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**Letter from the Secretary of the Interior, transmitting supplemental report of the Surveyor-General of New Mexico relative to private land claim No. 98.**

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L E T T E R

FROM

THE SECRETARY OF THE INTERIOR.

TRANSMITTING

*Supplemental report of the surveyor-general of New Mexico relative to private land claim No. 98.*

MAY 3, 1886.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,  
*Washington, April 29, 1886.*

SIR: Referring to former letter from this Department (see House Ex. Doc. No. 62, Forty-third Congress, second session), I have the honor to transmit herewith, pursuant to the requirement of the 8th section of the act of July 22, 1854 (10 Stats., 308), a supplemental report by the surveyor-general of New Mexico on the alleged private land claim of Bernardo de Miera y Pacheco and Pedro Padilla, No. 98.

The surveyor-general recommends that the claim be rejected.

Very respectfully,

L. Q. C. LAMAR,  
*Secretary.*

The PRESIDENT OF THE SENATE PRO TEMPORE.

[File No. 172. Reported No. 98.]

*Private land claim of Bernardo de Miera y Pacheco and Pedro Padilla.*

SURVEYOR-GENERAL'S OPINION.

[Supplementary.]

UNITED STATES SURVEYOR-GENERAL'S OFFICE,  
*Santa Fé, N. Mex., March 20, 1886.*

*Private land claim of Bernardo de Miera y Pacheco and Pedro Padilla. File No. 172. Reported No. 98.*

This claim was filed in this office November 10, 1874. The case was heard by Surveyor-General Proudfit, who recommended the confirmation of the claim on December 14, 1874, and on the 26th of the same month transmitted to the General Land Office the papers in the case, which is now pending before Congress. A survey of the claim was made in April, 1879, covering 148,862.94 acres.

On February 3, 1886, Roman A. Baca, on behalf of himself and other owners of the Cebolleta grant, filed a protest against the survey, on the ground of its conflict with

the survey of said grant, which protest was forwarded to the General Land Office February 6, 1886, and on the 26th of the same month the Commissioner of the General Land Office directed me to re-examine the case and submit my report for the information of his office and Congress. The petition filed by the claimants does not give the names of the present owners, but refers to them as "the heirs and legal representatives of Bernardo de Miera y Pacheco and Pedro Padilla." No evidence is produced showing who the present claimants are, or that any heirs, descendants, or assigns of the original grantees are now living.

The original grant papers are the only evidence offered in support of the claim. These were in the archives received by the United States from Mexico, and are believed to be genuine. By them it is shown that Bernardo de Miera y Pacheco and Pedro Padilla presented to Pedro Fermin de Mendinueta, governor and captain-general of this Territory, their petition requesting a grant of land for pasturage within the following boundaries:

"On the east the road leading from Zia to Laguna, the same road being the boundary of the aforesaid settlers of the Puerco River; on the west the side of the main Cebolleta Mountain tending in that direction; on the north the said tracts of Salvador Jaramillo and Antonio Baca and the arroyo generally called the Agua Salada, and on the south a cañon where there are usually some Apaches living." The settlers of the Puerco River referred to are those of the settlement of San Fernando del Rio Puerco, to whom a grant was made in 1754.

The governor on February 9, 1768, decreed as follows: "That I would make, and I do make, a grant to Bernardo de Miera y Pacheco and to Pedro Padilla, of a tract of land for pasturage of live stock, at the place they have registered, which tract shall consist of one league of five thousand Castilian varas by courses, and of four leagues in circumference, making twenty thousand varas, it being understood that on the east this tract shall adjoin the lands of Salvador Jaramillo and Antonio Baca, and with that of the settlement of San Fernando del Rio Puerco, and at the close of the league on the opposite course firm and permanent landmarks will be placed, with the understanding that if on the course towards Cebolleta, where the pueblo of the Navajo Apaches was commenced to be built, the survey of the league should approach so as prejudicially to affect the planting or pastoral lands belonging to the site of the said pueblo so commenced, it will be reduced in so far as not to occasion injury, and whatever the league may be reduced on that side will be added to it on another, although the shape may not be square, but in such shape as the ground will permit, provided the circumference shall embrace the said twenty thousand varas. And this grant I make to the petitioners for themselves, their families, and successors, \* \* \* under the penalty of the defeasance in the grant, which forfeiture they will incur should they not settle this tract granted them within the term prescribed by law." Directions were given to Francisco Trebol Navarro, chief alcalde and war captain of the jurisdiction of Albuquerque, to notify all interested parties, and deliver possession of the land to the grantees.

