulations had authorized only Mexican governors to make land grants, and then only in strict compliance with the terms and conditions of the statute and regulations. In ruling that a claim should have been rejected because these terms and conditions had not been met, the Supreme Court declared:

> The question here is not whether the fact of the habitual grant of lands by Mexican Governors . . . to settlers, and, also, whether the customary mode and manner adopted in making grants, do not furnish presumptive evidence both of the existence of the power and of a compliance with the forms of law in the execution? We agree, that the affirmative of these questions has frequently been determined by this court, in cases involving Spanish titles . . . But no such presumptions are necessary or admissible in respect to Mexican titles granted since the act of . . . 1824, and the regulations of . . . 1828. Authority to make the grants is there expressly conferred on the Governors, as well as the terms and conditions prescribed, upon which they shall be made. *The court must look to these laws for both the power to make the grant, and for the mode and manner of its exercise; and they are to be substantially complied with, except so far as modified by the usages and customs of the Government under which the titles are derived, the principles of equity, and the decision of this court.*[99]

Similarly, in the *Vigil* case, the Supreme Court noted that under the 1824 statute and the 1828 regulations, only the Mexican governor had authority to make settlement grants and not the Departmental Assembly.[100] Because the eight grants presented to the CPLC had not been made by authorized officials in compliance with the 1824 statute and 1828 regulations, the court rejected them.

Although *Cambuston* and *Vigil* had been in effect during the Surveyor General of New Mexico period (1854-1891), they had limited practical effect during that time. Community grants which were not made in

[99] *Cambuston*, 61 U.S. at 63-64 (emphasis added). The Supreme Court was looking in part at principles of equity because, as discussed in chapter 2 above, the California Commission was allowed to consider such principles under the 1851 Act.

[100] The Departmental Assembly was equivalent to Provincial Deputation or Territorial Deputation under different Mexican governmental structures.

accordance with the 1824 statute or 1828 regulations could nevertheless be approved under the 1854 Act's requirement that claims be decided in accordance with Spanish and Mexican "laws, usages, and customs," because under Interior's directive to the Surveyor General, this statutory standard included the presumption in favor of cities, towns and villages. Two years after *Cambuston*, for example, in 1859, Surveyor General Pelham approved claims for the Town of Torreón and the Town of Tejón grants, even though the grants had been made by unauthorized officials, because they qualified for the presumption in favor of towns.[101] Once the 1891 Act establishing the CPLC went into effect, however, allowing approval of grants only if claimants could prove they were "lawfully and regularly derived" under Spanish or Mexican law—with no presumption in favor of cities, towns, and villages—the rule in *Cambuston* and *Vigil* had a much greater effect on grants that had not been made by authorized officials. The outcome for these eight grants might have been different if Congress had established a statutory presumption for cities, towns, and villages in cases before the CPLC, as it had in the 1851 Act for cases before the California Commission. In addition, the outcome for the four grants recommended for approval by the Surveyor General might have been different if Congress had acted to confirm the grants prior to creation of the CPLC.

[101] Where the presumption in favor of towns did not apply, however, the Surveyor General followed *Cambuston* and *Vigil* in rejecting grants. For example, in rejecting the Ojo del Apache individual land grant in 1872, Surveyor General Proudfit specifically cited *Cambuston:*

> [I]n this case the grant was made by a justice of the peace, who, so far as I can learn, was not empowered either by law or custom, under any circumstances whatever, to make donations of the "vacant public lands of the republic of México." It does not appear that any attempt was ever made to comply with any single one of the regulations of 1828, or the law of 1824, in making this grant.

See Surveyor General James K. Proudfit, "Opinion of the Surveyor General for the Ojo del Apache Grant," Dec. 19, 1872, Report No. 72, in Sen. Ex. Doc. No. 45, 42d Cong., 3rd Sess. (1873), p. 19. Similarly, after the 1871 *Vigil* decision, the Surveyor General of New Mexico began rejecting Mexican land grants that did not qualify for the presumption and that had been made by the Mexican Departmental Assembly/Territorial Deputation rather than the Governor. Surveyor General Julian also cited *Vigil* in two 1886 supplemental decisions recommending rejection of two individual grants which did not qualify for the presumption, the Nerio Antonio Montoya grant and the Ojo de la Cabra grant.

The CPLC Rejected Grants That Relied on Copies Made by Unauthorized Officials (the *Hayes* Case)

The CPLC rejected two community land grants, totaling about 69,000 acres, solely because the claimants relied only on copies of grant documents that were made by officials who lacked authority to make copies of grant documents. The two grants were the Town of Cieneguilla grant (43,961 acres) and the Embudo grant (25,000 acres).[102] Claims involving both grants had originally been filed with the Surveyor General, but the Surveyor General investigated and reported only on the Town of Cieneguilla land grant. In 1872, Surveyor General Rush Spencer reported that although the only supporting documents for this grant were unauthorized copies, he nevertheless recommended that the grant be approved. The Surveyor General noted that the Town of Cieneguilla was known to be one of the oldest settlements in New Mexico and had been in existence for at least 51 years prior to U.S. acquisition of the New Mexico territory. Surveyor General Julian issued a supplemental report on the Town of Cieneguilla land grant in 1886, noting that while the claimants did not have a legal basis for their claim, it seemed "fair to justify the existence of an equitable title" based on the presumption in favor of towns. Congress did not act on these recommendations, and claims for both the Cieneguilla and Embudo grants were filed again with the CPLC.

The CPLC assessed claims supported by copies of grant documents on the basis of the totality of the evidence presented. Although the U.S. government routinely objected to the admission of copies rather than original documents in court proceedings, in at least three cases, concerning the La Majada, Black Mesa, and the Town of Bernalillo grants, the CPLC had overruled the government's objections and allowed copies to be introduced as part of the evidence. (See table 26.) For the La Majada grant, there had been original corroborating evidence in the archival documents assembled by the Surveyor General. For the Black Mesa grant, the CPLC accepted a copy of grant documents made by a Mexican judge. For the Town of Bernalillo grant, the CPLC accepted copies of grant documents made by an *alcalde*.[103]

[102] While the claimants for the Sanguijuela land grant also relied on a copy of grant documents, the CPLC rejected the grant for this and other reasons, as discussed below.

[103] The CPLC's Bernalillo decision contains a lengthy discussion about the necessity of making copies of grant documents as they became worn over time and about how such copies were customarily made. The U.S. Attorney representing the U.S. government's interests in the proceedings before the CPLC recommended that the U.S. government appeal the Bernalillo decision, but no appeal was filed and the Town of Bernalillo was awarded 3,404.67 acres.

Table 26: Community Land Grants Adjudicated by the CPLC That Involved Disputes over Copies of Grant Documents

Grant name	CPLC docket number(s)	Year granted	Year decided by CPLC	Final result
La Majada	89	1695	1894	Confirmed; awarded complete acreage
Black Mesa	56	1743	1894	Confirmed; appears to have been awarded complete acreage
Cieneguilla (Town of)	84	1795	1896	Rejected based on unauthorized copies
Bernalillo (Town of)	146, 208, 217, 258	1708	1897	Confirmed; awarded partial acreage due to boundary issue
Sanguijuela	170	1843	1898	Rejected for copy-related and other reasons
Embudo	173	1725	1898	Rejected based on unauthorized copies

Source: GAO analysis.

For the Town of Cieneguilla grant, however, the CPLC rejected the grant because "no law or usage" gave the Secretary of the Town Council of Taos authority to make copies of grant documents. Similarly, two years later, the CPLC rejected the Sanguijuela and Embudo grants. The court ruled that the supporting documents for the Sanguijuela grant were deficient in a number of respects including copy-related reasons; moreover, the court lacked jurisdiction because the grant was wholly contained within the Town of Las Vegas land grant already confirmed by Congress.

The Embudo land grant is the most controversial of the grants rejected for copy-related reasons. As in the Bernalillo grant case, the Embudo copies were made by an unauthorized *alcalde*. Unlike the Bernalillo grant, however, which the CPLC had approved on June 2, 1897, the CPLC rejected the Embudo grant on July 15, 1898 by a 3-2 vote. The CPLC relied on the U.S. Supreme Court's decision in *Hayes v. United States*, 170 U.S. 637 (1898), issued just seven weeks before the CPLC's decision, in which the Supreme Court had rejected an individual grant made by an unauthorized official based on the 1891 Act's requirement that the CPLC confirm only grants that had been "lawfully and regularly derived."[104] Writing for the majority of the CPLC, Justice Murray stated, "[w]e know from an examination of many claims in this territory under Spanish grants that it was a common practice for *alcaldes* to make copies of grant papers at the request of parties whose grants were torn or otherwise mutilated."

[104] The *Hayes* case involved an appeal by the claimants for the Arroyo de San Lorenzo individual land grant. The CPLC had rejected the grant because it was made by an unauthorized Mexican official and the U.S. Supreme Court upheld the CPLC's decision.

Nevertheless, Justice Murray ruled that "*alcaldes* were not the legal custodians of grants of land, and had no power or authority conferred on them by law to perpetuate evidence of title of land by making copies of grants, nor is there any law making copies evidence of title . . .We have no power to assume that the *alcalde* had lawful authority to perpetuate evidence to land by making copies of grants . . ."[105] Chief Justice Reed and Justice Stone dissented from the CPLC's majority opinion. Chief Justice Reed believed the court should have confirmed the Embudo grant as it had the Bernalillo grant because the same type of evidence was presented in both cases.

The "copy issue" is a practical illustration of how the 1891 Act establishing the jurisdiction of the CPLC was more stringent than the 1854 Act and supplemental Interior directives establishing the jurisdiction of the Surveyor General of New Mexico. In his supplemental report on the Cieneguilla grant, Surveyor General Julian had recognized that the claim suffered from "legal" problems, but he went on to approve it as an equitable claim based on the presumption in favor of towns. By the time the CPLC rejected the Cieneguilla and Embudo grants, both towns had been in existence for over 100 years, meaning that they likely would have been approved under the presumption in favor of towns. Congress had changed the statutory standard, however, and the CPLC was not authorized to apply such a presumption.

[105] *See Antonio Griego v. United States*, unpublished CPLC decision for the Embudo Grant, Docket No. 173, July 5, 1898, pp. 1-2.

Land Grant Heirs and Others Have Additional Concerns about the Fairness and Equity of the Confirmation Procedures Followed for Evaluating Community Land Grant Claims

Some land grant heirs and legal scholars contend that the Surveyor General confirmation procedures established by the 1854 Act did not satisfy requirements of fundamental fairness as required by the due process provisions of the U.S. Constitution. Heirs also contend that the CPLC confirmation procedures created by the 1891 Act did not properly reflect principles of equity. Based on the legal requirements of the time, however, and even under modern-day legal standards, we conclude that both procedures satisfied applicable legal requirements.[106]

Perceived Fairness and Due Process Issues with the Surveyor General Procedures

Some heirs and scholars contend that the Surveyor General process did not comply with the Constitution's requirements of due process of law. They focus on two alleged constitutional deficiencies: (1) that actual notice of the process was not provided to all individuals who might have a potential interest in a land grant; and (2) that an opportunity was not provided to such individuals to cross-examine persons who had filed

[106] As discussed later in this chapter, the United States had discretion as a matter of international law to adopt whatever confirmation procedures it deemed appropriate. Thus the only potential legal grounds for objecting to the procedures established in the 1854 Act are requirements of U.S. law such as the Constitution's due process requirements.

evidence in support of a land grant claim.[107] We are aware of no reported cases in which a court has addressed the constitutionality of the Surveyor

[107] Statements that the Surveyor General of New Mexico procedures violated the requirements of due process of law under the Constitution have appeared repeatedly in the land grant literature, and may contribute to the belief by some land grant heirs today that the procedures violated legal requirements. Because of the prominence of these statements and the role they may play in the continuing public debate over implementation of the Treaty of Guadalupe Hidalgo, we quote four selected examples at length here:

(1) "The procedures followed by the Surveyor General . . .lacked the due process safeguards of notice and a hearing. [The Surveyor General] acted *ex parte*, the claimant merely presenting evidence, usually by affidavit, without challenge or cross-examination. . . The Tierra Amarilla case is illustrative of . . . the injustice of the Surveyor General system in New Mexico which failed to hold hearings or to provide adequate notice. Political influence generally determined the outcome of many of these 'adjudications.' They can hardly be called adjudications since they contained none of the procedures associated with due process."—Charles DuMars and Malcolm Ebright, *Problems of Spanish and Mexican Land Grants in the Southwest: Their Origin and Extent*, 1 Southwest Rev. of Mgmt. & Econ. 177, 177, 185 (1981) (no legal authorities cited) (footnote omitted, quoting selected portion of 1867 annual Surveyor General's Report addressing impact on private claimants).

(2) "The most glaring disparity [between the Surveyor General of New Mexico and the California Commission] was in the procedures manipulated by the Surveyor General. 'He acted ex-parte, the claimant merely presenting evidence . . .without challenge or cross-examination.' . . '[D]ue process safeguards of notice and a hearing' were disregarded and the door was left open to fraud and political collusion."—P. Gómez, footnote 93 above, pp. 1069-70 (1985) (citing DuMars and Ebright, above).

(3) "[S]urely the most serious defect in the surveyor general procedure [was that] it lacked the essential element of all true adjudication—due process of law. To adjudicate land titles is to determine land ownership judicially, and the Constitution of the United States mandates that no one be deprived of property without a judicial determination meeting the requirements of due process of law. Due process requires that there be a hearing at which interested parties can present evidence and cross-examine opposing witnesses and that actual notice of the hearing be given to those whose property rights might be affected. The failure to require a hearing with an adversarial procedure meant that most claims were decided solely on self-serving affidavits with no opportunity for cross-examination. Potential adverse claimants were usually not even notified of the proceedings."—M. Ebright, *Land Grants and Law Suits in Northern New Mexico*, footnote 83 above, p. 39 (citing 16 American Jurisprudence 2d [Constitutional Law] § 935).

(4) "The prime culprit here [regarding Surveyor General's evaluation of the Tierra Amarilla Grant] was the system of land grant adjudication devised by Congress for New Mexico. It was not a real adjudication meeting due process of law standards, but was a one-sided administrative proceeding in which the Surveyor General acted as lawyer, judge and jury. This is in sharp contrast to the relatively fair judicial system employed in California to settle land grant claims, under which both the claimant and the government were represented by lawyers. There, the issues of the validity and nature of the grant were argued before a commission which decided the questions raised in an adversary proceeding."

General procedures. Based on the legal requirements at the time, however, and even under today's legal standards, we conclude that the process satisfied constitutional due process requirements.

The Fifth Amendment to the U.S. Constitution, ratified in 1791 as part of the Constitution's Bill of Rights, requires that when the federal government deprives any person of "life, liberty, or property," it must do so through "due process of law." The Fourteenth Amendment, ratified in 1868, imposes the same requirement on state governments. The specific procedures required by the Fifth and Fourteenth Amendments—what "process" is "due"—have evolved over time and vary depending upon the particular circumstances of each case.[108] The U.S. Supreme Court issued its first decision discussing what constituted due process under the Fifth Amendment in 1856,[109] and it has been clear since that time that due process does not necessarily require a formal court proceeding.[110] Rather, as the Supreme Court explained in 1877, where there is notice that a property interest is at stake and opportunity for a proceeding that is "appropriate to the nature of the case, the judgment in such proceedings can not be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."[111] As the

"The difference between these two procedures illustrates the requirements of due process of law, a right guaranteed under the United States Constitution. The elements of due process are: a hearing, at which all interested parties have the right to present evidence and cross-examine opposing witnesses, and actual notice of the hearing to those whose property rights might be affected."—Malcolm Ebright, *The Tierra Amarilla Grant: A History of Chicanery* (Center for Land Grant Studies, 3rd ed. 1993), pp. 18-20 (citing 16 American Jurisprudence 2d [Constitutional Law] § 935).

[108] As one commentator has noted, "[d]ue process may be the most frequently litigated concept in the Constitution." Robert Riggs, *Substantive Due Process in 1791*, 1990 Wis. L. Rev. 941, 941 n. 1 (1990).

[109] *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 282 (1856) (holding U.S. Treasury Department complied with due process requirements using summary, non-court procedures to seize property owned by former Collector of the Customs to satisfy $1.3 million government debt; Court relies on "[i]mperative necessity" of federal government to raise funds and fact that debtor could dispute debt in subsequent court proceeding).

[110] *See Davidson v. City of New Orleans*, 96 U.S. 97, 102 (1877) ("An exhaustive judicial inquiry into the meaning of the words 'due process of law,' as found in the Fifth Amendment, resulted in the unanimous decision of this court, that they do not necessarily imply a regular proceeding in a court of justice, or after the manner of such courts.") (citing *Murray's Lessee*, footnote 109 above).

[111] *Davidson*, footnote 110 above, p. 105 (upholding collection of state property taxes and possible forfeiture only after personal service of notice had been provided to owners whose identities were known or, for those who were unknown or could not be found, "due advertisement" of the proceeding).

Supreme Court commented in the early 1900s, "[t]he fundamental requisite of due process of law is the opportunity to be heard."[112]

As time has progressed, the Supreme Court has clarified that the opportunity to be heard must be afforded "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Accordingly, there must be both "notice and an opportunity to be heard." *See*, *e.g.*, *Dusenbery v. United States*, 534 U.S. 161, 167 (2002). As discussed below, we conclude that the Surveyor General of New Mexico procedures met both of these fundamental due process requirements as the courts defined them at the time and even today.

Adequacy of Notice Provided to Land Grant Claimants

At the time of the Surveyor General process in the 1800s, the type of notice required even for a formal court proceeding depended largely on whether the court's jurisdiction was deemed to be "*in rem*," "*quasi in rem*," or "*in personam*."[113] If a proceeding were *in rem* or *quasi in rem*—the latter including the Surveyor General/congressional confirmation process in New Mexico—then "constructive" notice could suffice. Constructive notice could be given by publication in a newspaper, for example, particularly if the category of potentially covered persons was described in

[112] *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

[113] As noted in chapter 1 (footnote 21), an *in personam* case is one in which the court decides rights of particular persons; an *in rem* case is one in which the court decides the rights of all persons in particular property; and a *quasi in rem* case is one in which the court decides the rights of particular persons in particular property. See footnote 21 above.

the notice.[114] On the other hand, if a proceeding was *in personam*, then additional notice—for example, personal notice directed to the specific individuals involved—might be required.[115]

By the mid-1900s, the Supreme Court had moved away from this *in rem/in personam* distinction. As the Court noted in *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956), it is impossible to set up a "rigid formula as to the kind of notice that must be given, [and the] notice required will vary with circumstances and conditions." Instead, the Court declared that due

[114] The rule that constructive notice sufficed to alert property owners of proceedings that could deprive them of their ownership rights was based in part on courts' judgment that owners should monitor activities that could affect their property. *See*, *e.g.*, *The Mary*, 13 U.S. 126, 144 (1815) ("[I]t is the part of common prudence for all those who have any interest in [property], to guard that interest by persons who are in a situation to protect it."). This included an obligation of property owners to take notice, by reading the newspaper, of government actions that might adversely affect their property. *See*, *e.g.*, *Huling v. Kaw Valley Railway & Improvement Co.*, 130 U.S. 559, 564 (1889) ("It is, therefore, the duty of the owner of real estate . . . to take measures that in some way he shall be represented when his property is called into requisition; and if he fails to do this, and fails to get notice by the ordinary publications which have usually been required in such cases, it is his misfortune, and he must abide by the consequences. Such publication is 'due process of law' as applied to this class of cases.") (citations omitted). In *Huling*, the Supreme Court found that newspaper notice announcing that land in a general area was at risk for a railroad right-of-way provided due process to non-resident owners: "we think that this was all the notice they had a right to require. Of course, the statute [requiring newspaper notice] goes upon the presumption that, since all the parties cannot be served personally with such notice, the publication, which is designed to meet the eyes of everybody, is to stand for such notice." *Id.* at 563.

Similarly, in *Case of Broderick's Will*, 88 U.S. 503 (1874), the Supreme Court declined to hear claims filed by heirs seeking real property that already had been distributed as part of a probate proceeding in which they had not participated. General notice of the proceeding had been published in the local newspaper, and the fact that the heirs did not see the notice because they lived "in a secluded region" was not considered relevant. "If this excuse could prevail," the Court explained, "it would unsettle all proceedings in rem. . . . Parties cannot thus, by their seclusion from the means of information, claim exemption from the laws that control human affairs, and set up a right to open up all the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings in rem." *Id.* at 518-19. *See also Winona & St. Peter Land Co. v. Minnesota*, 159 U.S. 526 (1895) (notice by publication sufficient for tax forfeiture proceeding); *Leigh v. Green*, 193 U.S. 79, 93 (1904) (same); *Ballard v. Hunter*, 204 U.S. 241, 255 (1907) (same); *Longyear v. Toolan*, 209 U.S. 414, 418 (1908) (same); *North Laramie Land Co. v. Hoffman*, 268 U.S. 276 (1925) (newspaper notice sufficient for taking of property to build county road).

[115] *See*, *e.g.*, *Pennoyer v. Neff*, 95 U.S. 714 (1878); *Arndt v. Griggs*, 134 U.S. 316 (1890); *Hamilton v. Brown*, 161 U.S. 256 (1896). *See generally Mennonite Board of Missions v. Adams*, 462 U.S. 791, 796 n.3 (1983); *Shaffer v. Heitner*, 433 U.S. 186, 196-205 (1977).

process simply requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306, 314 (1950). Notice by publication is constitutionally sufficient, the Court ruled in *Mullane*, "where it is not reasonably possible or practicable to give more adequate warning," such as "in the case of persons missing or unknown" or those "whose interests are either conjectural or future." *Id.* at 317. By contrast, additional notice beyond publication is required when the specific names and addresses of interested parties are known. In determining what level of notice is required, the *Mullane* Court also considered the nature of the proceeding, the effort necessary to identify interested parties and their addresses, the costs associated with such identification, and whether the notice given was likely to reach the parties interested in the proceeding.[116]

Today, even in the high-technology world of 21st century communications, due process does not require personal notice to all individuals with a potential interest in property that their interest may be in jeopardy. Rather, the Supreme Court has continued to focus on the overall reasonableness of notice in light of the circumstances. As the Court recently confirmed in *Dusenbery*, above, "the Due Process Clause does not require . . . heroic efforts by the Government . . . ." 534 U.S. at 170.[117] Rather, the standard is that the government's efforts need only be reasonably calculated to apprise a party of the pendency of the action; "'the criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements . . . .'" *Id.* at 170-71, quoting *Mullane*, 339 U.S. at 315.

Based on the foregoing, we conclude that the notice provided to potential claimants under the Surveyor General of New Mexico procedures satisfied due process. As a threshold matter, it is arguable that due process requirements did not even apply to the Surveyor General process. The Supreme Court has ruled that due process does not apply where a person's

[116] *See also Mennonite Board of Missions v. Adams*, footnote 115 above (mailed notice required for property tax foreclosure where names and addresses are available from deed records).

[117] In *Dusenbery*, the Court ruled that actual notice was not required even though the name and address of the interested party—a prison inmate—were readily available. The Court found that notice mailed to the inmate advising him of an imminent FBI administrative forfeiture proceeding afforded due process even though the inmate never received the notice due to mishandling at the prison. The Court reasoned that mailing the notice was reasonably calculated under the circumstances to apprise the inmate of the proceeding.

property or liberty interests may merely be affected—but not deprived—by the government. Proceedings before government entities that are not empowered to determine legal rights, for example, cannot actually deprive a person of life, liberty or property. In *Hannah v. Larche*, 363 U.S. 420 (1960), for instance, the Supreme Court held that due process did not apply to persons whose reputations (in which they had a property and liberty interest) might be harmed by a U.S. Civil Rights Commission investigation. The Court reasoned that the Commission was engaged only in fact-finding and was not authorized to adjudicate liability, issue orders, or "make any determinations depriving anyone of life, liberty or property . . . .[T]he Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action." *Id.* at 441. In *Jenkins v. McKeithen*, 395 U.S. 411 (1969), by contrast, the Court distinguished *Hannah v. Larche* and ruled that a person being investigated by a state commission whose findings allegedly had the practical effect of adjudicative determinations was entitled to due process rights, even though the commission could not officially make such determinations.

The Surveyor General, like the Civil Rights Commission in *Hannah v. Larche*, had no authority to make legally binding determinations of ownership. He acted as an investigator and fact-finder and applied principles of Spanish and Mexican law to formulate recommendations to Congress. Thus, as in *Hannah*, "[t]he only purpose of [the Surveyor General's] existence [was] to find facts which may subsequently be used as the basis for legislative . . .action." On the other hand, the recommendations of the Surveyor General, like the findings of the state commission in the Supreme Court's more recent *Jenkins v. McKeithen* decision, arguably had the practical effect of official determinations. Although Congress did not adopt all of the Surveyor General's recommendations, as noted in chapter 2, at the least, they carried substantial weight in Congress' decision whether or not to confirm a given grant.

Even assuming that due process requirements applied to the Surveyor General process, however, the newspaper notice that was provided to all potential land grant claimants afforded the requisite constitutional notice, namely, reasonable notice under the circumstances of the establishment of the Office of the Surveyor General of New Mexico and the requirement to submit a claim for any land grant for which governmental (congressional) confirmation was sought. As discussed above, under the legal standards of the 1800s, newspaper notice, not actual notice to all potential claimants,

was sufficient in *quasi in rem* proceedings such as the Surveyor General process. As detailed in chapter 2, at the least, the Surveyor General gave the newspaper notice required by Interior's instructions, in both Spanish and English, to all persons who might have an interest in a community land grant. The newspaper notice, which was published repeatedly, stated that claims should be filed with the Office of the Surveyor General and specified what information and testimony would be required to validate a claim. Whether or not these notices were published throughout New Mexico or only in Santa Fe, all potentially interested persons were provided with the identical notice and the evidence suggests it reached its intended audience: claims involving 130 of the 154 community land grants in New Mexico, and 208 of the 295 total land grants, were filed with the Surveyor General.[118] As in the *Huling* and *Broderick's Will* cases discussed above (footnote 114), the fact that some potential claimants may not actually have seen the newspaper notice does not mean it was constitutionally deficient. Moreover, the evidence suggests that potential claimants may have seen the newspaper notice but delayed in responding to it because the notice did not specify any filing deadline.[119]

Even under modern-day due process standards, we conclude that the Surveyor General's newspaper notice was sufficient because it was reasonably calculated under the circumstances to apprise interested parties of the pendency of the Surveyor General process. Neither the Surveyor General nor any other government official at the time knew or could reasonably ascertain the names and addresses of all persons with a potential interest in one or more of the 295 land grants within New Mexico. In addition, the interests of these persons was conjectural—virtually all residents had a *potential* interest, but whether they actually had an interest cognizable under the terms of the 1854 Act was unknown; determining this was the very purpose of the Surveyor General proceeding. In addition, even if the names and addresses of potential claimants had been known, millions of acres of land were at issue, and there was no practical method in the latter 1800s for personally contacting

[118] Eventually, claims were filed for 294 of the 295 Spanish and Mexican land grants in New Mexico. As reflected in appendix X to this report, no formal claim has been filed for the Montoya grant, a self-identified community land grant.

[119] As discussed in chapter 2, because the 1854 Act contained no deadline, the Surveyor General's newspaper notice requested only that claims be filed "as soon as possible." The early Surveyors General expressed concern that this lack of a deadline, among other reasons, initially resulted in few claims being filed.

all persons living in this vast area.[120] Unlike today, there was no direct mail delivery, no telephone system, and of course no Internet or electronic mail system. Newspapers were one of the most common means of communicating information to the public, particularly in rural areas.[121] While in theory it may have been possible, at great effort and expense, to scour the countryside to identify potential claimants, as the Supreme Court explained in *Dusenbery*, "the Due Process clause does not require . . . heroic efforts by the Government."

The conclusion that the Surveyor General's newspaper notice was reasonable under the circumstances is supported by the fact that the Surveyor General process was not a land grant claimant's only opportunity to establish title. As discussed in chapter 2, the 1854 Act provided that persons who held superior title under Spanish or Mexican law to a confirmed grant but did not file a claim for the grant with the Surveyor General could—and still can today, as evidenced by the *Montoya v. Tecolote Land Grant* lawsuit described earlier in this chapter—bring a subsequent court action challenging these congressionally confirmed decisions. This lack of finality means that potential claimants effectively had two opportunities to press their claim—either with the Surveyor General or in state court—and thus due process did not require that they receive actual, personal notice of the Surveyor General process. See *Mullane*, above, 339 U.S. at 314 ("An elementary and fundamental requirement of due process in any proceeding *which is to be accorded finality* is notice . . . [and an] opportunity to present their objections") (emphasis added).

Some have suggested that the Surveyor General's newspaper notice was constitutionally deficient. The basis of this contention appears to be a belief that potential claimants were entitled to both an initial actual notice advising them of the Surveyor General process and then a second actual

[120] While this report focuses on community land grants located within the present-day boundaries of New Mexico, as noted above, the Surveyor General of New Mexico also was responsible for evaluating claims and surveying lands located within the current boundaries of Arizona, Colorado and Nevada.

[121] Through the early 1900s, the federal Postal Service, established in 1789, transported mail principally by horseback (including the Pony Express), stagecoach, and railroad. Mail typically had to be picked up at a post office rather than being delivered to a specific address; residential delivery did not begin on a large scale in large cities until the 1860s, and did not begin in rural areas until the late 1890s (in what became known as rural free delivery or RFD). The telephone was not invented until 1876, and universal phone service was not developed until considerably later.

notice advising them that a claim had been filed regarding a particular land grant. Due process does not require notice of all subsequent steps in a proceeding once initial notice has been provided, however. Rather, persons who receive adequate initial notice and do not join a proceeding are deemed to be non-parties entitled to no special notice and presumed to be capable of asserting and protecting their specific rights.[122] Although some scholars compare the Surveyor General process unfavorably to what they characterize as the "relatively fair judicial system employed in California," the California process was identical in this regard—it also did not require actual notice to all potential claimants. The 1851 Act establishing the California Commission required only that "due and *public* notice" be given of the Commission's sessions (emphasis added), as the Supreme Court confirmed in *United States v. O'Donnell*, 303 U.S. 501, 516 (1938) (1851 Act "required no notice to be given to any third party"). Nor did the Commission's regulations require notice to potential adverse claimants after a claim had been filed for a particular grant. The regulations required only that the Commission give "due notice" to the original claimant and the U.S. Agent when the Commission was going to take testimony on the claim. *See* Organization, Acts and Regulations of the U.S. Land Commissioners for California (San Francisco: 1852), p. 5. Finally, regardless of what notice was technically required in California, we are aware of no evidence that actual notice was in fact provided to all persons with a potential interest in a particular California land grant once a claim had been filed. In sum, while the Surveyor General's newspaper notice may or may not have provided actual notice to every potential

[122] *See, e.g.*, *Elk River Coal & Lumber Co. v. Funk*, 271 N.W. 204 (Iowa 1937) (due process does not require notice of all subsequent steps once original notice has been provided); *Collins v. North Carolina State Highway & Public Works Commission*, 74 S.E.2d 709 (N.C. 1953) (same); *Lehr v. Robertson*, 463 U.S. 248 (1983) (non-parties not entitled to special notice).

claimant, it provided constitutionally adequate notice under the circumstances.[123]

Adequacy of Opportunity to Be Heard Provided to Land Grant Claimants

Another constitutional shortcoming of the Surveyor General process, according to some scholars, was the purported absence of an opportunity for persons with potential land grant claims to cross-examine those who had submitted claims to the Surveyor General. The contention is that the Surveyor General process was a one-sided "*ex parte*" proceeding without the needed scrutiny that allegedly only cross-examination could provide. As discussed below, however, due process does not necessarily require an opportunity to conduct cross-examination; it requires an opportunity to be heard. The Surveyor General process afforded the requisite opportunity to be heard to the relevant parties at the relevant points in the process. Moreover, claimants with superior title under Spanish or Mexican law still have this opportunity today.

Just as the notice required by due process varies from case to case, so does the type of "hearing" that must be made available. As the Supreme Court underscored in *Goss v. Lopez*, 419 U.S. 565, 579 (1975), a person deprived of a protected interest "must [only] be given *some* kind of notice and afforded *some* kind of hearing." (Emphasis in original.) At the time of the Surveyor General of New Mexico confirmation process in the 1800s,

[123] In some cases, due process notice may be provided by enactment of a statute that deprives persons of property rights after a certain period of time, even without providing any additional notice (including newspaper notice). Where a self-executing statute requires property claims to be filed in order to maintain ownership, the statute itself provides the necessary notice. *See*, *e.g.*, *Texaco*, *Inc. v. Short*, 454 U.S. 516 (1982) (notice not required of 2-year statutory deadline for filing of claims to retain dormant oil, gas and coal interests). *Cf. Tulsa Professional Collection Services*, *Inc. v. Pope*, 485 U.S. 478 (1988) (notice not required of statutes of limitations). As the Supreme Court explained in *Texaco*, "[p]ersons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property . . . [and] it has never been suggested that each citizen must in some way be given specific notice of the impact of a new statute on his property before that law may affect his property rights." *Id.* at 532, 536 (citations omitted).

We conclude that enactment of the 1854 Act, without more, did not provide this type of "*Texaco*" due process notice with respect to the Surveyor General process. The 1854 Act required the Surveyor General to solicit claims and make recommendations to Congress on their confirmation, but the statute itself did not provide for termination of property rights if property holders did not file a claim. Enactment of the 1851 and 1891 Acts, by contrast, which established 2-year deadlines for filing of claims with the California Commission and the CPLC, respectively, and deemed all lands for which claims were not filed to be part of the U.S. public domain, arguably constituted due process notice under the reasoning of the *Texaco* case.

the law was not well settled regarding which particular procedures were constitutionally required in which types of civil cases after notice had been provided.[124] As discussed above, however, it was clear at that time that due process did not always require a formal trial-type hearing and this remains the law today. *See*, *e.g.*, *Matthews v. Harney County*, Oregon, 819 F.2d 889, 892 (9th Cir. 1987) (due process "need *not* be a full adversarial hearing") (emphasis added). Under modern law, whether a right to cross-examine is constitutionally mandated depends on the particular facts of each case. In the *Hannah v. Larche* case above, for example, the Supreme Court denied cross-examination rights to the person who was the subject of negative testimony before the Civil Rights Commission, in part because the Commission was not authorized to take action depriving the person of his property or liberty rights.[125] The Court also was influenced by the need to ensure a smooth administrative process and the fact that it would be highly disruptive if outside parties were allowed to intervene and cross-examine each other. This result is consistent with the factors that courts balance today in determining whether particular hearing procedures are required, namely: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value of the additional safeguards; and (3) the government's interest in not providing the safeguard, including the financial and administrative burdens it would impose. *Mathews v. Eldridge*, above, 424 U.S. at 334-35.

Based on the foregoing, we conclude the Surveyor General process provided a reasonable opportunity to be heard under the circumstances, including appropriate "cross-examination" rights. As discussed in chapter 2, the Surveyor General process served a discrete and limited purpose: to determine who owned a tract of land as between a particular claimant and the United States (a *quasi in rem* case), not who owned the land as

[124] By contrast, the Sixth Amendment to the Constitution, ratified in 1791, generally provides a right to cross-examine in all *criminal* prosecutions. The Sixth Amendment guarantees criminal defendants the right to "confront" witnesses against them, and this generally has been interpreted to include the right to cross-examine.

[125] *See also Securities and Exchange Commission v. Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984) (target of SEC investigation had no due process right to cross-examine witnesses because investigation would not result in determination of legal liabilities); *United States v. Nugent*, 346 U.S. 1 (1953) (persons claiming Conscientious Objector status had no right to cross-examine persons providing information to the Federal Bureau of Investigation, where the draft appeals board, not the Federal Bureau of Investigation, determined Conscientious Objector status using Federal Bureau of Investigation information).

between all parties (an *in rem* case).[126] The only party directly adverse to the *claimant*—and the party that the *claimant* might have the right to cross-examine—was the United States. While the evidence does not indicate that claimants literally cross-examined U.S. representatives, the vast majority of claimants were represented by legal counsel and had an opportunity in the course of presenting their claim to address deficiencies in their documentation or other supporting evidence identified by the Surveyor General. The claimant therefore had some opportunity to "cross-examine" the United States, either through the Surveyor General's questions or more directly in cases in which a U.S representative appeared.[127] This degree of cross-examination was appropriate even under the present-day *Mathews v. Eldridge* balancing test, because the additional value that formal cross-examination of the United States likely would have provided would have been outweighed by the financial and administrative burden it would have imposed.

As to whether persons who were not already before the Surveyor General—namely, parties with potential adverse interests who did not themselves file a claim—were constitutionally entitled to appear and conduct cross-examination in an ongoing proceeding, as some scholars contend, we conclude they were not. Those persons received identical notice of the Surveyor General process as persons who filed claims, and they would have had the same cross-examination rights as claimants if

[126] As the New Mexico state court recently found in the *Montoya v. Tecolote Land Grant* case with respect to the heirs' argument that they should be allowed to pursue claims under their superior Mexican title, "[i]t was not the function of the Surveyor General or the U.S. Congress to determine and adjudicate any existing valid adverse rights within the exterior boundaries of a land grant. . . .[Rather, the] Congressional purpose [in creating the Surveyor General/congressional confirmation process] . . .was to determine what lands belonged to the United States by segregating such as had become, under the former sovereignty, private property; not to adjudicate, nor to provide for the adjudication, of conflicting private claims." Findings of Fact and Conclusions of Law, footnote 92 above, Conclusions of Law para. 24-25. *See also Beard v. Federy*, 70 U.S. 478 (1865); *Board of Trustees of Antón Chico Land Grant v. Brown*, 33 N.M. 398 (1928); *State v. Red River Valley Co.*, 51 N.M. 207 (Ct. App. 1946). *But see Lobato v. Taylor*, 13 P.3d 821 (Colo. Ct. App. 2000) (citing *Tameling*), *rev'd on other grounds*, 71 P.3d 938 (Colo. 2002) (holding later claimants bound by 1860 confirmation act despite act's statement that it affects only rights of U.S. and original claimant).

[127] One scholar has criticized the Surveyor General process as "a one-sided administrative proceeding in which the Surveyor General acted as lawyer, judge, and jury," as noted above. However, the Constitution does not require judge and jury functions to be performed by different persons. *Chicago, R.I. & P.R. Co. v. Cole*, 251 U.S. 54 (1919). Even today in less formal proceedings, one person sometimes serves in all three roles—lawyer (asking questions of witnesses), judge (applying the law), and jury (determining facts).

they had filed claims as well. Where, as in the case of the Surveyor General procedure, constitutionally required notice is given, due process does not afford a right of cross-examination to persons who do not respond to the notice by filing a claim or taking other required action. Assertions that the Surveyor General process was an unconstitutional *ex parte* proceeding as to such non-filers are contrary to decisions like *Hannah v. Larche*, above, where cross-examination was denied to persons allegedly harmed by testimony being given before a government investigatory body. As the Court explained in *Hannah*, allowing outside parties to intervene and confront witnesses "would make a shambles of the investigation and stifle the agency in its gathering of facts." *Hannah*, 363 U.S. at 444. While the Surveyor General process was less complex than modern-day agency investigations, allowing additional parties to participate would have added to government's financial and administrative burdens, without assuring a more accurate result on the only question facing the Surveyor General: whether the primary claimant had title superior to the *United States*, not to all other parties. Surveyor General Clark recognized that it was the government that was at risk in his 1867 Annual Report, observing that "[g]reat injustice is liable to be done, as well to claimants as to the *government*, by this anomalous manner of determining the rights of the parties." (See chapter 2, fig. 6 (emphasis added).)

Indeed, third parties with potential competing community land grant claims were in a better position than the parties denied cross-examination rights in *Hannah*. While the *Hannah* parties had no alternative means to ensure that their position was heard, the would-be land grant claimants had several. First and most directly, they could have filed their own claims before the Surveyor General, just as the original claimants had done. Second, even though adverse parties did not have a *constitutional* right to intervene and cross-examine claimants in ongoing cases, claimants' written submissions to the Surveyor General were required to identify any known adverse claimants. As noted in chapter 2 (footnote 46), adverse claimants did in fact appear and conduct cross-examination of principal claimants in some cases, and principal claimants also were cross-examined by the U.S. representative or the Surveyor General himself in a number of instances. Third, even after a land grant had been confirmed as between the principal claimant and the United States, a party claiming title superior to the claimant under Spanish or Mexican law could file a subsequent lawsuit in state court, as heirs have done in the current *Montoya v. Tecolote Land Grant* case. Even today, providing this type of

opportunity—having a hearing after, rather than before, a property right may be deprived—satisfies due process where there is an overriding government need to act.[128] In the 1800s, courts gave even more deference to the government's need to advance an important public interest in determining whether *ex parte* seizure of property was constitutional. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 59-60 (1993) (summarizing 1856-1889 cases allowing *ex parte* seizures based on what the Supreme Court called "executive urgency"). Because third-party claimants with superior title could (and still can) assert their rights through a subsequent lawsuit, any "pre-hearing deprivation" of property that may have occurred during the Surveyor General process may be justified by the government's need in the late 1800s to resolve ownership of lands in the southwest in order to promote settlement. Moreover, as noted, this would be the third opportunity that such adverse claimants have had to be heard.

Finally, scholars have pointed to differences in cross-examination practices between the Surveyor General and California Commission processes as evidence that the Surveyor General process was unconstitutional. Yet a procedure does not violate due process simply because another procedure provides additional rights.[129] Congress and other governmental bodies often provide rights beyond the minimum required, and in the California Commission process, persons who had filed a claim were allowed to submit a request to intervene and conduct cross-examination in another case where the land they claimed was at issue.[130]

[128] *See, e.g.*, *Mathews v. Eldridge*, above (pre-hearing termination of Social Security disability payments constitutional where subsequent agency hearing available); *Ingraham v. Wright*, 430 U.S. 651(1977) (pre-hearing student punishment constitutional where subsequent state tort suit available).

[129] *Stein v. People of New York*, 346 U.S. 156 (1953); *see also Davon, Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996) (Congress not required to select fairest procedure, only a fair, rational, and non-arbitrary procedure).

[130] The Commission's regulations provided that "[w]hen the same tract of land, or a portion of it is claimed adversely under Spanish or Mexican title by two petitioners, either or both of them, may file a motion in the case of the other, for leave to appear and contest the right of the petitioner to a confirmation of his claim; . . . and upon the granting of such motion, the petitioner will be required to notify the contesting claimant or his counsel, as well as the [U.S.] Law Agent, of the time and place of taking evidence, and such claimant or his counsel, may appear and cross-examine witnesses, and may also attend to the taking of testimony against the petitioner, and be heard in the argument upon the question relating to his interfering claim." *Organization, Acts and Regulations of the U.S. Land Commissioners for California*, above, p. 6.

There is no evidence, however, that the Commission believed this procedure was constitutionally required, and the fact that the Commission reserved the right to deny such requests indicates it did not. Moreover, in the Commission's explanation of why, by a 2-1 divided vote, it adopted this intervention/cross-examination process, all three Commissioners stressed that the Commission was not carrying out a judicial function—where cross-examination might sometimes be required—but rather a political function.[131]

The non-judicial, non-adversarial nature of the California Commission's proceedings was discussed at length by the Supreme Court in the *United States v. O'Donnell* case, discussed in chapter 1 (footnotes 18 and 24). The *O'Donnell* Court rejected the argument that one of the Commission's confirmation determinations should be stricken because it was not the result of the Commission's allegedly "vigorous" process. *O'Donnell*, 303 U.S. at 523. To the contrary, the Supreme Court explained, the Commission's process was not intended to be vigorous or adversarial:

> [T]he Government owed no duty to the [adverse claimant] to contest the [principal] claim [because] . . . the proceeding before the Board was not adversary. . . . The Board was an administrative body, created . . . 'to ascertain and settle the private Land Claims in the State of California,' by proceedings which were not required to be controversial. It was begun without notice to any other party. While the attendance by the 'agent' of the United States was required in order that he might 'superintend the interests of the United States,' it did not appear in the role of litigant. . . .The Board was an administrative body, not a court. . . .Since the [1851 Act] did not require adversary proceedings, the validity of its administrative determination was unaffected by their absence.

Id. at 523-24. Implicit in the Supreme Court's approval of the California confirmation procedure was the fact that due process does not require adversarial procedures, for nowhere in the Court's extensive discussion of the California procedures does the Court even mention possible due

[131] *See Organization, Acts and Regulations of the U.S. Land Commissioners for California*, footnote 130 above, pp. 8 (Commission is carrying out "a political obligation, which could not be performed by our courts of justice, acting in their ordinary judicial capacity."), 10 ("we are exercising for the legislature of the nation a political rather than a judicial authority."), 12 ("By the [1851 Act,] constituting the present commission, the political power of confirming Spanish and Mexican titles is delegated to the Commissioners . . . .").

process concerns.[132] In sum, the Surveyor General process in New Mexico provided the constitutionally required opportunity to be heard.

Perceived Equity Issues with the CPLC Process

Some heirs and scholars contend that the CPLC process was "inequitable" because the court was allowed under the 1891 Act to confirm only those grants which had been "lawfully and regularly derived" under Spanish or Mexican law. Particularly in comparison with the Surveyor General process—under which equitable rights could be considered if they were recognized under the "laws, usages, and customs of Spain and México," or in the context of the presumption that existence of a town at the time of the Treaty was clear evidence of a grant—some heirs and scholars believe the CPLC process was overly technical and "legal."

Although these perceived differences between the Surveyor General and CPLC processes were real, they reflect permissible differences created by the Congress. Congress gave different legal authority and different mandates to the two entities, with the CPLC process reflecting an evolution in Congress' judgment regarding what procedures were appropriate following its experience with the California and Surveyor General processes during the previous 40 years. Based on this experience, Congress decided to create more stringent standards for the CPLC to apply in deciding whether to approve community land grants, and the CPLC had no choice but to comply with these limits. As the Supreme Court noted in its 1897 *Sandoval* decision, the limitation on the CPLC's authority (and on the authority of the Supreme Court itself in reviewing appeals of CPLC decisions) meant land grant claims could not be

[132] Because the Supreme Court's decision in *O'Donnell* addresses many of the points made by current critics of the Surveyor General of New Mexico process, it is appropriate to quote additional passages here. In discussing the fact that the United States had discretion under the Treaty of Guadalupe Hidalgo and international law to carry out its property protection obligations using whatever procedures it deemed appropriate, the Court explained that the United States "could relegate all the multitude of claims under the Mexican grants to the ordinary procedure of courts with the inevitable delays and confusion affecting land titles in the vast annexed area . . . [or it] could set up an administrative tribunal acting by a more summary procedure designed to establish with finality the status of all the Mexican grants as of the date of annexation. It chose the latter course by the creation of the Board of Land Commissioners, by the [1851 Act]. . . . [T]he role of the Government was not that of a litigant. It was . . . supervisory: 'to superintend the interests of the United States' in the performance, through an administrative agency, of its treaty obligation to ascertain for the Mexican claimants, and for itself, what lands had been withdrawn from the public domain by the Mexican grants. 'The United States did not appear in the courts as a contentious litigant; but as a great nation . . .' *United States v. Fossatt*, 21 How. [62 U.S.] 445, 450, 451 [(1858)]." *O'Donnell*, 303 U.S. at 511-12, 516, 524 (footnote and other citations omitted).

approved based only on "equitable title" or lesser rights such as "usufruct" rights to use the land. Although the Court suggested it would like to have been able to consider equitable grounds in determining ownership, it recognized that the statute did not allow this and that it was "for the political department"—Congress—"to deal with the equitable rights involved" in community land grants. *Sandoval*, 167 U.S. at 298. As discussed below, so long as the procedures that the CPLC and reviewing courts followed complied with due process—and there is no suggestion they did not—it was within Congress' discretion to decide the procedures by which the United States would implement its property protection obligations under the Treaty. Thus whether the statutory scope of the CPLC's jurisdiction was an appropriate one was a policy judgment for the Congress in 1891, and it remains so today.

Any Conflict between the Confirmation Statutes and the Treaty Would Have to Be Resolved under International Law or by Additional Congressional Action

Finally, in addition to concerns about whether particular decisions under the 1854 Act and 1891 Act confirmation processes were appropriate, and whether the processes were fair and equitable under the U.S. Constitution and other law, land grant heirs and others have expressed concern that the substantive provisions of the statutes themselves—establishing the standards under which land grants would be confirmed—were inconsistent with the Treaty's property protection provisions, or at least with the international law doctrine that successor sovereigns should protect property rights of persons living in newly acquired areas according to the law of the former sovereign. As discussed above, heirs and scholars contend that the Surveyor General and CPLC processes did not adequately ensure that property rights would be protected to the same extent that they would have been under Spanish and Mexican law and custom. The CPLC process in particular is seen as problematic because the standard that the CPLC was directed to apply—approval only of those grants that had been "lawfully and regularly derived" under Spanish or Mexican law—did not allow courts to recognize lesser interests such as equitable title which may have been recognized by prior sovereigns.