The return of the alcalde shows that he gave notice to the interested parties as directed, and on the 3d day of March, 1768, being upon the lands, he formally delivered possession thereof to the grantees, saying that owing to the condition of the land the quantity granted could not be obtained in a square form, and on account of the rough character of the country it was impossible to make a regular measurement, and he therefore selected two disinterested and capable men to estimate the quantity of land granted, which they did, after being sworn to properly discharge their duties. The statement by them as to quantity and distances is as follows: "That from the northern to the eastern side there is one league and a half, making seven thousand five hundred Castilian varas, and that from the northern to the southern side there is about two leagues and a half, making twelve thousand five hundred varas, also Castilian, with a very slight variation." The alcalde then states that he indicated the landmarks and boundaries to the grantees as follows: "On the west [he] pointed out as a landmark the point of a white mesa at the base of the Cebolleta Mountain; on the east a small bushy mountain, where it makes a bluff facing the point of a black mesa, a joint boundary with the settlers of San Fernando del Rio Puerco; on the north I declare as a permanent boundary a little valley (*rinconada*) formed by the said mesa; and on the south a pair of small table-lands, the said tract adjoining the bald one of the two little table-lands referred to.

"All the settlers and housekeepers to whom distributions of lands shall be made, shall, within three months, which shall be stipulated, take possession of the same, designate their confines and the boundaries which separate them from other lands by planting, in the proper season, willows and other trees, in such a manner that, besides a correct and agreeable laying out of said lands, they may avail themselves of the timber which they may want; under penalty, if after the expiration of said term they shall not have planted the aforesaid boundaries, of forfeiting the land, that the same may be vacated and granted to some other settler." (2 White's Recop., p. 51.

See Hall's Mexican Law, sec. 42. Mr. Hall in a foot-note gives November, 1536, as the time of the enactment of this law.)

There is in the archives of this office, received from the Mexican Government, a document in the Spanish language, No. 1193, some of which is in print and some in writing. The printed portion states that, among other measures regulating the granting of public lands, the superior board of the royal treasury, on the 10th of May, 1802, on petition of the attorney-general, made a decree, which was approved by the King, that owners of lands should settle or cultivate the same within one year, otherwise they would revert to the public domain. It was ordered that such decree be published and copies forwarded to the commanding generals and governors of the internal Provinces and other officers. This is dated at Mexico, July 27, 1807, and is signed by Joseph de Yturigaray, as viceroy, governor, and captain general of New Spain, etc.

The written portion is dated at Chihuahua, October 22, 1807, and directs the promulgation of the decree in the Provinces, and then States: "That the settling and cultivating of the lands shall be done on the terms prescribed in laws 3 and 11, title 12, book 4, of the Indies, so modified that there shall be erected houses on the lands; those shall be cultivated which are arable; live stock shall be placed upon those which are pastoral; the limits shall be divided, as far as possible, into groves, so as to allow the timber to grow, and at these points where questions may arise landmarks shall be placed."

This portion is signed by Nemesio Salcedo, but there is nothing indicating his official position. By indorsements it is shown to have been published at two separate places in this Territory, and the presumption arises that it was duly executed, or it would not have been placed in the archives; but whether so or not is not material in this case.