These concerns can only be addressed today by additional congressional action or as a matter of international law, however. As noted in chapter 1, the Treaty of Guadalupe Hidalgo was not a self-executing treaty, and thus it required implementing congressional action in order to take effect in the United States. Although treaties and federal statutes generally have equivalent status under the U.S. Constitution (along with the Constitution itself, both are considered "supreme" over state law under Article VI, clause 2 of the Constitution), under U.S. law, a court must apply and follow later-enacted legislation even if it conflicts with a treaty's

provisions.[133] The Supreme Court applied this rule in the Treaty of Guadalupe Hidalgo context in *Botiller v. Dominguez*, 130 U.S. 238 (1889), in which it concluded that the 1851 Act's 2-year deadline for filing claims in California applied to all grants (both perfect and imperfect) despite the fact that the Treaty itself contained no deadline. Even if the 2-year deadline had conflicted with the Treaty, however, the Court declared, that would be "a matter in which the court is bound to follow the statutory enactments of its own government" and thus "no title to land in California, dependent upon Spanish or Mexican grants can be of any validity which has not been submitted to and confirmed by the board provided for that purpose in the act of 1851 . . . ." *Id.* at 247, 256. Remaining disputes would be "a matter of international concern," to be addressed as a matter of international law, the Court held; "[t]his court . . . has no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation . . . ." *Id.* at 247. The Supreme Court's subsequent rulings reviewing decisions by the CPLC reflect this *Botiller* rule, recognizing that while the 1891 Act establishing the CPLC's authority may or may not be more stringent than the Treaty, the Act has priority as a matter of U.S. law. Because the fundamental requirements of the 1854 and 1891 Acts were in fact carried out, as discussed above, remaining concerns based on any conflict between the terms of the Acts and the Treaty would have to be resolved as a matter of international law or by additional congressional action. While we do not suggest that any such conflict exists, as agreed, we do not express an opinion on whether the United States fulfilled its Treaty obligations as a matter of international law.

By contrast, any concerns about the specific confirmation procedures that Congress adopted—for example, whether notice and a formal hearing would be provided—cannot be addressed under the Treaty or international law but only under U.S. law, and as noted, we conclude that these requirements were satisfied. The United States' obligations under the Treaty were "political," not legal, and thus the United States had discretion as a matter of international law in the procedures it selected for carrying out these obligations. In *United States v. O'Donnell*, above, involving the

[133] As the Supreme Court explained in *Foster v. Neilson*, 27 U.S. 283, 314-15 (1829), where a treaty is not self-executing, "the treaty addresses itself to the political, not the judicial, department; and the legislature must execute the contract [treaty] before it can become a rule for the Court." *See also In re Cherokee Tobacco Case*, 78 U.S. 616, 621 (1870) ("The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supercede a prior act of Congress, and an act of Congress may supercede a prior treaty."). *See generally* C. Klein, footnote 9 above, 26 N.M.L. Rev., pp. 217-34.

California confirmation process, the Supreme Court explained that "[t]he obligations thus assumed by the United States [under the Treaty] . . . were political in character, to be discharged in such manner and upon such terms as the United States might deem expedient in conformity to its treaty obligations . . . . While the treaty provided that the claimants under Mexican grants might cause their titles to be acknowledged before American tribunals, it was silent as to the mode of selection or creation of such tribunals. The United States was left free to provide for them in its own way." *O'Donnell*, 303 U.S. at 511. The same rule applies to confirmation of land grants in New Mexico: the United States had discretion to establish whatever procedures (within constitutional limits) it deemed appropriate. In fact, as the *O'Donnell* Court specifically recognized in discussing the California process, Congress could have decided to resolve Spanish and Mexican land grant claims by a combination of administrative and congressional processes—the very combination that Congress later adopted for New Mexico in the 1854 Act. See *O'Donnell*, 303 U.S. at 515 ("Even after the submission of . . . claims to the [California] Board of Commissioners [the United States] could withdraw them from decision of the Board and courts and adjudicate them by Congressional action . . . [The United States had] full latitude . . . in the choice of modes of disposition of those claims . . . ."). Thus concerns about alleged deficiencies in the specific procedures that Congress adopted for New Mexico land grants can be addressed today only to the extent they raise issues under U.S. law, which we conclude they do not.

Notwithstanding this legal compliance with statutory and constitutional requirements, the New Mexico confirmation processes were inefficient and created hardships for many grantees, particularly compared with the Commission process that Congress had established for California under the 1851 Act. For policy or other reasons, therefore, Congress may wish to consider whether any further action may be warranted to address remaining concerns. For example, as detailed in this chapter and chapter 2, it took over 50 years once the Treaty was ratified for the U.S. government to complete its review of New Mexico land grant claims, and the New Mexico Surveyors General themselves reported during their first 20 years that they lacked the legal, language, and analytical skills and financial resources to review grant claims in the most effective and efficient manner. Although some claims were resolved quickly, a significant number of claims sat idle for long periods of time. Unfamiliarity with the English language and the American legal system made claimants reluctant to turn over land grant documents and often required them to hire English-speaking lawyers, sometimes necessitating sale of part of their claimed land—for many, their principal resource—to cover legal

expenses. In addition, because of delays in Surveyor General reviews and subsequent congressional confirmations—caused by the intervention of the Civil War, concerns about fraudulent claims, and other reasons—some claims had to be presented multiple times to different entities under different legal standards. In some instances, a single claim was subject to an original decision by the Surveyor General of New Mexico, a supplemental decision by a subsequent Surveyor General of New Mexico, a decision by the Court of Private Land Claims, and on appeal, a decision by the U.S. Supreme Court. Moreover, even after a grant was confirmed, the claims process was burdensome because of the imprecision and cost of having the lands surveyed, a cost that grantees had to bear for a number of years. Thus pursuing a land grant claim could be a lengthy, arduous and expensive task.

Summary

In summary, land grant heirs, scholars, and commentators have raised a number of concerns about decisions made about specific community land grants under the two New Mexico confirmation processes and about the nature of the processes themselves. Several published studies have identified three core reasons why CPLC and U.S. Supreme Court decisions restricted or completely rejected acreage for 17 of these grants that comprised about one-third of the "lost" acreage for community land grant in New Mexico (1.28 million acres out of 3.42 million acres). If Congress had established less stringent standards for the CPLC to apply in evaluating claims for these land grants, such as those it had established for the California Commission or the Surveyor General of New Mexico, the results for these 17 grants might have been different, particularly if Congress had given the CPLC the same type of equity jurisdiction it gave to the California Commission. As to the broader concerns with the two New Mexico confirmation procedures, the evidence indicates that the Surveyor General process complied with constitutional due process requirements and that the CPLC process considered equitable rights to the extent Congress deemed appropriate, as was its prerogative. Finally, even if there were conflicts between the substantive standards that Congress established in the Surveyor General and CPLC processes and the requirements of the Treaty or other international law, which we do not suggest there were, these would have to be resolved as a matter of international law or by additional congressional action. By contrast, any concerns about the particular procedures that Congress, the Surveyor General, or the CPLC adopted cannot be addressed under the Treaty or other international law but only under U.S. legal requirements such as the Constitution's procedural due process requirements. Notwithstanding the compliance of the New Mexico confirmation procedures with relevant U.S.

statutory and constitutional requirements, the confirmation processes were inefficient and created hardships for many grantees. Congress may wish to consider whether any further action may be warranted to address remaining concerns.

Chapter 4: Heirs and Others Are Concerned That the United States Did Not Protect Community Land Grants after the Confirmation Process, but the United States Was Not Obligated to Protect Non-Pueblo Indian Lands Grants after Confirmation

Overview

Some land grant heirs and advocates of land grant reform have expressed concern that the United States failed to ensure continued community ownership of common lands after the lands were awarded during the confirmation process. They contend that the Treaty of Guadalupe Hidalgo imposed a duty on the United States to ensure that these lands were not subsequently lost through other means, either voluntarily or involuntarily, and that because the United States did not take such protective action, the United States breached this alleged "fiduciary" duty. (A fiduciary duty is a duty to act with the highest degree of loyalty and in the best interest of another party.) Land grant acreage has been lost, for example, by heirs' voluntary transfers of land to third parties, by contingency fee agreements between heirs and their attorneys, by partitioning suits that have divided up community land grants into individual parcels, and by tax foreclosures. Some land grant heirs also contend that the Treaty specifically exempts their confirmed grant lands from taxation. These issues have great practical importance to claimants, because it appears that virtually all of the 5.3 million acres in New Mexico that were confirmed to the 84 non-Pueblo Indian community grants have since been lost by transfer from the original community grantees to other entities. This means claimants have lost substantially more acreage *after* the confirmation process—almost all of the 5.3 million acres that they were awarded—than they believe they lost *during* the confirmation process—the 3.4 million acres they believe they should have been awarded but were not.

We conclude that under established principles of federal, state, and local law, the Treaty did not create a fiduciary relationship between the United States and non-Pueblo community grantees in which the United States was required to ensure the grantees' continued ownership of confirmed lands, nor did it exempt lands confirmed to these grantees from state or local property requirements, including, but not limited to, tax liabilities. The United States does have a fiduciary relationship with the Indian Pueblos in New Mexico, and it protects community lands that the Pueblos obtained under Spanish land grants. But this relationship is the result of specific legislation, bringing the Pueblos under the same general protections afforded to other Indian tribes, rather than the result of obligations created under the Treaty. Thus the U.S. did not violate any fiduciary duty to non-Pueblo community grantees.

Heirs Claim That the United States Had a Fiduciary Duty to Protect Confirmed Land Grants

Since the late 1800s and early 1900s, when the 84 non-Pueblo Indian community land grants were confirmed in New Mexico, it appears that ownership of the vast majority of confirmed acreage has been lost, and more may be at risk today. This means that claimants have lost substantially more acreage *after* completion of the confirmation process (as much as 5 million of the 5.3 million acres confirmed) than they believe they lost *during* the confirmation process (the 3.4 million acres that they believe they should have been awarded but were not, as discussed in chapter 2). As discussed below, grantees have lost ownership through voluntary actions of the communities themselves; contingency fee agreements with heirs' attorneys; partitioning suits, which have divided up community land grants into individual parcels; and tax foreclosures. Regardless of how ownership was lost, some heirs allege that under the Treaty of Guadalupe Hidalgo, the U.S. government had a fiduciary duty to protect the ownership of their lands even after the confirmation process was completed. As a result of this loss of ownership, the originally confirmed grants now contain only a fraction of the land that the original grantees received. For the 37 non-Indian community land grants for which we could obtain current information, only about 322,000 acres remain under community ownership, meaning that about 94 percent of the original acreage confirmed for those grants has now been transferred to others. Table 27 shows the original and remaining acreage for these 37 grants, as well as an estimated acreage of zero for the remaining 47 grants.[134]

[134] After an extensive search, we were unable to obtain any information on 47 of the 84 land grants. According to members of the New Mexico Land Grant Forum, the best estimate for the current acreage holdings of these grants is zero.

Table 27: Non-Indian Community Land Grants with Originally Confirmed Acreage and Currently Held Acreage

Grant name	Original acreage confirmed	Current community acreage owned	Acreage difference
Original documentation community land grants			
Abiquiú (Town of)	16,708.16	16,425.00	283.16
Albuquerque (Town of)	17,058.10	0	17,058.10
Antón Chico (Town of)	383,856.10	104,000.00	279,856.10
Atrisco (Town of)	82,728.72	68,000.00	14,728.72
Belén (Town of)	194,663.75	0	194,663.75
Cañón de Carnue	2,000.59	500.00	1,500.59
Casa Colorado (Town of)	131,779.37	0	131,779.37
Cebolleta (Town of)	199,567.92	32,000.00	167,567.92
Chililí (Town of)	41,481.00	30,000.00	11,481.00
Cubero (Town of)	16,490.94	13,000.00	3,490.94
Don Fernando de Taos	1,817.24	0	1,817.24
Juan Bautista Valdez	1,468.57	1,468.57	0
Las Trampas (Town of)	28,131.67	50.00	28,081.67
Las Vegas (Town of)	431,653.65	10,340.00	421,313.65
Los Trigos	7,342.06	1.00	7,341.06
Manzano (Town of)	17,360.24	117.00	17,243.24
Mora (Town of)	827,621.01	200.00	827,421.01
Nuestra Señora del Rosario, San Fernando y Santiago	14,786.58	14,786.58	0
San Antonio de las Huertas	4,763.85	700.00	4,063.85
San Miguel del Vado	5,024.30	7.00	5,017.30
San Pedro	31,594.76	250.00	31,344.76
Santa Bárbara	30,638.28	100.00	30,538.28
Santa Fé	16,228.58	0	16,228.58
Santa Cruz	4,567.60	1,000.00	3,567.60
Sevilleta	261,187.90	0	261,187.90
Socorro (Town of)	17,371.18	0	17,371.18
Tejón (Town of)	12,801.46	500	12,301.46
Tierra Amarilla	594,515.55	0	594,515.55
Tomé (Town of)	121,594.53	0	121,594.53
Remaining 26 original documentation community land grants[a]	566,917.32	0	566,917.32
Subtotal original documentation community land grants	**4,083,720.98**	**293,445.15**	**3,790,275.83**
Self-identified community land grants			
Alameda (Town of)	89,346.00	0	89,346.00
Bartolomé Sánchez	4,469.83	2,700.00	1,769.83

Grant name	Original acreage confirmed	Current community acreage owned	Acreage difference
Cristóbal de la Serna	22,232.57	20,000.00	2,232.57
Francisco Montes Vigil	8,253.74	0	8,253.74
Mesita de Juana López	42,022.85	12.00	42,010.85
Santo Domingo de Cundiyó	2,137.08	1,400.00	737.08
Sebastián Martín	51,387.20	0	51,387.20
Tecolote (Town of)	48,123.38	4,545.00	43,578.38
Remaining 21 self-identified community land grants[a]	1,005,273.28	0	1,005,273.28
Subtotal self-identified community land grants	**1,273,245.93**	**28,657.00**	**1,244,588.93**
Total	**5,356,966.91**	**322,102.15**	**5,034,864.76**

Source: GAO analysis and data from land grant heirs.

[a]After an extensive search, we were unable to obtain any information on 47 of the 84 land grants, and according to members from the New Mexico Land Grant Forum, the best estimate for the current acreage holdings of these grants is zero.

Heirs Transferred Some Community Lands to Private Ownership

Some community land grants have lost acreage as a result of actions taken directly by land grant heirs themselves. The territory, and later the state, of New Mexico enacted laws that authorized the incorporation of community land grants, with boards of trustees and by-laws, and authorized these boards to transfer or sell portions of the common lands, either to individual land grant families or to outside interests.[135] Currently, about 20 land grant communities are seeking to re-acquire lands that have been lost in this manner. Land grant families that received confirmed community land grants also sold large amounts of this land to outside interests. In addition, feuds within and between families to gain control of the land grants often left families vulnerable to losing land ownership through fraud or unfair practices because speculators were able to capitalize on the divisiveness that resulted from the internal quarrels. For example, in 1955, some of the heirs of the Town of Tomé, a New Mexico community land grant corporation, who owned no livestock and saw no benefit from the grant's policy of using the common lands for grazing, voted to transform the community land grant corporation into the Tomé Land and

[135] Under the earlier laws, the incorporated land grant's by-laws defined trustee responsibilities, rules for determining grant membership, and title stipulations. In 1927, New Mexico enacted a state statute amending previous statutes to allow community-grant boards of trustees to sell portions of the common lands. *See* N.M. Stat. Ann. 49-2-7 (2001). *See also* Phillip B. Gonzales, "Struggle for Survival: The Hispanic Land Grants of New Mexico" (Albuquerque, N. Mex.: University of New Mexico, 2002).

Improvement Company (Tomé Land), a private corporation. In 1968, Tomé Land sold virtually all of its common lands to a private development company. Other heirs sued, claiming that in 1955 the Town of Tomé did not have authority to change itself into a private stock corporation.[136] They did not contest the sale of common lands to the development company, but only sought to share in the proceeds from such sale. Reversing a lower court ruling, in 1978 the New Mexico Supreme Court decided that the Town of Tomé was not authorized to convert itself into a private corporation in 1955 and directed the District Court of Valencia County "to make a determination of all rightful heirs" to the Tomé land grant and to distribute the proceeds of the sale accordingly.[137]

The Town of Atrisco, New Mexico, had a similar experience. Heirs from the Town of Atrisco approved the incorporation of the Westland Development Company, Inc. Litigation ensued from 1970 to 1976 to determine the stock rights of the original 225 incorporators in the new corporation. Each incorporator was awarded 3,175 shares of stock, and in 1979, Westland paid them the first dividend. Not all of the heirs were pleased with this outcome, however, and in the 1970s, several heirs formed an organization called the Atrisco Land Rights Council, which asserted that the decision for the Westland Development Company, Inc., to become a for-profit organization violated the spirit and the law of the Treaty of Guadalupe Hidalgo. Today, the council is calling for the return of the common lands, and it frequently voices its objections at public forums when Westland (which now was 5,723 stockholders) attempts to sell or develop the lands.

Private Arrangements with Attorneys Resulted in Loss of Community Lands

A second reason why ownership of community land grant acreage has been lost after it was confirmed is that grantees transferred the lands to attorneys in payment for legal representation. Many land grant claimants sought legal assistance in filing claims during the confirmation process because of the legal complexities involved in the process. Because claimants could seldom afford to pay for these legal services in cash, attorneys' fees were commonly paid in land. If a grant was confirmed, attorneys obtained either a percentage interest in their clients entire

[136] However, in 1967 the New Mexico legislature authorized community land grant corporations to convert themselves into private corporations. N.M. Stat. Ann. 49-2-18 (2001).

[137] *See Apodaca v. Tomé Land & Improvement Co.*, 91 N.M. 591, 598 (1978).

commonly owned land grant or, in some cases, title to a certain amount of land as payment for their services. Reflecting a typical attorney-client contingency fee arrangement, grantees usually agreed to give the attorney a one-third undivided interest in the entire land grant if the attorney succeeded in securing confirmation of the grant, or, if confirmation was rejected, the attorney would receive nothing. Attorneys have also received land for legal services provided to land grant heirs outside of the confirmation process. For example, according to heirs of the Town of Antón Chico grant, attorneys who represented the grant in a legal dispute with the Preston Beck Jr. grant took possession of one-third of the 383,856-acre Antón Chico grant, or over 100,000 acres.

Partitioning Suits Led to Breakup of Common Lands

A third scenario in which community land grant acreage has been lost after confirmation is as the result of "partitioning suits." These lawsuits have resulted in the subdivision of community grants jointly owned by "tenants-in-common" into individually owned parcels that could more easily be used or sold.[138] For example, if 15 individuals each owned an undivided 1/15 interest as tenants-in-common of a 45,000-acre community land grant, one of the owners could request a court to partition the grant into fifteen 3,000-acre parcels (assuming each of the parcels is of equal value). After partitioning, each individual would own 100 percent of a 3,000-acre parcel, rather than a 1/15 undivided interest in the 45,000-acre grant.

Partitioning was not allowed in New Mexico prior to 1876, when it became authorized under a New Mexico territorial statute.[139] Through this law, at the request of one of the grant's co-owners, a court could require a jointly owned land grant to be divided among its owners or sold to pay outstanding attorneys' and other legal fees. According to heirs and scholars, attorneys often instigated partition suits after they had succeeded in obtaining confirmation of a grant, to obtain payment for fees owed under a contingency fee agreement. The standard fee for obtaining grant confirmation of a grant ranged from a one-fourth to a one-third

[138] Tenancy-in-common is a type of real property ownership in which two or more people own an undivided interest in an entire parcel of land. The property may be divided by mutual agreement or pursuant to a partitioning suit, which is a court action that divides real property owned by more than one person into separately owned pieces of property.

[139] *See* David Benavides, "Lawyer-Induced Partitioning of New Mexican Land Grants: An Ethical Travesty" (Guadalupita, N. Mex.: Paper, Center for Land Grant Studies, 1994).

undivided interest in the common land, but because owning land in common with clients was not an attractive option for most attorneys, the attorneys, who were then co-owners of the grant, filed partitioning suits to force the sale of common land and obtain cash by selling the resulting individual parcel.

Some heirs and legal experts contend that under Spanish and Mexican law, a community land grant could not be owned by tenancy-in-common and thereby become partitionable. Partitioning was seen as contrary to the Spanish and Mexican systems of land tenure, under which common lands had to remain intact so they could serve as a perpetual resource for the community. Heirs and scholars thus contend that the U.S. confirmation process, in allowing tenancies-in-common, created a land tenure pattern that did not exist in New Mexico for community grants and led to partitioning that likely would never have occurred under Spanish or Mexican law. As one researcher has asserted, many grantees undoubtedly were not even aware that they were tenants-in-common, and they continued to occupy and use the land under the assumption that they had no private interest in it.[140] It was often the filing of a partitioning suit that first made heirs aware of the concept of tenancy-in-common, and it was through these suits that grantees first learned that private entities had assumed ownership of their common lands. In the case of the Cañón de San Diego Land Grant, for example, the common lands were partitioned and sold, and the new owner began to charge residents for the right to graze and gather firewood—rights which they had previously enjoyed for free.

Property Taxes and Subsequent Foreclosures Led to Loss of Land Ownership

A final reason for the post-confirmation loss of ownership of community land grant acreage has been foreclosures on the land for tax delinquencies. Foreclosures have come about in part as the result of original land grantees' unfamiliarity with the concept of paying annual property taxes. According to a study commissioned by the state of New Mexico in 1971, the direct assessment of property taxes in New Mexico did not begin until the 1870s, at which point the grantees had to learn quickly about taxation and the consequences of nonpayment.[141] The payment of property taxes

[140] *See* G. Taylor, "Notes on Community-Owned Land Grants in New Mexico, 9" (University of New Mexico Law Library, 1937); David Benavides, footnote 139 above.

[141] White, Koch, Kelly, and McCarthy, Attorneys at Law, and the New Mexico State Planning Office, *Land Title Study* (Santa Fe, N. Mex.: 1971).

was difficult because grantees' farming and ranching were subsistence and noncommercial in nature and therefore did not produce cash income. The imposition of cash tax liabilities on the land thus required not only revision of heirs' understanding of taxation but also a change in their system of land use in the entire economy. When grant owners proved unable to pay taxes on commonly held grazing lands, county governments seized the property and sold it at auction to pay delinquent property taxes, often for less than the amount of the tax delinquency. The County of Taos, for example, obtained a tax delinquency judgment from the First Judicial District Court of New Mexico against several land grants, and offered the grants at public auction in order to collect what was owed. The County sold the Arroyo Hondo Land Grant at a public auction because of delinquent taxes for 1893-95 and 1897-98.

The Sevilleta grant, the largest grant confirmed by the Court of Private Land Claims, is another example of a grant that lost land as a result of delinquent taxes. The grant heirs allege that the U.S. government failed to protect the grantees by allowing the land to be taxed and sold. The heirs contend that their ancestors' lack of fluency in English compounded the problem because they did not understand the legal concepts concerning taxation and because attorneys or officials intimidated and pressured the grantees into making decisions detrimental to their own interests. The heirs assert that it was not until New Mexico became a state in 1912 that the Sevilleta grant encountered difficulties, when Socorro County levied taxes on the grant. The grant's Board of Trustees did not pay the taxes because it assumed it did not have to, and by the mid-1920s, the grant was about $137,000 in arrears. Socorro County then sued for nonpayment of the taxes, and the court ruled in the county's favor. As a result, the entire grant was sold to a private landowner in 1936, and it has since been turned into a wildlife refuge.

The Treaty of Guadalupe Hidalgo Provided No Special Protections for Community Land Grants After Confirmation

Although land grant heirs and others contend that the Treaty of Guadalupe Hidalgo obligated the United States to provide continuing protections for community grant lands even after they were confirmed, particularly with respect to taxation of these lands, we conclude that under established principles of federal, state, and local law, the Treaty did not create a fiduciary relationship, nor did it exempt confirmed lands from state or local property requirements, including, but not limited to, tax liabilities. In *Havasupai Tribe v. United States*, 752 F. Supp. 1471 (D. Ariz. 1990), for example, the U.S. District Court concluded that the Treaty of Guadalupe Hidalgo created no fiduciary duty for the United States to protect Indian tribal rights in the free exercise of religion, despite the language of Article

IX of the Treaty, which provided that Mexicans who decided to become U.S. citizens would be "secured in the free enjoyment of their religion without restriction." This protection applied until the New Mexico territory became a state, after which Mexicans would enjoy the same constitutional rights as citizens of the United States.

The court's reasoning in the *Havasupai Tribe* case also applies to the question of whether the Treaty created a fiduciary duty to protect community land grant property rights. Article IX similarly provided that until New Mexico statehood, Mexicans (individuals) would be "maintained and protected in the free enjoyment of their . . . property," after which time, they would enjoy the same constitutional rights as U.S. citizens.[142] The Treaty's other provision pertaining to property, Article VIII, stated that the rights of Mexicans then owning property within the newly acquired territories, and the heirs of those persons and "all Mexicans who may hereafter acquire said property by contract," would be "inviolably respected" and that those persons would enjoy the same guarantees with respect to their property as the guarantees given to U.S. citizens. Thus, neither Article VIII nor Article IX created any fiduciary duty of the United States to protect owners of confirmed community land grant acreage in a special manner superior to the protections afforded to other U.S. citizens. Rather, community land grant owners were to have the same property protections, guarantees, and responsibilities that all U.S. citizens had, which would include the obligation to pay property taxes and be subject to foreclosure for nonpayment, as well as being subject to partition suits, adverse possession suits, and any other legal mechanism potentially resulting in loss of real property ownership.[143] (As discussed below, the United States does owe a fiduciary duty to protect community land grant acreage awarded to Indian Pueblos, but this duty arises under a specific statute applicable only to the Pueblos.)

[142] These rights might include a citizen's Fifth and Fourteenth Amendment rights under the Constitution to receive "due process of law" before the government deprived them of their property (an issue discussed in chapter 3), to receive equal protection of the laws as other citizens received, and to receive just compensation if the government took their private property for public use.

[143] As noted in chapter 2, the doctrine of adverse possession allows a person to gain complete, fee simple title to real property owned by another person through open, continuous, and uninterrupted possession of the real property for a period of years, and New Mexico has enacted such legislation specifically addressing land grants and awarding title after 10 years of adverse possession. *See* N.M.S.A. § 37-1-21.

The courts have applied this reasoning to the Treaty of Guadalupe Hidalgo in a related context in *Amaya v. Stanolind Oil & Gas Co.*, 158 F.2d 554, 557 (5th Cir.), *cert. denied*, 331 U.S. 808 (1947), a case applying a Texas adverse possession statute to Mexican citizens' claims to oil lands. In *Stanolind Oil*, the U.S. Fifth Circuit Court of Appeals concluded that nothing in the language of the Treaty, including Article VIII's provision to Mexicans of the same property-related guarantees as those of U.S. citizens, suggested that the property of Mexican citizens "would not be subject to the valid, and nondiscriminatory, property laws of the State of Texas." Nor did the Treaty guarantee that Mexicans "would never lose their title . . .by foreclosure, sales under execution, trespasses, adverse possession, and other nongovernmental acts." *Id.* at 558. This is true even where lands were fraudulently withheld from the title holders.[144] New Mexico courts have likewise recognized that title to common lands and unalloted lands of community land grants can be acquired by adverse possession.[145] In sum, we conclude that the Treaty did not create a fiduciary duty of the United States to ensure the continued ownership of confirmed lands.

Nor did the Treaty specifically protect community land grants from state or local taxation or tax foreclosure sales. Article VIII did contain a limited, one-time immunity from property-related taxation: Mexicans then living in territories acquired by the United States, including New Mexico, would have no "contribution, tax, or charge whatever" levied against them on the proceeds from sale or transfer of lands they possessed within those territories. Heirs have argued that Article VIII created a blanket and permanent exemption from all taxation, past and present, of land grants. However, tax exemptions under treaties are written in very precise language and are limited to the circumstances specified in that language. In the case of Article VIII, the only exemption from taxes occurred when lands were initially sold or transferred, not when they were held in the normal course of ownership. The Article VIII language is standard in U.S. treaties acquiring land in the 18th and 19th centuries. Arguably interpretation of this provision to exempt heirs who are now U.S. citizens

[144] *See Gonzales v. Yturria Land & Livestock Co.*, 72 F. Supp. 280 (S.D. Tex. 1947) (applying state statute of limitations).

[145] *See H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 555 (1940), citing *First National Bank of Albuquerque v. Town of Tomé*, 23 N.M. 255 (1917); *Merrifield v. Buckner*, 41 N.M. 442 (1937); *Pueblo of Nambé v. Romero*, 10 N.M. 58 (1900).

might constitute a preference over non-heirs violating the Equal Protection provision of the U.S. Constitution.[146]

Nor can any blanket property tax immunity be inferred from the general language of Article VIII to "inviolably respect" the property rights of Mexican property owners in New Mexico and to provide them with the same "guaranties" afforded to U.S. citizens. In *Chadwick v. Campbell*, 115 F.2d 401, 405 (10th Cir. 1940), a case that considered whether, under the Treaty of Guadalupe Hidalgo, New Mexico *ad valorem* taxes applied to a community land grant, the U.S. Tenth Circuit Court of Appeals found that there was "nothing in either provision of the treaty [Article VIII and IX] which guarantees exemption and immunity from ad valorem taxes regularly assessed and levied." The New Mexico Supreme Court has also ruled that lands of a community land grant are subject to taxation.[147]

The U.S. Government Currently Has a Fiduciary Duty to Protect Pueblo Indian Lands

In contrast to land grants to non-Indians, the U.S. government currently has a fiduciary duty, or "trust responsibility," to protect Indian lands that the U.S. government holds in trust for the Pueblos in New Mexico. This trust responsibility for the Pueblos was established long after ratification of the Treaty of Guadalupe Hidalgo. Up until New Mexico became a state in 1912, non-Indian land grants and Pueblo land grants were generally treated in the same manner, which was different from the manner in which the United States treated other Indian tribes with whom it had a fiduciary relationship.[148]

The Pueblo Indians had lived for centuries in settled agricultural communities in river valleys, principally the Rio Grande, and were considered Mexican citizens. They were generally treated like other Mexican communities and were not subject to the same protections or

[146] See footnote 142 above.

[147] *See, e.g., Town of Atrisco v. Monohan*, 56 N.M. 70, 77 (1952); *Board of Trustees of the Town of Tomé v. Sedillo*, 28 N.M. 53, 54 (1922).

[148] The U.S. Supreme Court recognized the United States' duty of trust toward Indians as early as 1831, in its decision in *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831). In that case, the Court described the relationship between the United States and Indian tribes as "resembl[ing] that of a ward to his guardian." The Court later described this relationship as deriving from the government's "humane and self-imposed policy . . . [under which] it has charged itself with moral obligations of the highest responsibility and trust. Its conduct . . . should therefore be judged by the most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

laws applicable to other Indian groups. Among the first land grants confirmed by Congress were those of 17 Indian Pueblos in 1858. In 1876, the U.S. Supreme Court ruled in *United States v. Joseph*, 94 U.S. 614, 619 (1876), that the Pueblo Indians were not tribal Indians within the meaning of a statute providing a penalty for settlement on tribal lands. The Court noted that the Pueblo Indians had superior title, unlike other Indians, and could allow others onto their property if they wished.

However, beginning in 1872, Congress passed legislation (the 1872 Act) that placed the United States on a path toward a more traditional, protective relationship with the Pueblos, like that the United States had with other Indian tribes.[149] The 1872 Act provided funds for Pueblos' activities and supplied government agents to protect their interests. In 1905, in response to a Supreme Court of New Mexico decision upholding the taxation of Pueblo lands,[150] Congress exempted such property from all forms of taxation.[151] In 1910, the New Mexico Enabling Act of 1910 broadened the definition of "Indian" and "Indian country" to include Pueblo Indians,[152] subjecting Pueblo lands to the ban on the introduction of liquor into Indian country. In 1912, the U.S. Supreme Court determined that the ruling set out in the *Joseph* case—that Pueblos were not tribal Indians—applied only to the particular statute involved in that case and not more broadly.[153] This 1912 decision held that Congress had authority to pass the New Mexico Enabling Act to regulate the activities of the Pueblos because they were "Indians." The Court disagreed with the description of the Pueblos contained in the *Joseph* case and considered Pueblos to be a dependent people, like other Indians, in need of U.S. protection. Today, each of the Pueblos is a federally recognized Indian tribe and receives assistance through a variety of U.S. government programs.

As a result of the trust relationship between the U.S. government and the Pueblos, the U.S. government has taken several steps since New Mexico statehood to resolve outstanding Pueblo land disputes, generally by the

[149] Act of May 29, 1872, ch. 223, 17 Stat. 165 (1872).

[150] *See Territory of New Mexico v. Delinquent Taxpayers*, 12 N.M. 139 (1904).

[151] Pub. L. No. 58-212, 33 Stat. 1069 (1905).

[152] Pub. L. No. 61-219, 36 Stat. 557 (1910).

[153] *See United States v. Sandoval*, 231 U.S. 28 (1912). This case involved another party named Sandoval, different than the person involved in the 1897 *Sandoval* decision discussed in chapter 3.

payment of monies or the transfer of lands.[154] These disputes have involved encroachments by non-Indian settlers into confirmed Pueblo-owned Spanish-issued land grants, as well as aboriginal land claims that extended far beyond the Spanish grants. In the Pueblo Lands Act of 1924, Congress established the Pueblo Lands Board to address encroachments by non-Indian settlers on Pueblo lands and to prohibit future acquisition of Pueblo lands without federal approval.[155] The Pueblo Lands Board was responsible for investigating, determining, and reporting on the status of land within the boundaries of all land claimed by the Pueblo Indians. In 1946, Congress established the Indian Claims Commission to address historic aboriginal land claims. Under these two processes, many of the Pueblos have received cash settlements as compensation for the loss of their land and water rights; as of October 2002, the Pueblos collectively had received over $130 million under these processes (in constant 2001 dollars) to settle their claims. (See table 28.) Some Pueblos also have received monetary payments through the U.S. Court of Federal Claims or congressional legislation, and the Pueblos have used some of these payments to reacquire land as it becomes available.

Table 28: Payments to Settle Land Claims for Pueblo Grants in New Mexico, as of October 2002

Payment process	Settlement payments in constant 2001 dollars
Pueblo Lands Board, 1927-39	$14,160,255.67
Indian Claims Commission and the U.S. Court of Federal Claims	116,757,838.44
Total	**$130,918,094.11**

Source: GAO analysis and data from the Department of the Interior's Bureau of Indian Affairs.

[154] A claim by the Pueblo of Sandía was resolved through creation of a preservation trust area. In Pub. L. No. 108-7, 117 Stat. 11 (2003), Congress resolved the Pueblos' litigation against the Department of the Interior and the Department of Agriculture regarding 10,000 acres within the Cibola National Forest, including a portion of the Sandía Mountains, by creating the 9,800-acre T'uf Shur Bien Preservation Trust Area. The Sandía Pueblo was given access to the land for traditional and cultural uses and has received certain rights to be consulted regarding use and management of the area.

[155] Pub. L. No. 68-253, 43 Stat. 636 (1924).

In addition, some Pueblos have received land directly through congressional legislation.[156] The net effect of this special fiduciary relationship between the U.S. government and the Pueblos is reflected in their current land holdings. Unlike the non-Indian community land grants, most Pueblos currently have *more* acreage than they had received by their original Spanish land grants. (See table 29.)

Table 29: Comparison of Acreage Confirmed to Spanish Land Grants for the Pueblos with Their Current Acreage, as of December 31, 2000

Grant name	Acreage confirmed	Acreage in trust as of Dec. 31, 2000	Acreage in excess of grant
Pueblo of Acoma	95,791.66	378,262.41	282,470.75
Pueblo of Cochití	24,256.50	50,681.46	26,424.96
Pueblo of Isleta	110,080.31	301,120.92	191,040.61
Pueblo of Jémez	17,510.45	89,619.13	72,108.68
Pueblo of Laguna	17,328.91	491,387.13	474,058.22
Pueblo of Nambé	13,586.33	19,093.83	5,507.50
Pueblo of Pecos[a]	18,763.33	0	-18,763.33
Pueblo of Picurís	17,460.69	15,034.49	-2,426.20
Pueblo of Pojoaque	13,520.38	12,004.20	-1,516.18
Pueblo of San Felipe	34,766.86	48,929.90	14,163.04
Pueblo of San Ildefonso	17,292.64	26,197.75[b]	8,905.11
Pueblo of San Juan	17,544.77	12,236.33	-5,308.44
Pueblo of Sandía	24,187.29	22,890.28[c]	-1,297.01
Pueblo of Santa Ana	17,360.56	76,982.93	59,622.37
Pueblo of Santa Clara	17,859.14	45,969.21[d]	28,110.07
Pueblo of Santo Domingo	74,743.11	71,355.56	-3,387.55
Pueblo of Taos	17,360.55	96,106.15	78,745.60
Pueblo of Tesuque	17,471.12	16,813.16	-657.96
Pueblo of Zía	17,514.63	121,611.19	104,096.56
Pueblo of Zuñí	17,635.80	463,270.83	445,635.03
Total	**602,035.03[e]**	**2,359,566.86**	**1,757,531.83**

Source: GAO analysis and data from the Department of the Interior's Bureau of Indian Affairs.

[156] In Pub. L. No. 108-66, 117 Stat. 876 (2003), Congress declared that certain lands owned by the Bureau of Land Management in Rio Arriba and Santa Fe counties in New Mexico shall now be held in trust for the Pueblos of San Ildefenso and Santa Clara.

[a]The Pueblo of Pecos was combined with the Pueblo of Jémez by the Act of June 19, 1936 (49 Stat. 1528).

[b]This amount does not include approximately 2,000 acres of Bureau of Land Management land placed in trust for the Pueblo of San Ildefonso by Pub. L. No. 108-66, 117 Stat. 876 (2003).

[c]This amount does not reflect the Pueblo of Sandía's right to be consulted with respect to use and management of lands within the Cibola National Forest, provided by Pub. L. No. 108-7, 117 Stat. 11 (2003).

[d]This amount does not include approximately 2,484 acres of Bureau of Land Management land placed in trust for the Pueblo of Santa Clara by Pub. L. No. 108-66, 117 Stat. 876 (2003).

[e]This total does not include over 150,000 acres of other land grants that were awarded to the Pueblos during the confirmation process. A few Pueblos purchased surrounding land grants. The Pueblo of Laguna was awarded 101,510.78 acres for five individual land grants commonly referred to collectively as the "Laguna purchase tracts"—Rancho de Gigante, Rancho de Paguate, Rancho de San Juan, Rancho de Santa Ana, and Rancho el Rito. The Pueblo of Isleta was awarded 51,940.82 acres for the Lo de Padilla individual land grant and a portion of the 22,636.92-acre Joaquin Sedillo & Antonio Guitierrez individual land grant. The Pueblo of Santa Ana was awarded 4,945.24 acres for the Ranchito community land grant. Also not included in this total are 1,070.69 acres that were jointly awarded to the Pueblos of Santo Domingo and of San Felipe.

Summary

In summary, the Treaty of Guadalupe Hidalgo did not create a fiduciary relationship between the United States and non-Pueblo community land grantees. The United States does have such a relationship with the Pueblo Indians in New Mexico on the basis of specific legislation, and so has special obligations to protect the Pueblos' community land grant property. This legislation does not extend to other community land grantees or their heirs and thus these parties are subject to the same risk of loss of their lands as other citizens, from such causes as tax foreclosures, contingency fee agreements, partitioning suits, and voluntary transfers by the grantees and heirs themselves.

Chapter 5: Concluding Observations and Possible Congressional Options in Response to Remaining Community Land Grant Concerns

Overview

As detailed in this report, grantees and their heirs have expressed concern for more than a century—particularly since the end of the New Mexico land grant confirmation process in the early 1900s—that the United States did not address community land grant claims in a fair and equitable manner. As part of our report, we were asked to outline possible options that Congress may wish to consider in response to remaining concerns. The possible options we have identified are based, in part, on our conclusion that there does not appear to be a specific legal basis for relief, because the Treaty was implemented in compliance with all applicable U.S. legal requirements. Nonetheless, Congress may determine that there are compelling policy or other reasons for taking additional action. For example, Congress may disagree with the Supreme Court's *Sandoval* decision and determine that it should be "legislatively overruled," addressing grants adversely affected by that decision or taking other action. Congress, in its judgment, also may find that other aspects of the New Mexico confirmation process, such as the inefficiency and hardship it caused for many grantees, provide a sufficient basis to support further steps on behalf of claimants. Based on all of these factors, we have identified a range of five possible options that Congress may wish to consider, ranging from taking no additional action at this time, to making payment to claimants' heirs or other entities, or transferring federal land to communities. We do not express an opinion as to which, if any, of these options might be preferable, and Congress may wish to consider additional options beyond those offered here. The last four options are not necessarily mutually exclusive and could be used in some combination. The five possible options are:

Option 1: Consider taking no additional action at this time because the majority of community land grants were confirmed, the majority of acreage claimed was awarded, and the confirmation processes were conducted in accordance with U.S. law.

Option 2: Consider acknowledging that the land grant confirmation process could have been more efficient and less burdensome and imposed fewer hardships on claimants.

Option 3: Consider establishing a commission or other body to reexamine specific community land grant claims that were rejected or not confirmed for the full acreage claimed.

Option 4: Consider transferring federal land to communities that did not receive all of the acreage originally claimed for their community land grants.

Option 5: Consider making financial payments to claimants' heirs or other entities for the non-use of land originally claimed but not awarded.

As agreed, in the course of our discussions with land grant descendants in New Mexico, we solicited their views on how they would prefer to have their concerns addressed. Most indicated that they would prefer to have a combination of the final two options—transfer of land and financial payment.

Potential Considerations in Determining Whether Any Additional Action May Be Appropriate

This report has detailed the principal concerns and contentions that grantees and their heirs and advocates have expressed, particularly since completion of the New Mexico community land grant confirmation process in 1904, about whether the property protection provisions of the 1848 Treaty of Guadalupe Hidalgo were implemented in a legal and fair manner. We have assessed these concerns and contentions based on extensive factual investigation and legal research and provided what we believe is the most thorough analysis undertaken to date of many of the most contentious issues surrounding the Treaty. With respect to grants and acreage, our analysis shows that the majority of the community land grants in New Mexico—over 68 percent—were confirmed under the Surveyor General and Court of Private Land Claims procedures, and that the majority of the acreage claimed under these grants—over 63 percent—was awarded. Our analysis also shows that 55 percent of the acreage claimed under both community and individual land grants in New Mexico combined was awarded under these procedures, rather than the 24 percent that is commonly reported in the land grant literature.

With respect to compliance with legal requirements, our analysis shows that the property provisions were carried out in accordance with all applicable U.S. laws and requirements, including the U.S. Constitution. First, because of the non-self-executing nature of the Treaty, Congress was required to enact legislation to put the provisions into effect. It did so in the 1854 and 1891 Acts establishing the Surveyor General and the CPLC procedures, respectively, and under U.S. law, any conflict between these statutes and the Treaty provisions (which we do not suggest exists) must be resolved in favor of the statutes. Another legally related issue of great concern to heirs, in part because it affected the disposition of more than 1.1 million acres of land, is the U.S. Supreme Court's 1897 decision in

United States v. Sandoval. As discussed in this report, many heirs believe the *Sandoval* case was wrongly decided because the Court purportedly misapplied Spanish and Mexican law in holding that the sovereign (Spain, México, and later the United States), rather than communities, owned the common lands in community land grants. As our analysis explains, however, the Court had no authority under the 1891 Act to confirm grants based on the type of equitable rights involved in the *Sandoval* land grant claim and related cases; it could confirm only those grants "lawfully and regularly derived" under Spanish or Mexican law. As a matter of statutory interpretation, the Court found that these grants consisted only of grants held under legal, not equitable, title. As the Court explained in *Sandoval*, the grantees' concern was essentially a concern with the Congress' policy judgments in the 1891 Act itself, rather than with the courts' application of the act, and this concern could be addressed only by "the political department" of the U.S. government—that is, the Congress. As discussed in chapter 3, the California Commissioners had come to a similar conclusion regarding the nature and limits of their land grant confirmation authority, acknowledging that they were essentially carrying out political, rather than judicial, responsibilities.[157] Heirs and scholars also have asserted that the confirmation procedures violated the requirements of due process of law under the U.S. Constitution. Our analysis shows, however, that the procedures satisfied these requirements as the courts had defined them at that time and even under modern-day standards. Finally, with respect to heirs' contention that the United States had a fiduciary duty, after their grants had been confirmed, to ensure that ownership of the lands remained with the heirs and was not transferred voluntarily or involuntarily, our analysis shows that the Treaty did not create such a duty and thus the United States acted properly in this regard.

The fact that the United States implemented the Treaty's property provisions in accordance with U.S. law may suggest that a predicate for taking additional congressional action at this time may be lacking and that further action may not be necessary or appropriate. In the absence of any legal violation for which relief might be warranted, taking action could set a precedent for resolving other sensitive disputes, and at least in the context of the Guadalupe Hidalgo claims, could be costly to taxpayers, depending on what action is taken. On the other hand, Congress may find that there are compelling policy or other reasons for taking at least some additional action. For example, as a matter of policy (or even law),

[157] See footnote 131.

Congress may disagree with the Supreme Court's *Sandoval* decision and decide that it should be "legislatively overruled," by addressing the affected grants in some way or taking other action. Congress, in its judgment, also may find that other aspects of the confirmation process in New Mexico provide a sufficient basis to support further steps on behalf of claimants. For example, Congress may wish to respond to the fact that, as detailed in this report, pursuing a land grant claim in New Mexico was inefficient and burdensome for many claimants, particularly compared with the more streamlined Commission process that Congress had established for California under the 1851 Act. As the New Mexico Surveyors General themselves reported during the first 20 years of their claims reviews under the 1854 Act, they lacked the legal, language, and analytical skills, and financial resources to review grant claims in the most effective and efficient manner. Moreover, unfamiliarity with the English language and the American legal system made claimants reluctant to turn over land grant documents and often required them to hire English-speaking lawyers, sometimes necessitating sale of part of their claimed land—for many, their principal resource—to cover legal expenses. In addition, because of delays in Surveyor General reviews and subsequent congressional confirmations caused by the intervention of the Civil War, concerns about fraudulent claims, and other reasons, some claims had to be presented multiple times to different entities under different legal standards. Finally, the claims process could be burdensome even after a grant was confirmed, because of the imprecision and cost of having the lands surveyed, a cost that grantees had to bear for a number of years. For these or other reasons, Congress may decide that some additional action is warranted.

Possible Congressional Options for Response to Remaining Concerns

With respect to your request for possible options to address remaining concerns about community land grant claims in New Mexico, our analysis and findings suggest a variety of possible responses, ranging from taking no additional action at this time to taking one or more additional steps. We describe five of these possible options below. If Congress decides that some additional action is warranted, we note that resolving specific land grant claims dating back to the 18th and 19th centuries would be a challenging task: among other things, it could require identification of the specific persons who were adversely affected by the confirmation process, determination of where the descendants of those persons are today, and an assessment of the relationship between those descendants and persons currently living on the affected land. We do not express an opinion as to which, if any, of these options might be preferable, and Congress may wish to consider additional alternatives. The five possible options are:

Option 1: Consider Taking No Additional Action at This Time

A first option could be for Congress to take no further action at this time regarding community land grants in New Mexico. As noted above, the majority of the community land grants in New Mexico were confirmed and the majority of acreage claimed under these grants was awarded. In addition, the procedures that Congress developed for confirming community land grants complied with applicable U.S. laws, including constitutional due process requirements. Although the confirmation processes could have been more efficient and less burdensome on claimants, U.S. citizens sometimes are subjected to inefficient and burdensome government procedures and yet do not receive compensation or other formal relief. Particularly given the high rate of confirmation of New Mexico land grants and the substantial passage of time since the confirmation process was completed 100 years ago, Congress may decide that no further official action is appropriate at this time.

Option 2: Consider Acknowledging Difficulties in Evaluating the Original Claims

If Congress decides for policy or other reasons that some type of additional response is appropriate, one alternative could be to make an official acknowledgment that the U.S. government could have evaluated community land grant claims in New Mexico in a more efficient and less burdensome manner and one that created fewer hardships for grantees. Acknowledgement of these difficulties could take many forms, ranging from a declarative statement to an apology by the U.S. government.[158]

Option 3: Consider Creating a Commission or Other Entity to Evaluate and Resolve Remaining Concerns About Individual Claims or Categories of Claims

Another possible option for taking action in response to remaining land grant concerns, if Congress determines this is appropriate, could be for Congress to establish a commission or other entity to evaluate and resolve concerns about specific claims or categories of claims regarding New Mexico community land grants. Twenty-two congressional bills and

[158] For example, in Pub. L. No. 103-150, 107 Stat. 1510 (1993), Congress acknowledged the 100th anniversary of the takeover of the Kingdom of Hawaii in 1893 and offered an apology for the U.S. government's involvement.

resolutions reflecting this concept were introduced between 1971 and 1980, triggered in part by a 1967 raid of a county courthouse in northern New Mexico by land grant heirs and their advocates.[159] Since January 1997, at least eight additional bills have been introduced to address New Mexico community land grant claims, most recently in 2001, and most of these also have involved creation of some type of commission. One of the bills, H.R. 2538, passed the House of Representatives in September 1998.