By the eighth section of the act of Congress of July 22, 1854, establishing this office, and defining the duties of the surveyor, it is provided that in the investigation of private land claims "he shall make a full report on all such claims as originated before the cession of the territory to the United States, \* \* \* 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."

The report of Mr. Proudfit in this case occupies less than a page of small-sized legal cap, and, omitting its formal parts, is as follows:

"The muniments of title are a part of the official archives of this office, are in the Spanish language, and genuine beyond doubt. From them it appears the land was granted to Bernardo de Miera y Pacheco and Pedro Padilla, on the 9th day of February, 1768, by Pedro Fermin de Mendinueta, at that time governor and captain-general of New Mexico, an ultramarine possession of Spain, and that on the 3d day of March, 1768, the grantees were placed in legal possession by Alcalde Francisco Trebol Navarro, under orders of the governor-general." I am at a loss to understand how he could arrive at the conclusion that the grantees became vested with an absolute title to the land when it was not shown that they had complied with the laws and regulations above quoted as to occupation and settlement of the same.

It has been repeatedly held by the highest judicial tribunals of the country, both State and Federal, that if anything remained to be done at the time of the acquisition of territory from a foreign power, in order to vest a perfect title under the laws of such power, the title remained in the sovereign and passed to the United States, and it requires some act on the part of this Government to invest the claimants with title. (*Stevenson v. Bennet*, 35 Cal., on p. 432; *Wilkinson v. McCue*, 46 Cal., 656; *U. S. v. Hanson*, 16 Pet., 196; *Les Bois v. Braniell*, 4 How., 449.)

Under the principle established in these cases absolute title did not vest in the grantees unless they complied with the laws of Spain as to occupation of the land, and it devolved on the claimants to show that this was done. As to the survey, there can be no question that the intention of the governor was to grant but one league, being a tract of land 5,000 varas square, and containing a fraction over 4,428 acres. His language is so explicit that there is no room for controversy. The alcalde exceeded his jurisdiction when he put the grantees in possession of more land than he was directed to. He was required to "survey the said tract in conformity with above requirements." Instead of doing so he placed the grantees in possession of a tract of land 7,500 varas from east to west and 12,500 varas from north to south, containing  $3\frac{1}{2}$  leagues, being nearly four times the amount granted. The claimants on filing their petition recognized that but 1 league was granted, and their sketch map filed indicates that they only claimed a tract 5,000 varas square. A simple glance at the papers is sufficient to show that the survey is erroneous. One league, or 4,428 acres, was granted, and the survey way made for 148,862.94 acres. Should it be claimed that the survey ought to be made for the quantity of which the alcalde gave possession, it is still erroneous, for  $3\frac{1}{2}$  leagues contain but a fraction over 16,605 acres.

The instructions issued by the surveyor-general to his deputy directed his attention to the fact that the alcalde who executed the act of possession stated that the

tract was one league and a half from east to west, and about two and a half leagues from north to south. The alcalde misstated the facts, and the instructions were wrong in following them. It seems hardly necessary to occupy further space or time upon this subject, as the survey manifestly condemns itself.

I recommend the rejection of the claim by Congress. Triplicate copies of this report are forwarded for the consideration of Congress in connection with the other papers in the case.

GEORGE W. JULIAN,  
*Surveyor-General.*

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UNITED STATES SURVEYOR-GENERAL'S OFFICE,  
*Santa Fé, N. Mex.*

The foregoing eleven pages [manuscript] contain a full, true, and correct transcript of the original on file in this office in private land claim file No. 172, reported No. 93, in the names of Bernardo de Miera y Pacheco and Pedro Padilla for the Cañada de los Alamos tract.

In witness whereof I have hereunto subscribed my name and caused the official seal of this office to be affixed, at the city of Santa Fé, this tenth day of April, A. D. 1836.

[SEAL.]

GEORGE W. JULIAN,

*United States Surveyor-General for New Mexico.*