The commissions proposed in these bills generally have fallen into five basic categories, with differences in the composition of the commission, its duration, and the legal effect of any decisions or recommendations that the commission might issue.[160] H.R. 9422, for example, the first bill introduced in 1971, would have created a three-member commission to serve a 5-year term. The commission's decisions would have been final except if disapproved by Congress. The commission would have been authorized to direct U.S. seizure of any privately owned lands in dispute and transfer of these lands to the respective community land grant. The 1971 bill also would have authorized $2.5 million for the expenses of the commission, $5 million for legal and professional assistance for petitioners, and a substantial $5 billion for land acquisitions. More recently, H.R. 2538, passed by the House in 1998, would have created a five-member commission with no specific term limit. After investigating and ruling on all pending claims, the commission was to report its decisions and recommendations to the President and Congress; Congress then was to decide whether to accept, reject, or modify the commission's recommendations, similar to its role regarding the Surveyor General confirmation recommendations. The 1998 bill would have authorized an appropriation of $1 million per year for fiscal years 1999 through 2007 to fund the commission's operations and a land grant study center. Most

[159] In June 1967, a group of armed men took two hostages from the Rio Arriba County courthouse in the town of Tierra Amarilla, in which several *Alianza Federal de Mercedes* members were being arraigned for unlawful assembly. The *Alianza Federal de Mercedes*, headed by Reies Lopez Tijerina, was an organization that sought the return of ownership of Spanish and Mexican land grants to heirs of the grantees. Many of these heirs were concerned about what they believed was the loss of hundreds of thousands of acres of ancestral grant lands through the actions of private parties and the U.S. government.

[160] The five basic models are reflected in the following five bills or resolutions: (1) H.R. 9422, 92nd Congress, 1st Session, introduced June 24, 1971; (2) H. Res. 364, 93rd Congress, 1st Session, introduced April 19, 1973; (3) S. 4050, 93rd Congress, 2nd Session, introduced Sept. 26, 1974; (4) H.R. 5963, 96th Congress, 1st Session, introduced Nov. 27, 1979; and (5) H.R. 2538, 105th Congress, 2nd Session, introduced Sept. 24, 1997 (modeled on H.R. 260, 105th Congress, 1st Session, introduced Jan. 7, 1997).

recently, Representative Tom Udall and 20 co-sponsors introduced H.R. 1823, the Guadalupe-Hidalgo Treaty Land Claims Act of 2001. Among other things, H.R. 1823 would have created a commission authorized to receive petitions from community land grant heirs in New Mexico and elsewhere, seeking determination of the validity of their grants under the Treaty. When its work was completed, the commission was to report its decisions to Congress and make recommendations regarding whether Congress should "reconstitute" certain grants—that is, restore the grants to full status as a municipality with "rights properly belonging to a municipality under State law"—or provide other relief to grant heirs. The bill would have set a 5-year deadline for submission of petitions and authorized an appropriation of $1.9 million per year for fiscal years 2002 through 2008 to fund the commission's work and that of a land grant study center.

One notable aspect of all of these bills was that they did not specify what legal standard the commission was to apply in reviewing land grant claims. The bills did not, for example, specify that the commission was to confirm a grant based on Spanish or Mexican law, usages, and customs—as in the 1854 Act—or only if title to the grant had been lawfully and regularly derived under Spanish or Mexican law—as in the 1891 Act. To make any such commission as successful as possible, it would be important for any congressional legislation creating such a commission to specify what laws or other standards are to be applied in reviewing claims.

Option 4: Consider Transferring Federal Land to Communities

Another possible option for responding to remaining land grant concerns, if Congress determines this is appropriate for policy or other reasons, could be for Congress to transfer federal land to communities that made claims to the Surveyor General or the CPLC under a community land grant but did not receive all of the acreage they claimed. This option has been reflected in some of the legislative proposals over the last 30 years, whereby federal land located within the grants' originally claimed boundaries would have been transferred to claimants.[161] As agreed, in the course of our discussions with land grant descendants in New Mexico, we solicited their views on how they would prefer to have their concerns addressed, and this approach, which would address land grant heirs'

[161] H.R. 9422, the first bill introduced in 1971, and some of the other 1970s bills would have given both federally owned and privately owned land, but more recent bills would have given only federally owned land. Privately owned land could only be transferred if the federal government seized these lands under its eminent domain authority.

claims of "lost" acreage most directly, was one of the two options preferred by grant heirs with whom we spoke. If Congress decided to adopt this option and there were no federal lands located within the originally claimed grant boundaries, alternate federal lands in New Mexico might be transferred or financial payment made in lieu of transfer.

Although the amount of federal acreage that might be affected under this option would depend on the specific grants at issue, preliminary surveys indicate that it could be substantial if all of the acreage originally claimed were now awarded. For example, according to Bureau of Land Management estimates, over half of the almost 1 million acres of land "lost" by three grants—the Cañón de Chama grant, the San Miguel del Vado grant, and the Petaca grant—is now owned by the federal government (the U.S. Forest Service), and thus potentially could be transferred to these grants.[162] Appendix XII to this report shows the original claimed boundaries of these three grants and the present-day land ownership within those boundaries that could be at issue (see figures 9-11). Appendix XII also contains maps of five additional land grant claims for which we were able to locate preliminary surveys and which, if Congress adopted this option, it might decide to increase in size (see figures 12-14).

One other potential hurdle in implementing this option might be that any overlaps between claimed community land grant boundaries and the boundaries of existing Indian lands or additional aboriginal Indian lands would have to be resolved. For example, the Town of Cieneguilla land grant claim partially overlaps with the Pueblo of Picurís land grant, and the Don Fernando de Taos land grant claim conflicts with the Pueblo of Taos. Similarly, conflicts between the boundaries of claimed community land grants and confirmed land grants would have to be resolved. The original claimed boundaries of the San Miguel del Vado land grant, for example, overlap with the confirmed and patented boundaries of the Town of Las Vegas and Town of Tecolote land grants.

Option 5: Consider Making Financial Payments to Claimants' Heirs or Other Entities

[162] As described in chapter 3, these three grants were restricted to their individual allotments and thereby were not awarded about 99 percent of the almost 1 million acres originally claimed. Most of that acreage—54 percent, or 520,473 acres—is now owned by the U.S. Forest Service.

A final possible option if Congress determines that additional action should be taken—and the other option favored by the land grant heirs with whom we spoke—could be for Congress to make payments to claimants for the "lost" use of land that was claimed but not awarded. If land were not being transferred to a community under Option 4, payment could be made for both past and future non-use; if it were being transferred, there could be payment only for past non-use. Congress might assign the task of determining payment amounts to the type of commission discussed under Option 3, again presumably based on a specified legal standard. Congress created a similar entity in 1946 in the Indian Claims Commission, which was authorized to address claims by making financial payments. Similarly, Congress created the Pueblo Lands Board to resolve Indian land claims in the 1920s and 1930s, through a combination land transfer/financial payment mechanism.

There likely would be a number of practical issues to be resolved in implementing this option, the first of which would be determining the criteria for payment. The amount might be determined on the basis of acreage alone, for example, or might also account for the value of the specific parcels at issue. A prime piece of agricultural property in a river valley, for instance, might be worth more than rocky hillside property. Likewise, the non-use of heavily wooded property with an abundance of wildlife might have a greater value than the non-use of property without those resources. A second practical issue to be resolved would be determining who should receive compensation. The individuals affected by adverse land grant decisions 100 years ago would have to be identified, as would the individuals who are their present-day descendants.

Finally, decisions would need to be made regarding possible restrictions on the permissible uses of any payments made. For example, funds might be directly distributed as cash payments to individual heirs, with no restrictions on how the funds could be used. Alternatively, payments might be made into some type of development trust fund, with money earmarked for specific activities. Over the past 10 years, Congress has established these types of trust funds for Indian tribes that lost land when

dams were built on the Missouri River.[163] A development trust fund could create the flexibility to provide assistance for a wide variety of activities, such as economic development, land acquisition, or educational programs. Trust fund monies also might be used to pay property taxes owing on community land grant common lands, thus providing an immediate benefit to grants that continue to be at risk of tax foreclosure. As discussed in chapter 4, the federal government had no legal obligation under the Treaty of Guadalupe Hidalgo to ensure continued ownership of community land grants once they were confirmed, including by payment of a land grant's property taxes to avoid forfeiture, but Congress may nevertheless decide that there are compelling policy or other reasons to provide financial assistance to these communities.

Summary

In summary, we have identified, as requested, a range of five possible options that Congress may wish to consider in response to remaining concerns regarding New Mexico community land grants. These options reflect our conclusion that there does not appear to be a specific legal basis for relief but that Congress may nonetheless determine that there are compelling policy or other reasons for taking additional action.

[163] *See* U.S. General Accounting Office, *Indian Issues: Cheyenne River Sioux Tribe's Additional Compensation Claim for the Oahe Dam*, GAO/RCED-98-39 (Washington, D.C.: Jan. 28, 1998).

Appendix I: Confirmation of Land Grants under the Louisiana Purchase and Florida Treaties

The congressional confirmation processes used for European land grants in the Louisiana Purchase and Florida in the first half of the 19th century provided potential models for U.S. implementation of the Treaty of Guadalupe Hidalgo. At the beginning of the 19th century, the United States acquired the Louisiana Territory, an area almost as large as the United States, which had belonged at various times to France and Spain. Both countries had encouraged settlement and light industry and rewarded military service through the award of land grants. Spain also had awarded similar grants in Florida, which the United States acquired in 1819.[164] Frequently, congressional legislation limited the size of settlement grants that could be approved. In addition, Congress placed grants into two categories: complete and incomplete grants. Complete grants were grants that had satisfied all the legal requirements and conditions of grant ownership under Spanish or French law, which included cultivation of the land and its possession for certain periods of time. Incomplete grants were grants that had not complied with all legal requirements and conditions but which could be made complete through the congressionally established confirmation process. This process often involved the introduction of evidence to show that Spanish and French legal requirements had been met and that completion of grant conditions had been prevented by transfer of land to the United States.

In both the Louisiana Purchase and in Florida, Congress used similar methods to review land grant titles. These included boards of commissioners to review land grants and to make recommendations to Congress to confirm or reject them. Also, other officials, such as a register of the land office and a recorder of land titles, either served as commissioners or exercised similar functions. Eventually, Congress authorized the courts to decide land grant titles. These courts functioned as courts of equity, which provided more flexibility than courts of law in deciding land claim cases.[165] The confirmation process proceeded very

[164] Great Britain also had owned part of Florida at one time and made grants to settlers.

[165] The courts were to conduct their review of each claim according to the rules of a court of equity. These rules are the "well settled and established usages and principles of the court of chancery, as adopted and recognized in their decisions." *United States v. Arredondo*, 31 U.S. 691, 709 (1832); *United States v. Clarke*, 33 U.S. 436 (1834); *Johnson v. Towsley*, 80 U.S. 72, 84 (1871). A court of chancery offered a less rigorous forum than courts of law for deciding cases in order to achieve the most appropriate result. Traditionally, courts of law adhered more strictly to the applicable principles of law. For example, an equity court might decide to carry out the intention of a donor, even though a gift did not comply with all legal requirements. John R. Kroger, *Supreme Court Equity, 1789-1835, and the History of American Judging*, 34 Houston L. Rev. 1425 (1998).

slowly and frequent changes in legislation extended the time for filing claims. Courts were still deciding land grant cases after the ratification of the Treaty of Guadalupe Hidalgo.

The confirmation process that Congress established for the Louisiana and Florida land grants differed from what Congress established for California and New Mexico in two basic ways. First, with respect to Louisiana and Florida, it was presumed that the granting official had authority to make a grant and that the specifics of the grant were correct. These presumptions shifted the burden of proof from the grantee to the United States. Second, the treaties of cession for Louisiana and Florida transferred to the United States public domain only the land that had not been granted by, and still belonged to, the previous sovereign, France or Spain. Under the grant confirmation process in California and New Mexico, by contrast, all of the land that was transferred under the Treaty of Guadalupe Hidalgo was deemed to belong to the United States. Nevertheless, the California confirmation legislation (the 1851 Act), and the General Land Office's instructions to the Surveyor General of New Mexico issued under the 1854 Act, provided that a grant to a town in existence at the Time of the Treaty was presumed to have been validly made.

After they had evaluated land grant claims submitted to them, the Louisiana and Florida commissioners forwarded a report on the results of their evaluations to the Secretary of the Treasury, who then forwarded the recommendations to Congress for action. The territorial surveyors received copies of the commissioners' reports and had to survey each approved grant. Government lawyers played an important a role when the confirmation of grants shifted to the courts. They were responsible for opposing land claims they believed were invalid, with the result that invalidated claim increased land in the public domain.

The Louisiana and Florida commissioners had legal authorities similar to those of the Surveyor General of New Mexico and the California Commission. They could hear and decide claims, administer oaths, compel the attendance and testimony of witnesses, and have access to all public records. They decided cases according to "justice and equity" and to the laws, customs, and usages of Spain and other European powers. A successful claimant did not receive full title to the land grant, but only the waiver by the United States of any interest it might have in the land. A competing claimant who had better title could still bring an action in local courts challenging the grantee's claim.

The Louisiana Purchase Treaty

The Louisiana Purchase Treaty did not contain a provision specifically protecting land grants. Article III of the treaty, on which Article IX of the Treaty of Guadalupe Hidalgo was modeled, provided that the inhabitants of Louisiana would be "protected in the free enjoyment of their . . . property" until Louisiana became a State. Although not defined by the treaty, the term "property" customarily included both personal and real property. Shortly after ratification of the treaty, Congress divided the Louisiana Purchase into two territories: Louisiana and Orleans. In one territory, it created the position of register of land titles, and in the other, the position of recorder of land titles, to receive evidence of ownership from claimants. Under later congressional legislation, the President appointed commissioners in each district to review land claims and make recommendations to Congress for their confirmation. They decided cases based on "justice and equity." The legislation required that all claims be filed within a certain time or else the grant would be void. Other legislation established criteria for approving certain grants, such as setting limits on the size of the grant that could be approved. In some instances, commissioners were unable to decide whether a grant should be approved. In 1807, Congress required the Louisiana commissioners to prepare a list, which recommended action for three types of grants: (1) grants that should be confirmed because they were consistent with legislative criteria, (2) claims that should be confirmed according to the laws, customs, and usages of Spain, and (3) grants that should be rejected because they did not satisfy these criteria.

In 1812, additional legislation authorized the register of the land office and receiver of public monies in a district of the Orleans territory in Louisiana to submit to the Secretary of the Treasury their opinion, based on evidence gathered, whether certain grants should be confirmed. Subsequent legislation assigned similar responsibility to the register and receiver in other areas of the Louisiana Purchase. During this same year Congress established a commissioner for land claims in each of two districts east of the Mississippi River, claimed at one time by England, Spain, and the United States, to review land titles and make recommendations to Congress. The commissioner was to base his decision on the "justice and validity" of such grants. Persons who held complete grants were only required to file the record of the grant, the survey, and the plat whereas others had to provide more evidence of their claim. Subsequent legislation frequently extended the time for filing claims. Once Congress had confirmed land titles, a survey was completed and the appropriate register of the land office or the recorder of land titles issued patent certificates to the grantee. These certificates stated that a claimant was entitled to receive a patent for his grant. Confirmed grants did not convey full legal

title to the land within the grant, but only the interest that the United States had in such property. Consequently, a person alleging that they had title superior to the grantee could still bring suit in local courts challenging the grantee's title. In the period leading up to the Mexican-American War, Congress continued to use registers of the land and receivers of public money to investigate land claims and make recommendations whether grants should be confirmed.

In 1824, the first use of courts to settle land claims took place in an area of the Louisiana Purchase that included the State of Missouri and the Territory of Arkansas. The legislation provided that a claimant who had incomplete title which could have been completed if the land had not been transferred to the United States could file a petition in federal district court in the State of Missouri and superior court in the Territory of Arkansas.[166] Any person alleging title adverse to the petitioner's would also receive a copy of the claim. The courts' decisions were to be based upon the law of nations (international law), the treaty provisions, related acts of Congress, and the laws and ordinances of the government from which title was allegedly derived. General custom and usage were considered to be included in the "law" of the predecessor government, in addition to formal statutes and ordinances.[167] The claimant and the United States could appeal the court's decision to the Supreme Court. After the title had been confirmed, the surveyor of public lands completed a survey, at the claimant's expense, and the General Land Office issued a patent to the claimant upon receipt of a copy of the survey. The patent conveyed full legal title because the court's decision disposed of any adverse claim to the property. In 1844, Congress authorized the federal district courts to hear land grant claims in other areas of the Louisiana Purchase, including the States of Louisiana, Arkansas, Mississippi and Alabama. The courts' authority was similar to the Missouri court under the 1824 statute. Supreme Court decisions interpreting the 1824 statute presumed as a settled principle that a public grant was evidence that it was issued by lawful authority.[168]

[166] The 1824 act limited the court's jurisdiction in Arkansas to claims for up to one square league. *See* Annals of Congress, 18th Congress, 1st Session (1823-1824), Ch. 173, Sec. 15.

[167] *See Arredondo*, footnote 165 above, 31 U.S. at 715.

[168] *See Arredondo*, footnote 165 above, 31 U.S., pp. 724-30; *Clarke*, footnote 165 above, 33 U.S. at 451.

The Florida Treaty

By an 1819 treaty, Spain ceded East and West Florida to the United States. The United States had claimed ownership over part of West Florida under the Louisiana Purchase.[169] At different times Spain, Great Britain, and France had asserted claims to parts of Florida and had made grants of land for settlement, as a reward for military service, and as compensation for the development of light industry such as sawmills and mining. Article VIII of the Florida treaty provided that all Spanish grants of land "shall be ratified and confirmed" to persons occupying the lands to the same extent that they "would be valid if the territories had remained" under Spanish control. Owners occupying such lands who had failed to satisfy all the conditions of the grants because of recent circumstances affecting Spain could fulfill these conditions within the times prescribed in the grant. A deadline was set for filing of all claims; if a claim was not filed, the grant would be considered null. In the U.S. Supreme Court's 1833 decision in the *Percheman* case, Chief Justice Marshall, reversing the Court's previous position, ruled that based on the Spanish version of the treaty, the treaty was self-executing for perfect grants and did not require them to be submitted for approval. Incomplete grants, however, would require approval, and the Court ruled that this aspect of the treaty would require congressional legislation in order to implement and become effective.[170]

In 1822, Congress enacted legislation authorizing the President to appoint three commissioners to investigate the "justice and validity" of any Spanish grant made in Florida. The commissioners could not approve grants of more than 1,000 acres or of an undetermined amount of land. Decisions were to be based upon Spanish law and the law of nations (international law). The commissioners were directed to prepare a report on each case indicating their decision and transmit the report to the Secretary of the Treasury for submission to Congress for confirmation. Confirmed grants were to be surveyed to determine the precise boundaries. The commissioners had powers similar to those appointed to implement the Louisiana Purchase Treaty, and, as under the Louisiana Purchase Treaty, the confirmation of a grant under the Florida treaty would only be binding as to the interests of the United States; it would not prevent competing claimants who believed they had superior title from filing suit against the grantee in state court.

[169] In 1812, Congress confirmed British grants to U.S. citizens claiming lands in the Mississippi territory (West Florida), which the United States alleged was acquired pursuant to the Louisiana Purchase.

[170] *United States v. Percheman*, 32 U.S. 51, 88-95 (1833).

In 1823, Congress appointed three additional commissioners to decide claims in East Florida, with the original group addressing claims in West Florida only. The new commissioners could approve grants up to 3,500 acres. Later legislation extended the time for filing claims and required claimants to have been cultivating or occupying the land at the time of the treaty. In 1825, Congress transferred the functions of the commissioners in West Florida to the register and receiver of the land office, whose job it was to decide all claims and titles to land in West Florida. During the next two years, Congress confirmed titles to lands in both East and West Florida. Like the 1823 act, the 1825 act provided that congressional confirmations was only to relinquish the interest of the United States to such lands and did not prevent competing claimants from asserting superior title. After the confirmed grants were surveyed and the survey submitted to the register of the land office, the land office issued a certificate to the claimant. Upon presentation of the certificate to the Secretary of the Treasury, the claimant would receive a patent for the land confirmed.

In 1828, Congress confirmed the decisions of the register and receiver of East Florida and established a limit of one square league for grants submitted for confirmation. Congress also authorized the superior court of the district where property was located to decide claims that had not been approved. However, the only claims that could be resolved in court were those that had previously been filed with the commissioners or registers and receivers for confirmation and were for more acreage than they could confirm. The court was required to follow the rules, restrictions, and other limitations applicable to the district court of the State of Missouri in the 1824 legislation. The claimant, as well as the United States, could appeal to the Supreme Court from an adverse decision of the superior court. In 1830, Congress required that all unsettled claims be decided in the superior court according to the 1824 statute. This law also provided that a person with a claim adverse to the petitioner should be included as a party in the court case.

Finally, in 1860, Congress passed legislation to confirm land claims in Florida, Louisiana, and Mississippi that had not been previously presented. Local state officials acted as commissioners and made recommendations to the Commissioner of the General Land Office, who transmitted recommendations to Congress for confirmation. As an alternative, a claimant could petition the United States district court in each of the States to pass upon the claim, with an appeal to the Supreme Court in case of an adverse decision.

Appendix II: Articles VIII, IX, and Deleted Article X of the Treaty of Guadalupe Hidalgo

The following is an excerpt from the Treaty of Guadalupe Hidalgo consisting of the provisions pertaining to protection of property. Articles VIII and IX were included in the final Treaty; Article X was deleted. The full text of the Treaty can be found at 9 Stat. 922.

"Article VIII

"Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

"Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

"Article IX

"Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

"Article X [Deleted from the final version of the Treaty]

"All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty: in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

"The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfillment of the conditions of any such grant, within the new period, which, as is above stipulated, begins with the day of the exchange of ratifications of this treaty, the same shall be null and void."

Appendix III: Excerpts from the Protocol of Querétaro

The Protocol of Querétaro consisted of an introductory paragraph, three provisions, and a concluding paragraph. The following is an excerpt of the Protocol consisting of the first provision, a portion of the second provision that concerned grants, and the final paragraph.

"First

"The American Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III article of the Treaty of Louisiana did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the IIId article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

"Second

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

"Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1846, and in Texas up to the 2d March 1836.

* * *

"And these explanations having been accepted by the Minister of Foreign Affairs of the Mexican Republic, he declared in name of his Government that with the understanding conveyed by them, the same Government would proceed to ratify the Treaty of Guadalupe as modified by the Senate and Government of the United States. In testimony of which their Excellencies the aforesaid Commissioners and the Minister have signed and sealed in quintuplicate the present protocol."

Appendix IV: Excerpts from the Treaty Regarding the Gadsden Purchase

The Gadsden Purchase Treaty was part of a larger treaty between the United States and Mexico called the Treaty of Boundary, Cession of Territory, Transit of Isthmus of Tehuantepec, which was signed on December 30, 1853. The following are excerpts of the Treaty. The full text of the treaty can be found at 10 Stat. 1031.

"Article V

"All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth.

"Article VI

"No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day – twenty-fifth of September – when the minister and subscriber to this treaty on the part of the United States, proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

Appendix V: Excerpts from the 1851 Act to Confirm California Land Grants

The following are excerpts from the 1851 Act, "An Act to Ascertain and settle the private Land Claims in the State of California." The full text of the 1851 Act can be found at 9 Stat. 631.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which omission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

"**Sec. 2**. *And be it further enacted*, That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

"**Sec 3**. *And be it further enacted*, That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said commissioners.

"**Sec. 4**. *And be it further enacted*, That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interest of the United States in the premises, to continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance . . .

"**Sec 5.** *And be it further enacted*, That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

"**Sec. 6**. *And be it further enacted*, That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

"**Sec. 7**. *And be it further enacted*, That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpoena commanding the attendance of a witness or witnesses before the said board or any commissioner.

"**Sec. 8**. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

"**Sec. 9**. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim . . . [T]he said case shall stand for trial . . . .

"**Sec. 10**. *And be it further enacted*, That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

"**Sec. 11**. *And be it further enacted*, That the commissioners herein provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable . . . .

* * *

"**Sec. 13**. *And be it further enacted*, That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; . . . Provided, always, That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. And provided, further, That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

"**Sec. 14**. *And be it further enacted*, That the provisions of this act shall jot extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an

individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

"**Sec. 15**. *And be it further enacted*, That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of the third persons . . . ."

Appendix VI: Excerpts from the 1854 Act Establishing the Office of the Surveyor General of New Mexico

The following is an excerpt from the 1854 Act, "An act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes." The full text of the statute can be found at 10 Stat. 308.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor-General for New Mexico, whose annual salary shall be three thousand dollars, and whose power, authority, and duties shall be the same as those provided by law for the Surveyor-General of Oregon; he shall have proper allowances for clerk hire, office rent, and fuel, not exceeding what now is or hereafter may be allowed by law to the said Surveyor-General of Oregon; and he shall locate his office from time to time at such places as may be directed by the President of the United States.

"**Sec. 2**. *And be it further enacted*, That, to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who was residing in said Territory prior to the first day of January, eighteen hundred and fifty-three, and who may be still residing there, there shall be, and hereby is, donated one quarter section, or one hundred and sixty acres of land. And to every white male citizen of the United States, or every white male above the age of twenty-one years, who has declared his intention to become a citizen, and who shall have removed or shall remove to and settle in said Territory between the first day of January, eighteen hundred and fifty-three, and the first day of January, eighteen hundred and fifty-eight, there shall in like manner be donated one quarter section, or one hundred and sixty acres, on condition of actual settlement and cultivation for not less than four years: Provided, however, That each of said donations shall include the actual settlement and improvement of the donee, and shall be selected by legal subdivisions, within three months after the survey of the land where the settlement was made before the survey; and where the settlement has been made; and all persons failing to designate the boundaries of their claims within that time, shall forfeit all right to the same.

* * *

"**Sec. 8**. *And be it further enacted*, That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make 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 titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm bona fide grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act."

Appendix VII: Excerpts from the 1891 Act Establishing the Court of Private Land Claims

The following are excerpts from the 1891 Act, "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories." The full text of the statute can be found at 26 Stat. 854.

"**Sec. 3.** That immediately upon the organization of said court the clerk shall cause notices thereof, and of the time and place of the first session thereof, to be published for a period of ninety days in one newspaper at the city of Washington and in one published at the capital of the State of Colorado and of the Territories of Arizona and New Mexico. Such notices shall be published in both the Spanish and English languages, and shall contain the substance of this act.

* * *

"**Sec. 6**. That it shall and may be lawful for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the Republic of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States which at the date of the passage of this act have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court in the State or Territory where said land is situated and where the said court holds its sessions, but cases arising in the States and Territories in which the court does not hold regular sessions may be instituted at such place as may be designated by the rules of the court . . . .

"**Sec. 7**. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord, eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico, on the thirtieth day of December, in the year of our Lord, eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed.

"**Sec. 8**. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application

said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

It shall be lawful for and the duty of the head of the Department of Justice, whenever in his opinion the public interest or the rights of any claimant shall require it, to cause the attorney of the United States in said court to file in said court a petition against the holder or possessor of any claim or land in any of the States or Territories mentioned in this act who shall not have voluntarily come in under the provisions of this act, stating in substance that the title of such holder or possessor is open to question, or stating in substance that the boundaries of any such land, the claimant or possessor to or of which has not brought the matter into court, are open to question, and praying that the title to any such land, or the boundaries thereof, if the title be admitted, be settled and adjudicated; and thereupon the court shall, on such notice to such claimant or possessor as it shall deem reasonable, proceed to hear, try, and determine the questions stated in such petition or arising in the matter, and determine the matter according to law, justice, and the provisions of this act, but subject to all lawful rights adverse to such claimant or possessor, as between such claimant and possessor and any other claimant or possessor, and subject in this respect to all the provisions of this section applicable thereto.

"**Sec. 9**. That the party against whom the court shall in any case decide—the United States, in case of the confirmation of a claim in whole or in part, and the claimant, in case of the rejection of a claim, in whole or in part—shall have the right of appeal to the Supreme Court of the United States, such appeal to be taken within six months from date of such decision, and in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy, as is now provided by law for the taking of appeals from decisions of the circuit courts of the United States. On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive. Should no appeal be taken as aforesaid the decree of the court below shall be final and conclusive . . . .

"**Sec. 10**. That whenever any decision of confirmation shall become final, the clerk of the court in which the final decision shall be had shall certify that fact to the Commissioner of the General Land Office, with a copy of the decree of confirmation, which shall plainly state the location, boundaries, and area of the tract confirmed. The said Commissioner shall thereupon without delay cause the tract so confirmed to be surveyed at the cost of the United States. When any such survey shall have been made and returned to the surveyor-general of the respective Territory or State, and the plat thereof completed, the surveyor-general shall give notice that same has been done, by publication once a week, for four consecutive weeks in two newspapers, one published at the capital of the Territory or State and the other (if any such there be) published near the land so surveyed, such notices to be published in both the Spanish and English languages; and the surveyor-general shall retain such survey and plat in his office for public inspection for the full

period of ninety days from the date of the first publication of notice in the newspaper published at the capital of the Territory or State.

If, at the expiration of such period, no objection to such survey shall have been filed with him, he shall approve the same and forward it to the Commissioner of the General Land Office. If, within the said period of ninety days, objections are made to such survey, either by any party claiming an interest in the confirmation or by any party claiming an interest in the tract embraced in the survey or any part thereof, such objection shall be reduced to writing, stating distinctly the interest of the objector and the grounds of his objection, and signed by him or his attorney, and filed with the surveyor-general, with such affidavits or other proofs as he may produce in support of his objection. At the expiration of the said ninety days the surveyor-general shall forward such survey, with the objections and proofs filed in support of or in opposition to such objections, and his report thereon, to the Commissioner of the General Land Office.

Immediately upon receipt of any such survey, with or without objections thereto, the said Commissioner shall transmit the same, with all accompanying papers, to the court in which the final decision was made for its examination of the survey and of any objections and proofs that may have been filed, or shall be furnished; and the said court shall thereupon determine if the said survey is in substantial accordance with the decree of confirmation. If found to be correct, the court shall direct its clerk to indorse upon the face of the plat its approval. If found to be incorrect, the court shall return the same for correction in such particulars as it shall direct. When any survey is finally approved by the court, it shall be returned to the Commissioner of the General Land Office, who shall as soon as may be cause a patent to be issued thereon to the confirmee . . . .

* * *

"**Sec. 12**. That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years from the taking effect of this act, if no petition in respect to the same shall have then been filed as herein before provided, be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred . . . .

"**Sec. 13**. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

"**First**. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

"**Second**. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place . . . .

* * *

"**Fourth**. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.

"**Fifth**. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands.

"**Sixth**. No confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as is in this act provided.

"**Seventh**. No confirmation in respect of any claims or lands mentioned in section six of this act or in respect of any claim or title that was not complete and perfect at the time of the transfer of sovereignty to the United States as referred to in this act, shall in any case be made or patent issued for a greater quantity than eleven squares leagues of land to or in the right of any one original grantee or claimant, or in the right of any one original grant to two or more persons jointly, nor for a greater quantity than was authorized by the respective laws of Spain or Mexico applicable to the claim.

"**Eighth.** No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant, or other authority to acquire land . . . .

"**Sec. 14**. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid, notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant, and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands, surveys may be ordered by the court, and proof taken before the court, or by a commissioner appointed for that purpose by the court.

* * *

"**Sec. 16**. That in township surveys hereafter to be made in the Territories of New Mexico, Arizona, and Utah, and in the States of Colorado, Nevada, and Wyoming if it shall be made to appear to the satisfaction of the deputy surveyor making such survey that any person has, through himself, his ancestors, grantors, or their lawful successors in title or possession, been in the continuous adverse actual bona fide possession, residing thereon as his home, of any tract of land or in connection therewith of other lands, all together not exceeding one hundred and sixty acres in such township for twenty years next preceding the time of making such survey, the deputy surveyor shall recognize and establish the lines of such possession and make the subdivision of the adjoining lands in accordance therewith.

"**Sec. 17**. That in the case of townships heretofore surveyed in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming, all persons who, or whose ancestors, grantors, or their lawful successors in title or possession, became citizens of the United States by reason of the treaty of Guadalupe-Hidalgo, and who have been in the actual continuous adverse possession and residence thereon of tracts of not to exceed one hundred and sixty acres each, for twenty years next preceding such survey, shall be entitled, upon making proof of such facts to the satisfaction of the register and receiver of the proper land district, and of the Commissioner of the General Land Office upon such investigation as is provided for in section sixteen of this act, to enter without payment of purchase money, fees, or commissions, such legal subdivisions, not exceeding one hundred and sixty acres, as

shall include their said possessions: Provided, however, That no person shall be entitled to enter more than one such tract, in his own right, under the provisions of this section. . . .

"**Sec. 18**. That all claims arising under either of the two next preceding sections of this act shall be filed with the surveyor-general of the proper State or Territory within two years next after passage of this act, and no claim not so filed shall be valid. And the class of cases provided for in said two next preceding sections shall not be considered or adjudicated by the court created by this act, and no tract of such land shall be subject to entry under the land laws of the United States."

Appendix VIII: Organizations and Individuals Contacted for GAO's Reports

During the course of our reviews for the first and second GAO reports regarding the Treaty of Guadalupe Hidalgo, we interviewed and communicated with heirs and members of boards of trustees of 45 community land grants in New Mexico. We also contacted the Governors of 19 Indian Pueblos, and historians, researchers, and others who have studied land grant issues. These included lawyers representing the interests of land grant heirs; officials at the U.S. Bureau of Land Management, the U.S. Bureau of Indian Affairs, and the U.S. Forest Service; several counties in which land grants exist; and various representatives of other entities or interests associated with land grant issues in New Mexico.

For our first report, we convened community meetings with various heirs and land grant boards of trustees to get a better understanding of community land grant issues and to solicit comments on our approach. We also consulted with the Indian Pueblos and explained our work. For this second report, we met with several land grant boards of trustees to collect information. We also recontacted the Indian Pueblos to discuss our work and its impacts, including at a briefing provided at an All Indian Pueblo Council meeting at which representatives of 10 Indian Pueblos were present.

Following are the names of the land grants, Indian Pueblos and others that we contacted:

Original Documentation Community Land Grants

Abiquiú (Town of)
Antón Chico (Town of)
Arroyo Hondo
Atrisco (Town of)
Bernabé Manuel Montaño
Cañón de Carnue
Cañón de Chama
Cañón de San Diego
Cebolletta (Town of)
Chaperito (Town of)
Chililí (Town of)
Cubero (Town of)
Don Fernando de Taos
Juan Bautista Valdez
Las Trampas (Town of)
Las Vegas (Town of)
Los Trigos

Manzano (Town of)
Mora (Town of)
Nicolás Durán de Cháves
Nuestra Señora del Rosario, San Fernando y Santiago
Ojo Caliente
Petaca
San Antonio de las Huertas
San Miguel del Vado
San Antoñito
San Joaquín del Nacimiento
San Pedro
Santa Bárbara
Sevilleta
Tejón (Town of)
Tierra Amarilla
Tomé (Town of)
Torreón (Town of)

Self-identified Community Land Grants

Alameda (Town of)
Bernalillo (Town of)
Cristóbal de la Serna
Embudo
Francisco Montes Vigil
La Majada
Mesita de Juana López
Polvadera
Sangre de Cristo
Santo Domingo de Cundiyó
Sebastián Martín
Tecolote (Town of)

Pueblo Community Land Grants

Pueblo of Acoma
Pueblo of Cochití
Pueblo of Isleta
Pueblo of Jémez
Pueblo of Laguna
Pueblo of Nambé
Pueblo of Picurís
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of San Ildefonso

Pueblo of San Juan
Pueblo of Sandía
Pueblo of Santa Ana
Pueblo of Santa Clara
Pueblo of Santo Domingo
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zía
Pueblo of Zuñí

Scholars, Researchers, and Attorneys

Anselmo F. Arellano, Ph.D., Telaraña Research, Las Vegas, NM
David Benavides, Attorney at Law, Community and Indian Legal Services of Northern New Mexico, Santa Fe, NM
Tomas Benevidez, Town Attorney, Taos, NM
Pete V. Domenici, Jr. Attorney at Law, Albuquerque, NM
Malcolm Ebright, President, Center for Land Grant Studies, Guadalupita, NM
Narcisco Garcia, Attorney at Law, Albuquerque, NM
Jeffrey A. Goldstein, Attorney at Law, Denver, CO
Paula Garcia, Director, New Mexico Acequia Association, Santa Fe, NM
Felipe Gonzalez, Ph.D, Director, Southwest Research Institute, University of New Mexico, Albuquerque, NM
Gerald Gonzales, Attorney at Law, Santa Fe, NM
G. Emlen Hall, Professor, University of New Mexico School of Law, Albuquerque, NM
Robert Hemmerich y Valencia, Ph.D., Emeritus Editor, New Mexico Historical Review, Albuquerque, NM
Stanley Hordes, President, HMS Associates, Albuquerque, NM
Richard Hughes, Attorney at Law, Santa Fe, NM
Christine A. Klein, Professor of Law, University of Florida, Gainesville, FL
Teresa Leger de Fernandez, Attorney at Law, Santa Fe, NM
Carmen Quintana, La Herencia en Santa Fe, Santa Fe, NM
Jane C. Sánchez, Researcher, Albuquerque, NM
Joseph Sánchez, Ph.D., Director, Spanish Colonial Research Center, U.S. National Park Service/University of New Mexico, Albuquerque, NM
Charles R. Thompson, Attorney at Law, Albuquerque, NM
Robert Torrez, Former State Historian, New Mexico State Archives and Records Center, Santa Fe, NM
Frank Trujillo, Historian, Taos, NM
Victor Westphall, Ph.D., Former President, Historical Society of

New Mexico and Chief Executive Officer, Vietnam Veterans National Memorial, Eagle Nest, NM

Agencies and Organizations

Local governments

County of Cibola
County of Rio Arriba
County of Santa Fe
County of Taos
Town of Taos

State government agencies

New Mexico Attorney General's Land Grant Task Force
New Mexico State Records Center & Archives
New Mexico Legislature, Land Grant Committee
University of New Mexico, Center for Southwest Research, Zimmerman Library
University of New Mexico, Law School Library

Federal government agencies

U.S. Bureau of Indian Affairs, Department of the Interior
U.S. Bureau of Land Management, Department of the Interior
U.S. Forest Service, Department of Agriculture
U.S. National Archives and Records Administration
U.S. National Park Service, Department of the Interior

Additional contacts

All Indian Pueblo Council
Fray Angelico Chavez Library
Jicarilla Apache Nation
New Mexico Land Grant Forum
Northern New Mexico Stockmen's Association

Appendix IX: Instructions Issued by Interior to the Surveyor General of New Mexico as Required by the 1854 Act

"Instructions to the Surveyor General of New Mexico"

"General Land Office,
August 21, 1854."

"Sir: The 8th section of the act approved 22d July last, for the establishment of the office of surveyor general in New Mexico, declares as follows:

"'Sec. 8. *And be it further enacted*, That it shall be the duty of the surveyor general, under such instructions as may be given by the Secretary on the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.

"'He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make 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 titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide grants*, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and until the final action of Congress on such claims, all lands shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.'

"The duty which this enactment devolves upon the surveyor general is highly important and responsible. He has it in charge to prepare a faithful report of all the land titles in New Mexico which had their origin before the United States succeeded to the sovereignty of the country, and the law contemplates such a report as will enable Congress to make a just and proper discrimination between such as are *bona fide* and should be confirmed, and such as are fraudulent or otherwise destitute of merit, and ought to be rejected.

"The treaty of 1848 between the United States and Mexico (United States Statutes at Large, volume 9, page 922) expressly stipulates in the 8th and 9th articles for the security and protection of private property. The terms there employed in this respect are the same in substance as those used in the treaty of 1803, by which the French republic ceded the ancient province of Louisiana to the United States; and consequently, in the examination of foreign titles in New Mexico, you will have the aid of the enlightened decisions, and the principles therein developed, of the Supreme Court of the United States, upon the titles that were based upon the treaty of cession and the laws of Congress upon the subject.

"The security to private property for which the treaty of Guadalupe Hidalgo stipulates, is in accordance with the principles of public law as universally acknowledged by civilized nations.

"The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.'—United States vs. Perchman, 7 Peters' Reports.

"In the case of the United States vs. Arredondo and others, 6th Peters' Reports, the Supreme Court declare that Congress 'have adopted, as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested whether it was *property* at the time the treaties took effect.'

"Upon the same basis Congress has proceeded in the present act of legislation, which requires the surveyor general, under instructions from the Secretary of the Interior, to

ascertain the origin, nature, character and extent of all claims to land 'under the laws, usages, and customs of Spain and Mexico;' and arms the surveyor general with power for the purpose, by authorizing him to 'issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.'

"The private land titles in New Mexico are derived from the authorities of Old Spain, as well as of Mexico.

"Among the 'necessary acts' contemplated by the law and required of you, is, that you shall—

"**1st**. Acquaint yourself with the land system of Spain as applied to her ultra marine possessions, the general features of which are found—modified, of course, by local requirements and usages—in the former provinces and dependencies of that monarchy on this continent. For this purpose you must examine the laws of Spain, the royal ordinances, decrees and regulations as collected in *Whites's Recopilacion*, 2 vols.

"By the acts of Congress approved 26th May, 1824, 23d May, 1828, and 17th June, 1844, (United States Statutes at Large, vol. 4, page 52, chap. 173; page 284, chap. 70; and vol. 5, page 676, chap. 95,) the United States district courts were opened for the examination and adjudication of foreign titles. Numerous cases on appeal under these laws, and other cases on writs of error, in which actions on ejectment in the courts below had been instituted, were brought before the Supreme Court of the United States, where the rights of property under inceptive and imperfect titles which originated under the Spanish system have been thoroughly examined and discussed with eminent ability.

"For these decisions I refer you to Peters' and Howard's Reports of the Decisions of the Supreme Court of the United States. It is important you should carefully examine them in connexion with the Spanish law, and the legislation of Congress on the subject, in order that you may understand and be able to apply the principles of the Spanish system as understood and expounded by the authorities of our government.

"**2d**. Upon your arrival at *Santa Fé* you will make application to the governor of the Territory for such of the archives as relate to grants of land by the former authorities of the country. You will see that they are kept in a place of security from fire, or other accidents, and that access is allowed only to land owners who may find it necessary to refer to their title records, and such references must be made under your eye, or that of a sworn employé of the government.

"You will proceed at once to arrange and classify the papers in the order of date, and have them properly and substantially bound. You will then have *schedules* (marked 1) of them made out in duplicate, and will prepare *abstracts*, (No. 2) also in duplicate, of all the grants found in the records, showing the names of grantees, date, area, locality, by whom conceded, and under what authority.

"You will prepare, in duplicate, from the archives or authoritative sources, a *document*, (No. 3) exhibiting the names of all the officers of the Territory who held the power of distributing lands from the earliest settlement of the territory until the change of government, indicating the several periods of their incumbency, the nature and extent of their powers conceding lands; whether, and to what extent, and under what conditions and limitations, authority existed in the governors or political chiefs to distribute (repartir) the public domain; whether in any class of cases they had the power to make an absolute grant; and is so, for what maximum in area; or, whether subject to the affirmance of the department or supreme government; whether the Spanish surveying system was in operation, and since what period in the country, and under what organization; also, with verified copies in the original, and translations, of the laws and decrees of the Mexican republic, and regulations which may have been adopted by the general government of that republic for the disposal of the public lands in New Mexico. Herewith you will receive a table of land measures adopted by the Mexican government, translated from the 'Ordenanzas de Tierras y Aguas,' by Marianas Galvan, edition of 1844, as printed in Ex.

Doc, No. 17, 1st session 31st Congress, House of Representatives, containing much valuable information on the subject of California and New Mexico, and of which document I would invite your special and careful examination.

"In a report of the 14th November, 1851, from the surveyor general of California, it is stated that all the grants, &c., of lots or lands in California, made either by the Spanish government or that of Mexico, refer to the 'vara' of Mexico as the measure of length; that, by common consent in California, that measure is considered as exactly equivalent to *thirty-three* American inches. That officer then enclosed to us copy of a document he had obtained as being an extract of a treaty made by the Mexican government, from which it would seem that another length is given to the 'vara;' and by J. H. Alexander's (of Baltimore) Dictionary of Weights and Measures, the Mexican vara is stated to be equal to 92.741 *of the American yard*.

"This office, however, has sanctioned the recognition, in California, of the Mexican vara, as being equivalent to thirty-three American inches.

"You will carefully compare the data furnished in the table herewith, and in the foregoing, with the Spanish measurements in use in New Mexico, and will report whether they are identical; or if varied in any respect by law or usage, you will make a report of all the particulars.

"You should also add to 'document No. 3,' the *forms* used under the former governments to obtain grants, beginning with the initiatory proceeding, viz; the petition, and indicating the several successive acts until the title was completed. A copy of the 'schedule,' 'abstract,' and 'document,' required of you in the foregoing, duly authenticated by you, should constitute a part of the permanent files of the surveyor general's office, and duplicates of them should be sent as soon as practicable to the Department of the Interior.

"The knowledge and experience you will acquire in arranging the archives, collecting materials, and making out the documents called for by these instructions, will enable you to enter understandingly upon the work of receiving and examining the testimony which may be presented to you by land claimants, and prepare your report thereon, for the action of Congress.

"In the first instance, you will provide yourself with a *journal*, consisting of substantially bound volume or volumes, which is to constitute a complete record of your official proceedings in regard to land titles; and with a suitable *docket*, for the entry therein of claims in the order of their presentation, and so arranged as to indicate at a glance a brief statement of each case, its number, name of original and present claimant, area, locality, from what authority derived, nature of title—whether complete or incomplete, and your decision thereon.

"Your first session should be held at *Santa Fé*, and your subsequent sessions at such places and periods as public convenience may suggest, of which you will give timely notice to the department.

"You will commence your session by giving proper public notice of the same, in a newspaper of the largest circulation in the English and Spanish languages—will make known your readiness to receive notices and testimony in support of the land claims of individuals, derived before the change of government.

"You will require claimants in every case—and give public notice to that effect—to file a written *notice* setting forth the name of, 'present claimant;' name of the 'original claimant;' nature of claim—whether inchoate or perfect; its date; from what authority the original title was derived, with a reference to the evidence of the power and authority under which the granting officer may have acted; quantity claimed; locality, notice, and extent of conflicting claims, if any, with a reference to the documentary evidence and testimony relied upon to establish the claim, and to show a transfer of right from the 'original grantee' to 'present claimant.'

"You will also require of every claimant an authenticated plat of survey, if a survey has been executed, or other evidence, showing the precise locality and extent of the tract claimed.

"This is indispensable, in order to avoid any doubt hereafter in reserving from sale, as contemplated by law, the particular tract or parcel of land for which a claim may be duly filed, or in communicating the title to the same hereafter, in the event of a final confirmation.

"The effect of this will be not only to save claimants from embarrassments and difficulties, inseparable from the presentation and adjudication of claims with indefinite limits, but will promote the welfare of the country generally, by furnishing the surveyor general with evidence of what is claimed as private property, under treaty and the act of July 22, 1854; thus enabling him to ascertain what is undisputed public land, and to proceed with the public surveys accordingly, without awaiting the final action of Congress upon the subject.

"You will take care to guard the public against fraudulent or antedated claims, and will bring the title-papers to the test of the genuine signatures, which you should collect of the granting officers, as well as to the test of the official registers or abstracts which may exist of the titles issued by the granting officers. In all cases, of course, the *original* title-papers are to be produced, or loss accounted for; and where copies are presented, they must be authenticated; and your report should also state the precise character of the papers acted upon by you, whether originals or otherwise. Where the claim may be presented by a party as "present claimant" in right of another, you must be satisfied that the deraignment of title is complete; otherwise, the entry and your decision should be in favor of the 'legal representatives' of the original grantee.

"Your journal should be prefaced by a record of the law under which you are required to act, and of your commission and oath of office; and should contain a full record of the notice and evidence in support of each claim, and of your decision, setting forth, as succinctly and concisely as possible, all the leading facts, particulars, and the principles applicable to the case, and upon which such decision may be founded. All the original papers should of course be carefully numbered, filed, and preserved; and upon each should be endorsed the volume and page of the record in which they are entered, and such reference should be made on the journal and docket as will properly connect them with each other.

"Your docket should be a condensed exhibit of every case and of your decision. The claims, both as to grade and dignity, may be classified by numerals or alphabetically, accompanied by explanatory notes, in such a manner that it will show every case confirmed, and every one rejected by you.

"In the case of any town lot, farm lot, or pasture lots, held under a grant from any corporation or town to which lands may be granted for the establishment of a town, by the Spanish or Mexican government, or the lawful authorities thereof, or in the case of any city, town, or village lot, which city, town, or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claim to the same may be presented by the corporate authorities; or where the land on which the said city, town, or village, was originally granted to an individual, the claim may be presented by or in the name of such individual; and the fact being proved to you of the existence of such city, town, or village at the period when the United Sates took possession, may be considered by you as prima facie evidence of a grant to such corporation, or to the individuals under whom the lot-holders claim; and where any city, town, or village shall be in existence at the passage of the act of 22d July, 1854, the claim for the land embraced within the limits of the same may be made and proved up before you by the corporate authority of the said city, town, or village. Such is the principle sanctioned by the act of 3d March, 1851, for the adjudication of Spanish and Mexican claims in California; and I think its application and adoption proper in regard to claims in New Mexico.

"In the month of March, 1849, there was published in the Atlantic States an extract of a

letter dated December 12, 1848, at Santa Fé, New Mexico, purporting to be from a young officer of the army, in which it was stated that "the prefect at El Paso del Norte has for the last few months been very active in disposing (for his own benefit) of all lands in that vicinity that are valuable, *antedating* the title to said purchasers;" that "these land titles" would "be made a source of profitable litigation," &c. It will be your duty to subject all papers under suspicion of fraud to the severest scrutiny and test, in order to settle the question of their genuineness.

"You will also collect information, from authentic sources, in reference to the laws of the country respecting minerals, and ascertain what conditions were attached to grants embracing mines; whether or not the laws and policy of the former governments conferred absolute title in granting lands of this class in New Mexico. It is proper, also, and you are instructed in the case of every claim that may be filed, to ascertain from the parties, and require testimony, as to whether the tracts claimed are mineral or agricultural; and you will be careful to make the necessary discrimination in the record of your proceedings and in your docket.

"Your report should be divided into two parts. Part first should embrace individual and municipal claims, and should be prepared in the manner contemplated by law, and in accordance with the requirements in the foregoing instructions.

"The law further requires you, also, to 'make 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 titles to the land.'

"Part second of your report should be devoted to this branch of duty.

"It will be your business to collect *data* from the records and other authentic sources relative to these pueblos, so that you will enable Congress to understand the matter fully, and legislate in such a manner as will do justice to all concerned.

"In a report dated July 29, 1849, in camp near Santa Fé, from the Indian agent, James S. Calhoun, to the Commissioner of Indian Affairs, he says: 'The Pueblo Indians, it is believed, are entitled to the early and especial consideration of the government of the United States; they are the only tribe in perfect amity with the government, and are an industrious, agricultural, and pastoral people, living principally in villages, ranging north and west of Taos South, on both sides of the Rio Grande, more than 250 miles;" that "by a Mexican statute these people,' as he had been informed by Judge Houghton, of Santa Fe, "were constituted citizens of the republic of Mexico, granting to all of mature age, who could read and write, the privilege of voting;" but this statute has no practical operation; that "since the occupancy of the territory by the government of the United States, the territorial legislature of 1847 passed the following act, which at the date of the Indian agent's report was in force:

"'Sec. 1. *Be it enacted by the General Assembly of the Territory of New Mexico*, That the inhabitants within the Territory of New Mexico known by the name of Pueblo Indians, and living in towns or villages built on lands granted to such Indians by the laws of Spain or Mexico, and conceding to such inhabitants certain land and privileges, to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in law by the name of the "Pueblo," &c., (naming it;) and by that name they and their successors shall have perpetual succession –sue and be sued.'

"In a subsequent report, viz: of the 4th of October, 1849, the same officer reported, from Santa Fé, that "the pueblos or civilized towns of Indians of the Territory of New Mexico are the following:

"In the country of Taos: Taos Picoris …… 283 inhabitants.

In the country of Rio Ariba: San Juan, Santa Clara ……. 500 "

In the country of Santa Fé: San Ildefonso, Namba,

Pojoaque, Tesuque …….…….. 590 "

In the country of Santa Ana: Cochite, Santa Domingo,

San Felipe, Santa Ana, Zia, Jenez ……..…. 1,918 "

In the country of Bernalillo: Sandia-Gleta …….…… 883 "

In the country of Valencia: Leguna, Acona, Zunia …….…….. 1,800 "

Opposite El Paso: Socoro, Islettas ……..…. 600 "

Recapitulation. – Pueblos of New Mexico.

County of Taos……..……. 283 over five years of age.

County of Rio Ariba……. 500 " "

County of Santa Fé……..…….. 590 " "

County of Santa Ana……. 1,918 " "

County of Bernalillo…….……. 833 " "

County of Valencia……. 1,800 " "

District of Tontero, opposite El Paso del Norte…… 600 " "

6,524.'

"The above enumeration, it is stated by the officer mentioned, 'was taken from census ordered by the legislature of New Mexico, convened December, 1847, which includes only those of five years of age and upwards;' and further, that "these pueblo are located from ten to near a hundred miles apart, commencing north at Taos, and running south to near El Paso, some four hundred miles or more, and running east and west two hundred miles;" this statement having no reference to pueblos west of Zunia.

"In another dispatch, dated the 15th October, 1849, at Santa Fe, the same agent reports that 'those pueblos are built with direct reference to defence, and their house are from one to six stories high,' &c.; that 'the general character of their house is superior to those of Santa Fé;" they "have rich valleys to cultivate,' &c.; and they 'are a valuable and available people, and as firmly fixed in their homes as any one can be in the United States;' that "their lands are held by Spanish and Mexican grants—to what extent is unknown;" that Santa Ana, as Major Weightman had informed the agent, 'decreed, in 1843, that one born in Mexico was a Mexican citizen, and, as such, is a voter, and therefore all the Pueblo Indians are voters;' but that 'the exercise of this privilege was not known prior to what is termed an election—the last one is this Territory,' &c.

"It is obligatory on the government of the United States to deal with the private land titles, and the 'pueblos,' precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done—to go that far, and no further. This is the principle which you will bear in mind in acting upon these important concerns.

"You will append to your report on the pueblos the best map of the country that can be procured, on a large scale, and will indicate thereon the localities and extent of the several pueblos as illustrative of that report; which you desired to prepare and transmit to the department at as early a period as the nature of the duty will allow.

Very respectfully, your obedient servant,

JOHN WILSON, Commissioner.

"Wm. Pelham, Esq.,

U.S. Surveyor General of Mexico.

"The foregoing instructions are hereby approved.

R. McCLELLAND, *Secretary*.

Department of the Interior,

August 25, 1854."

Appendix X: Data on the 295 Spanish and Mexican Land Grants in New Mexico

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Abiquiú (Town of)	C	199	140	52
Agapito Ortega	I			226
Agua Negra	I	41	12	
Agua Salada	I	177	103	31
Alameda (Town of)	OI	144	91	11
Álamitos	C	151	69	91, 183
Álamo	I			200
Albuquerque (Town of)	C	188	130	8
Alexander Valle	C	54	18	
Alfonso Rael de Aguilar (2)	I	146	81	234
Alphonso Rael de Aguilar (1)	I	104		191
Antón Colorado	I			160
Angostura	I	165	84	229
Angostura del Pecos	C	23, 76		
Antoine Leroux	I	51	47	
Antón Chico (Town of)	C	63	29	
Antonio Armijo	I			102
Antonio Baca	OI	176	101	70
Antonio de Abeytia	I			68
Antonio de Salazar	OI	191	132	235
Antonio de Ulibarrí	I			261
Antonio Domínguez	I			105
Antonio Martínez	I	111	116	9
Antonio Ortiz	I	55	42	
Archuleta & González	I			104
Arkansas	OI	100		
Arquito	OI	75		145
Arroyo de San Lorenzo	I	158	79	37
Arroyo Hondo	C	81, 86, 174	159	5, 174, 175, 176, 186
Atrisco (Town of)	C	184	145	45
Badito	C			197
Baltazar Baca	I	178	104	114
Barranca	C			97, 265

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Bartolomé Baca	I	123	126	58
Bartolomé Fernández	I	154	78	61, 126
Bartolomé Sánchez	OI			264
Bartolomé Trujillo	C			257, 263
Belén (Town of)	C	43	13	
Bernabé Manuel Montaño	C	93	49	7, 77
Bernal Spring	I			118
Bernalillo (Town of)	OI	164	83	146, 208, 217, 258
Black Mesa	OI			56
Bosque Del Apache	I	69	35	
Bosque Grande	OI	175	100	66, 272
Bracito	C	32	6	
Cadillal	C	90		
Caja del Río	C	135	63	39
Cañada Ancha	I	157	82	85
Cañada de Cochití	I	95	135	205, 240
Cañada de los Álamos (1)	C	89	53	53
Cañada de los Álamos (2)	I	172	98	38, 76, 207
Cañada de Los Apaches	I	131	50	15
Cañada de los Mestaños	C	82		163
Cañada de San Francisco	C	136	57	98
Cañada de Santa Clara	P	193	138	17
Candelarios (Town of)	OI	99		
Cañón de Carnue	C	96	150	74
Cañón de Chama	C	83	71	107
Cañón de San Diego	C	60, 128	25, 122	100
Cañón del Agua	I	70	40	
Cañón del Río	I	142	93	166
Casa Colorado (Town of)	C	29	5	
Catarina Maese	I			119
Cebolla	C	141	61	108
Cebolleta (Town of)	C	73	46	
Chaca Mesa	OI	170	96	34
Chamisos Arroyo	I	143	74	72

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Chamita (Town of)	OI	64	36	
Chaperito (Town of)	C	7		
Chililí (Town of)	C	40	11	
Chupaderos de la Lagunita	I			113
Cieneguilla (Town of)	C	145	62	84
Corpos Cristo	I			48
Cristóbal de la Serna	OI	109	158	21
Cristóval Crespín	I			232
Cubero (Town of)	C	26		1
Cuyamungué	OI	139	54	112
Diego Arias de Quirós	I			190
Diego de Belasco	I			251
Diego Montoya	I	209	156	51, 106
Domingo Fernández	C	16	19	
Domingo Valdez	I	202	141	49
Don Fernando de Taos	C	120	125	149
Doña Ana Bend Colony	C	92, 161	85	24
El Pino	I			81
El Rito (Town of)	OI	196, 197	151	224
Embudo	OI	91		173
Estancia	I	10	70	152
Felipe Pacheco	I			192
Felipe Tafoya (1)	I			187
Felipe Tafoya (2)	I	173	99	67
Francisco de Anaya Almazán	OI	4, 125	115	214, 243
Francisco García	I			230
Francisco Montes Vigil	OI	189	128	14
Francisco X. Romero	I			262
Galisteo (Town of)	C	5, 138	60	54
Gaspar Ortiz	I	67, 159	31, 87	
Gervacio Nolan	C	9	39	46
Gijosa	OI	110	109	16
Gotera	OI	130	56	83
Guadalupe Miranda	I			139

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Guadalupita	OI	94, 204	152	131
Hacienda del Álamo	OI			155
Heath	OI			59
Jacona (Town of)	I	168	92	35
Joaquín (de) Mestas	I	171	97	23, 279
Joaquín Sedillo & Antonio Gutiérrez	I			274, 275
John Scolly	C	39	9	
Jornado del Muerto	I	58	26	
José Antonio Lucero	I	203	147	117
José Antonio Torres	I			255
José de Leyba	I			278
José Domínguez	I	129	120	
José García	I	211	160	92
José Ignacio Alarí	OI			227
José Leandro Perea	I	50	16	
José Manuel Sánchez Baca	I	24	129	138
José Rómula de Vera	I			121
José Sutton	I	61	45	143
José Trujillo	OI	117, 118	112	115, 268
Juan Antonio Flores	I			125
Juan Bautista Valdez	C	127, 137	55, 113	179
Juan Cayentano Lovato	I			103
Juan de Gabaldón	C	150	65	86, 202
Juan de Mestas	I	147	80	237
Juan de Ulibarrí	OI			253
Juan Durán	I			12
Juan Estevan García de Noriega	I			254
Juan Felipe Rodríguez	I			120
Juan G. Pinard	I	34		
Juan José Archuleta	I			124
Juan José Lovato	I	198		140, 250
Juan José Moreno	I			260
Juan José Sánchez	I			280
Juan Manuel Córdova	I	35		

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Juan Montes Vigil	I	113	124	
Juan Tafoya	I			266
Juana Baca	I			172
La Majada	OI			89
La Nasa	I	186		238
Las Lagunitas	OI	207	154	
Las Lomitas	I			156
Las Trampas (Town of)	C	65	27	
Las Vegas (Town of)	C	12	20	
Lo de Básquez	I	101		178
Lo de Padilla	I	102, 213	146	63, 273
Los Conejos	C	80		109
Los Manuelitas	C			242
Los Serrillos	C	132	59	78
Los Trigos	C	11	8	
Luis de Armenta	I	140	68	
Luis María Cabeza de Baca	I	6	20	
Maes & Gallego	I	205	153	
Manuel Tenorio	I			188
Manuela García de las Ribas	I			249
Manzano (Town of)	C	21	23	
Maragua	OI	126	121	276
Maxwell Grant	I	48	15	
Mesilla Civil Colony	C	114, 162	86	151
Mesita Blanca	C			159
Mesita de Juana López	OI	149	64	
Montoya	OI			
Mora (Town of)	C	66	32	
Nepumecina Martínez de Aragón	I			223
Nerio Antonio Montoya	I	87	51	20
Nicolás Durán de Cháves	C	208	155	57
Nuestra Señora de Guadalupe Mine	I			165, 206
Nuestra Señora del los Dolores Mine	I	192	162	147
Nuestra Señora del Rosario, San Fernando y Santiago	C			28, 225

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Ocate	I	1	143	231
Ojito de Galisteo	OI			164
Ojito de los Médanos	I			69, 209
Ojo Caliente	C	156	77	88, 94
Ojo de Borrego	I	97	118	95, 195
Ojo de la Cabra	I	181	106	167
Ojo de San José	C	185		130, 182, 259
Ojo del Apache	I	148	72	101
Ojo del Espíritu Santo	I	36	44	
Orejas del Llano de los Aguajes	I	116	117	169
Ortiz Mine	I	28, 37	43	
Pablo Montoya	I	27	41	
Pacheco	I			18
Pajarito	OI	210	157	73
Paraje del Punche	I			241
Pedro Armendaris #33	OI	56	33	
Pedro Armendaris #34	OI	57	34	
Peralta (1) (La)	I			161
Peralta (2)	I			110
Petaca	C	179	105	99, 153, 233
Piedra Lumbre	I	152	73	30
Plaza Blanca	I	84	148	32
Plaza Colorado	OI	85	149	2
Polvadera	OI	124	131	43
Preston Beck Jr.	I	2	1	
Pueblo of Acoma	P	B	B	
Pueblo of Cochití	P	G	G	
Pueblo of Isleta	P	Q	Q	
Pueblo of Jémez	P	A	A	
Pueblo of Laguna	P	S	S	133
Pueblo of Nambé	P	R	R	
Pueblo of Pecos	P	F	F	
Pueblo of Picurís	P	D	D	
Pueblo of Pojoaque	P	N	N	

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Pueblo of Quemado	C			171, 212
Pueblo of San Cristóbal	P	U		
Pueblo of San Felipe	P	E	E	
Pueblo of San Ildefonso	P	M	M	
Pueblo of San Juan	P	C	C	
Pueblo of Sandía	P	P	P	
Pueblo of Santa Ana	P	T	T	
Pueblo of Santa Clara	P	K	K	
Pueblo of Santo Domingo	P	H	H	
Pueblo of Santo Domingo & San Felipe	I	200	142	134, 184, 185
Pueblo of Taos	P	I	I	
Pueblo of Tesuque	P	L	L	
Pueblo of Zía	P	O	O	
Pueblo of Zuñí	P	V	V	
Pueblos of Zía, Jémez, & Santa Ana	P	TT	TT	50
Ramón Vigil	I	30	38	
Ranchito	C			157
Rancho de Abiquiú	I			247
Rancho de Coyote	I			248
Rancho de Gigante	I	68	30	
Rancho de la Gallina	I			222, 244
Rancho de la Santísima Trinidad	I	42	123	26, 282
Rancho de los Comanches	I			219
Rancho de los Corrales	I			221
Rancho de los Rincones	I			246
Rancho de Nuestra Señora de la Luz	OI	25	10	
Rancho de Paguate	I	68	30	
Rancho de Río Arriba	I			245
Rancho de Río Puerco	I			220
Rancho de San Juan	I	68	30	
Rancho de Santa Ana	I	68	30	
Rancho de Ysleta	C			33
Rancho del Río Grande	C	78	58	10
Rancho el Rito	I	68	30	136, 196, 210

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Real de Dolores del Oro (Town of)	OI			111
Refugio Civil Colony	C	163	90	150, 193
Río de Chama	I			218
Río del Oso	OI	112		177
Río del Picurís	C	71		65
Río Tesuque (Town of)	OI	98		123, 215
Rito de los Frijoles	I	106	133	41
Rómulo Barela	I			281
Roque Jacinto Jaramillo	I			228
Roque Lovato	I	133	52	180
Salvador Lovato	I			93
San Acasio	I			158
San Antonio de las Huertas	C	88	144	90, 269
San Antonio del Río Colorado	C	153	76	4
San Antoñito	C	77		27
San Clemente	OI	3	67	64
San Cristóbal	OI	121	110	
San Isidro (Town of)	OI	45	24	
San Joaquín del Nacimiento	C	134	66	144, 203, 213, 252
San Marcos Pueblo	OI	155	102	22
San Mateo Spring(s)	I	190	134	75
San Miguel del Vado	C	49	119	25, 60, 198
San Pedro	C	44	14	
Sangre de Cristo	OI	14	4	
Sanguijuela	OI			170
Santa Bárbara	C	122	114	96
Santa Cruz	C	103		181, 194
Santa Fé	C	166	88	19, 80
Santa Fé Cañón	I			199
Santa Rita del Cobre	OI	107, 194		
Santa Rosa de Cubero	OI			267
Santa Teresa	I	108, 115	111	168
Santiago Bone	I	206		62
Santiago Ramírez	I	52	136	122, 148

Grant name	Grant type[a]	Surveyor general file number[b]	Surveyor general report number[c]	CPLC docket number(s)[d]
Santo Domingo de Cundiyó	OI			211
Santo Tomás de Yturbide	C	201	139	137
Santo Toribio	C			256
Sebastián De Vargas	I	187	137	6
Sebastián Martín	OI	62	28	
Sevilleta	C	169	95	55
Sierra Mosca	I	119	75	87
Sitio de Juana López	I			82
Sitio de Los Serrillos	I			79
Socorro (Town of)	C	180	107	13, 127
Tacubaya	OI			239
Tajique (Town of)	C	47	21	
Talaya Hill	I	160	89	116
Tecolote (Town of)	OI	8	7	
Tejón (Town of)	C	22	37	
The Baird's Ranch	I			36
Tierra Amarilla	C	33	3	
Tomás Tapia	I			189
Tomé (Town of)	C	31	2	
Torreón (Town of)	C	20	22	
Uña Del Gato	I	167	94	
Vallecito (de San Antonio)	C	183		141
Vallecito de Lovato (Town of)	C	59, 182	108	142, 204, 236
Vertientes de Navajó	I	195		270

Source: GAO analysis.

[a]"C" refers to community land grants identified through original grant documentation. "OI" refers to grants identified by grant heirs, scholars, or others as having common lands, but which lack supporting grant documentation. "P" for Pueblo refers to grants made by Spain to indigenous Pueblo cultures. "I" refers to grants made to individuals.

[b]The blank spaces in this column indicate that no claim was presented to the Surveyor General.

[c]The blank spaces in this column indicate that the Surveyor General did not prepare a final report for this grant.

[d]"CPLC" refers to the Court of Private Land Claims. The blank spaces indicate that the grant was not presented to the CPLC and consequently it does not have CPLC docket number.

Appendix XI: Results of Evaluations of Claims for Land Grants in New Mexico

The following three tables summarize the results of the evaluations performed by the Surveyor General of New Mexico and confirmed by Congress, and by the Court of Private Land Claims, of claims made for community land grants located within present-day New Mexico.

Table 30: Community Land Grants in New Mexico Confirmed in Full

Original documentation community grants (C)	Self-identified community grants (OI)	Pueblo community grants (P)
Grants confirmed by Congress, 1854-1891		
Alexander Valle	Chamita (Town of)	Pueblo of Acoma
Antón Chico (Town of)	Mesita de Juana López	Pueblo of Cochití
Belén (Town of)	Pedro Armendaris #33	Pueblo of Isleta
Bracito	Pedro Armendaris #34	Pueblo of Jémez
Cañón de San Diego	Rancho de Nuestra Señora de la Luz	Pueblo of Nambé
Casa Colorado (Town of)	San Isidro (Town of)	Pueblo of Pecos
Cebolleta (Town of)	Sangre de Cristo	Pueblo of Picurís
Chililí (Town of)	Sebastián Martín	Pueblo of Pojoaque
Domingo Fernández	Tecolote (Town of)	Pueblo of San Felipe
John Scolly		Pueblo of San Ildefonso
Las Trampas (Town of)		Pueblo of San Juan
Las Vegas (Town of)		Pueblo of Sandía
Los Trigos		Pueblo of Santa Ana
Manzano (Town of)		Pueblo of Santa Clara
Mora (Town of)		Pueblo of Santo Domingo
San Pedro		Pueblo of Taos
Tajique (Town of)		Pueblo of Tesuque
Tejón (Town of)		Pueblo of Zía
Tierra Amarilla		
Tomé (Town of)		
Torreón (Town of)		
Grants confirmed by the Court of Private Land Claims, 1891-1904		
Abiquiú (Town of)	La Majada	
Atrisco (Town of)	Polvadera	
Caja del Río	San Marcos Pueblo	
Doña Ana Bend Colony	Santo Domingo de Cundiyó	
Mesilla Civil Colony		
Santa Bárbara		
Sevilleta		
Socorro (Town of)		
Grants confirmed by special congressional action		
Albuquerque (Town of)		Pueblo of Zuñí
Santa Fé		

Source: GAO analysis.

Table 31: Community Land Grants in New Mexico Confirmed in Part

Original documentation community grants (C)	Self-identified community grants (OI)	Pueblo community grants (P)
Grants that appear to have been awarded complete acreage to the extent possible		
Álamitos	Alameda (Town of)	
Arroyo Hondo	Black Mesa	
Bernabé Manual Montaño	Bosque Grande	
Cañada de los Álamos (1)	Cristóbal de la Serna	
Cubero (Town of)	Cuyamungué	
Juan de Gabaldón	Francisco Montes Vigil	
Los Serrillos	Gijosa	
Nicolás Durán de Cháves	Pajarito	
Nuestra Señora del Rosario, San Fernando y Santiago		
Rancho del Río Grande		
Santo Tomás de Yturbide		
Grants with boundary disputes		
Juan Bautista Valdez	Bartolomé Sánchez	Cañada de Santa Clara
Ojo Caliente	Bernalillo (Town of)	Pueblo of Laguna
Ojo de San José	Francisco de Anaya Almazán	
Ranchito	Plaza Colorado	
Refugio Civil Colony	San Clemente	
San Antonio de las Huertas	Santa Rosa de Cubero	
Grants restricted to individual allotments only		
Cañón de Carnue		
Cañón de Chama		
Don Fernando de Taos		
Galisteo (Town of)		
Petaca		
San Miguel del Vado		
Santa Cruz		
Grants restricted to 11 square leagues		
	Antonio Baca	
	Chaca Mesa	

Source: GAO analysis.

Table 32: Rejected Community Land Grants in New Mexico

Original documentation community grants (C)	Self-identified community grants (OI)	Pueblo community grants (P)
Grants for which claimants failed to pursue and grants were dismissed		
Angostura del Pecos	Antonio de Salazar	Pueblo of San Cristóbal
Bartolomé Trujillo	Arkansas	
Cadillal	Arquito	
Chaperito (Town of)	Candelarios (Town of)	
Los Manuelitas	El Rito (Town of)	
Mesita Blanca	Guadalupita	
Pueblo of Quemado	Hacienda del Álamo	
Santo Toribio	José Ignacio Alarí	
Vallecito (de San Antonio)	José Trujillo	
	Juan de Ulibarrí	
	Las Lagunitas	
	Montoya	
	Ojito de Galisteo	
	Río del Oso	
	San Cristóbal	
	Santa Rita del Cobre	
	Tacubaya	
Grants made by officials who lacked authority to make grants		
Badito	Gotera	
Cañada de los Mestaños	Maragua	
Cañada de San Francisco		
Río del Picurís		
San Antonio del Río Colorado		
San Antoñito		
Grants that relied on copies of documents made by officials who were not authorized to make copies		
Cieneguilla (Town of)	Embudo	
	Sanguijuela	

Original documentation community grants (C)	Self-identified community grants (OI)	Pueblo community grants (P)
Grants rejected for a variety of legal reasons		
Barranca	Heath	Pueblos of Zía, Jémez, & Santa Ana
Cebolla	Real de Dolores del Oro (Town of)	
Gervacio Nolan	Río Tesuque (Town of)	
Los Conejos		
Rancho de Ysleta		
San Joaquín del Nacimiento		
Vallecito de Lovato (Town of)		

Source: GAO analysis.

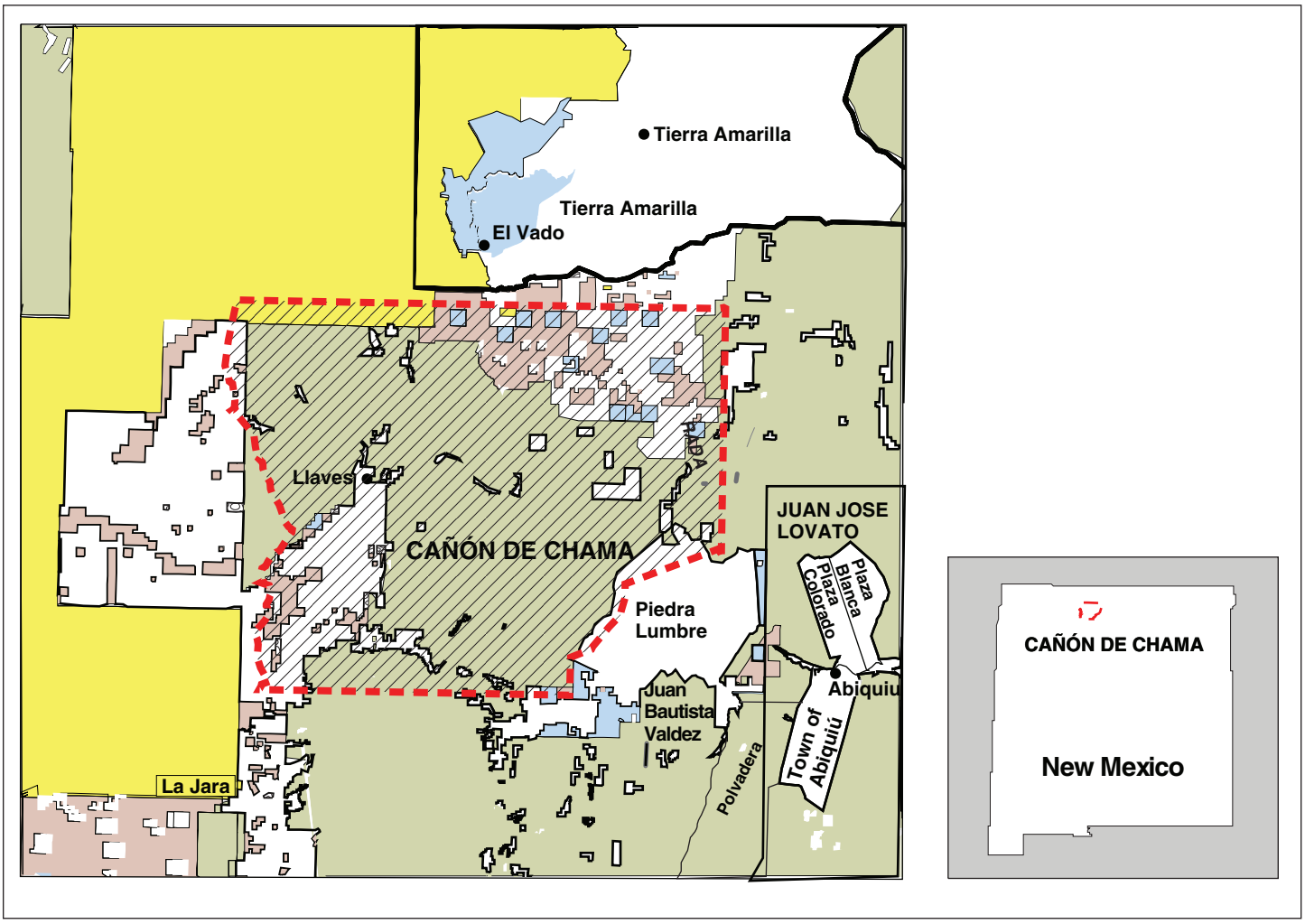
Appendix XII: Current Land Ownership within Originally Claimed Grant Boundaries

This appendix contains six maps (figures 9-14) showing the original claimed boundaries and current land ownership of eight community land grants—Cañón de Chama, San Miguel del Vado, Petaca, the Town of Cieneguilla, San Antonio del Río Colorado, Gotera, Maragua, and Cañada de San Francisco.

The maps are based on preliminary surveys by the U.S. Bureau of Land Management (BLM) and are intended to be used for illustrative purposes only. The maps show the approximate locations and the approximate original size of eight community land grants. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the maps. If Congress decides to take any action concerning any of the community land grants discussed in this report, additional surveys would need to be completed by BLM.

The version of this report available on the GAO Web site, at http://www.gao.gov, shows these six maps (and the other maps in this report) in color.

Figure 9: Current Land Ownership Within the Original Claimed Boundaries of the Cañón de Chama Land Grant



Legend

- Original claimed boundary
- Approved land grant

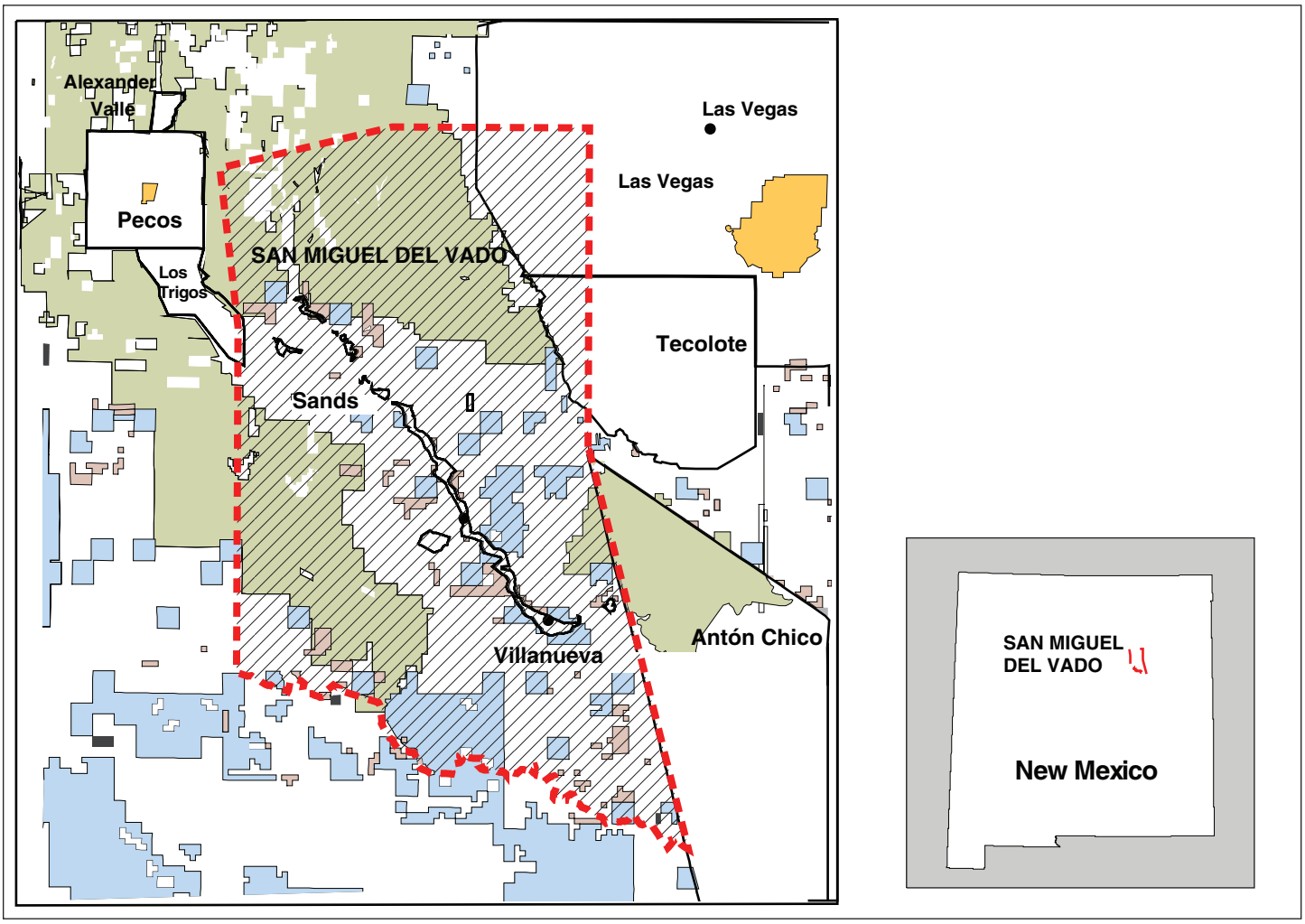
Surface ownership

- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on a preliminary survey by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of a community land grant. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Figure 10: Current Land Ownership Within the Original Claimed Boundaries of the San Miguel del Vado Land Grant



Legend

- Original claimed boundary
- Approved land grant

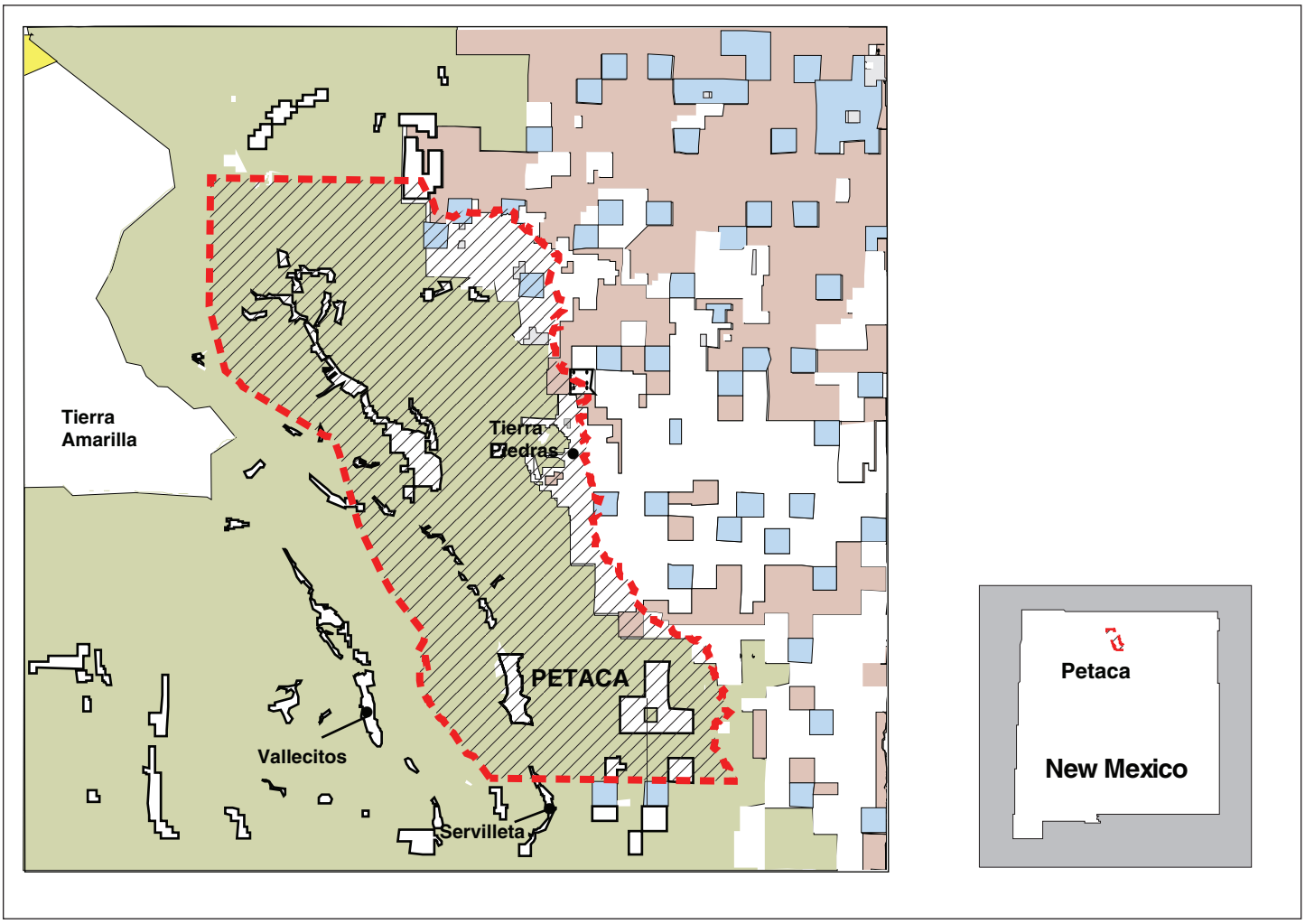
Surface ownership

- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on a preliminary survey by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of a community land grant. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Figure 11: Current Land Ownership Within the Original Claimed Boundaries of the Petaca Land Grant



Legend

- Original claimed boundary
- Approved land grant

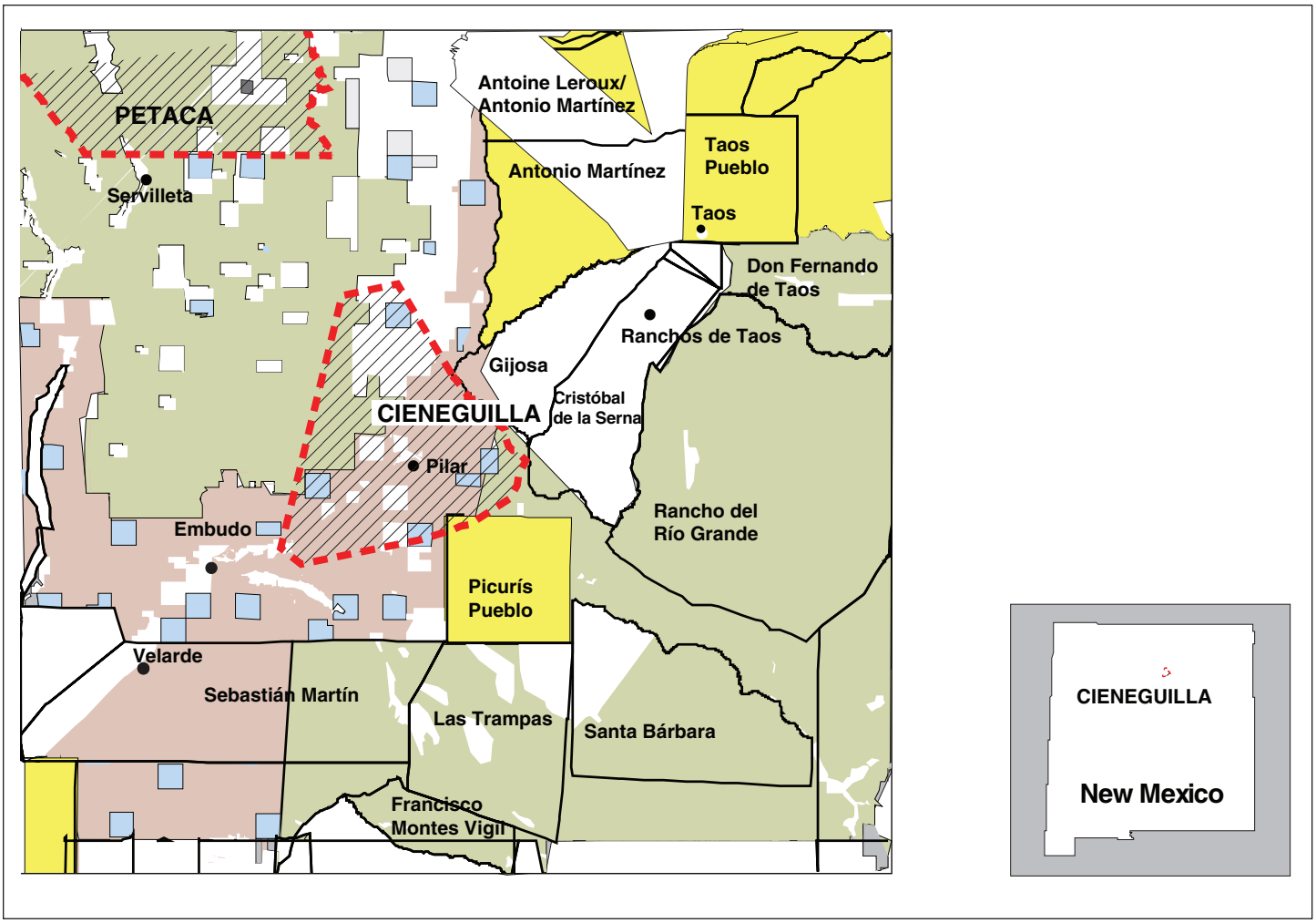
Surface ownership

- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on a preliminary survey by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of a community land grant. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Figure 12: Current Land Ownership within the Originally Claimed Boundaries of the Cieneguilla Land Grant



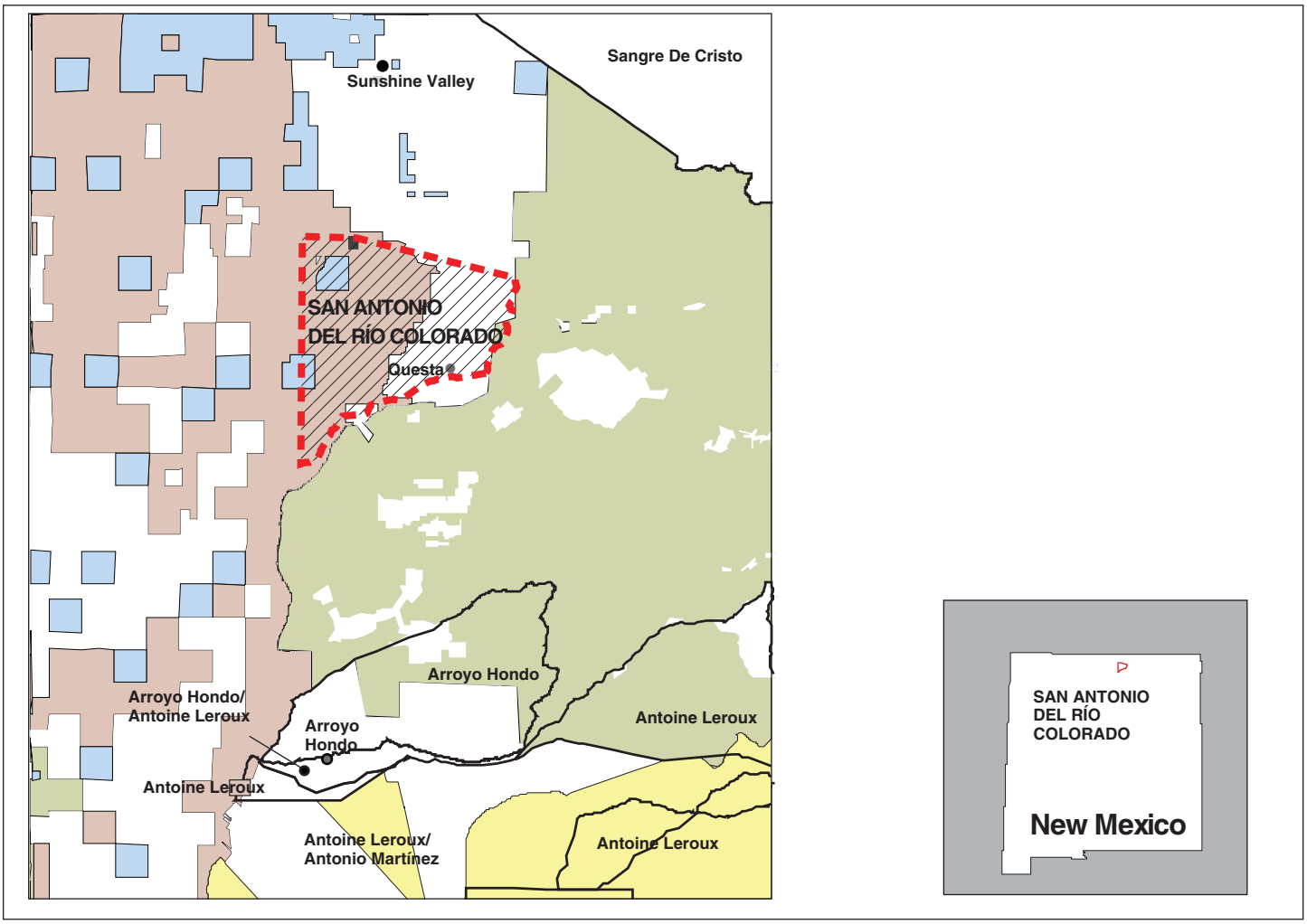
Legend

- Original claimed boundary
- Approved land grant
- **Surface ownership**
- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on a preliminary survey by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of a community land grant. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Figure 13: Current Land Ownership within the Originally Claimed Boundaries of the San Antonio del Río Colorado Land Grant



Legend

- Original claimed boundary
- Approved land grant

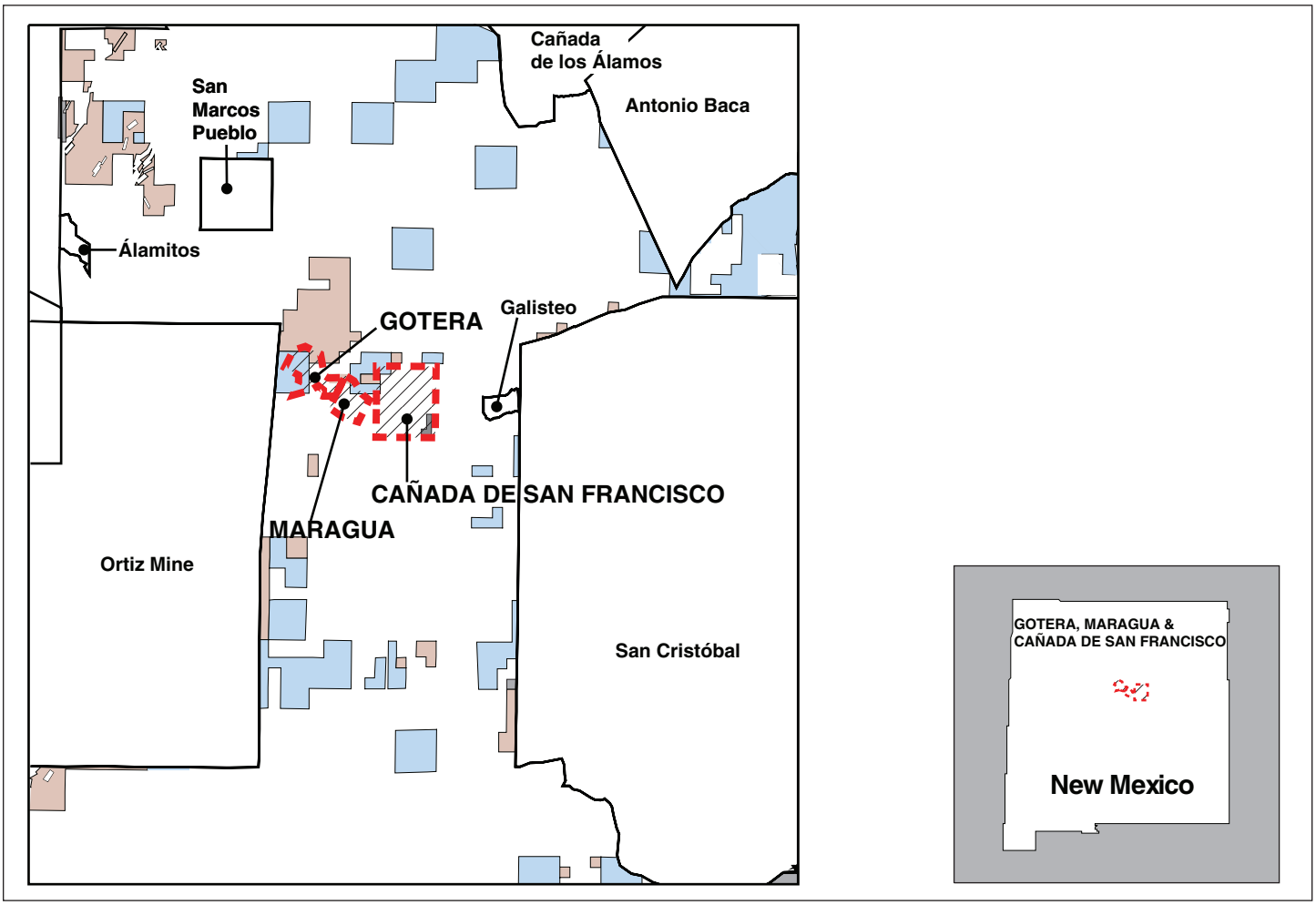
Surface ownership

- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on a preliminary survey by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of a community land grant. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Figure 14: Current Land Ownership within the Originally Claimed Boundaries of the Gotera, Maragua, and Cañada de San Francisco Land Grants



Legend

- Original claimed boundary
- Approved land grant

Surface ownership

- Private
- Bureau of Land Management
- U.S. Forest Service
- Tribal
- State
- Other federal

Source: Bureau of Land Management.

Note: This map is based on preliminary surveys by the Bureau of Land Management (BLM) and is intended to be used for illustrative purposes only. The map shows the approximate location and the approximate original size of three community land grants. BLM makes no warranty as to the accuracy, reliability, or completeness of the data represented in the map.

Appendix XIII: GAO Contacts and Staff Acknowledgments

GAO Contacts

Susan D. Sawtelle, Associate General Counsel
Alan R. Kasdan, Senior Attorney
Office of General Counsel
(202) 512-5400

Jeffery D. Malcolm, Assistant Director
Natural Resources and Environment Team
(202) 512-3841

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