

1-19-1887

Letter from the Acting Secretary of the Interior, transmitting supplementary report of the Surveyor-General of New Mexico on the land claim of Gaspar Ortiz, No. 87.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>

 Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

S. Exec. Doc. No. 37, 49th Cong., 2nd Sess. (1887)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

LETTER

FROM THE

ACTING SECRETARY OF THE INTERIOR,

TRANSMITTING

Supplementary report of the surveyor-general of New Mexico on the land claim of Gaspar Ortiz, No. 87.

JANUARY 19, 1887.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 17, 1887.

SIR: Pursuant to the requirement of the eighth section of the act of Congress approved July 22, 1854 (10 Stat., 308), I have the honor to transmit herewith, for the consideration of Congress, the supplementary report of the surveyor-general for New Mexico, dated January 22, 1886, on the private land claim designated as the "land grant to Gaspar Ortiz, No. 87," with the accompanying communication from the Commissioner of the General Land Office. The surveyor-general recommends the rejection of the claim.

Very respectfully,

H. L. MULDROW,
Acting Secretary.

THE PRESIDENT OF THE SENATE PRO TEMPORE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 13, 1887.

SIR: I have the honor to transmit herewith, for submission to Congress, the supplementary report, in duplicate, of the surveyor-general for New Mexico, on the alleged private land claim in New Mexico, designated as the "land grant to Gaspar Ortiz, No. 87."

By reference to the record in the case, which is merely copies of alleged original, the following facts are disclosed:

Gaspar Ortiz, a resident of Nambe, petitioned the then governor to confirm him in his title to a certain tract of land, with the boundaries as recited in the petition, for a grant by Vicente Duran de Armijo, said land having been acquired by purchase from said Vicente Duran de Armijo.

The governor confirmed to him the said grant, and directed the alcalde of the town of Santa Cruz de la Cañada to place the petitioner in possession of the land asked for and fix his boundaries.

On the 29th October, 1806, the chief alcalde of the town of Santa Cruz de la Cañada placed the petitioner in possession of a tract of land with the following boundaries: "On the north a dry run for his land marks to the mountain de la Mosca, and on the south by lands of Bernardino de Lena and lands of the pueblo of Tesuque; on the east by the mountain, and on the west by the lands of the pueblo of Nambe, and the lands exchanged by Vicente Duran de Armijo with the Indians of Nambe."

These are all the papers filed as evidence of title under the Mexican Government.

The surveyor-general has examined these papers and compared the signatures to the same with others and pronounces them to be forgeries.

By an examination of the papers in private land claim No. 31, I find that Vicente Duran de Armijo petitioned the governor and captain-general for a tract of land with the following boundaries: "On the north it is bounded by a dry gulch (arroyo); on the south by lands of Bernardo de Lena; on the east by a mountain; on the west by lands of the aforementioned Indians of Nambe," and contains about six fanegas of wheat and two of corn.

Under date of September 25, 1839, the then governor directed that the petitioner be placed in possession of certain land, but not the lands for which he petitioned, as the Indians of the pueblo of Nambe had objected to granting the lands asked for.

Under date of October 5, 1839, Juan Garcia de Mora, acting justice, proceeded to the lands granted by the governor, and placed the petitioner in possession of the same. The act of juridical possession is in the following terms, viz: * * *

I proceeded to the pueblo of Nambe within my jurisdiction, taking with me five witnesses to act in that capacity, and three of whom were to act as instrumental and two as my attending witnesses, with whom I acted, and these being present with the parties Vicente Duran de Armijo and the casique (war chief), and old men, natives of said pueblo, with the governor and other authorities of the aforesaid pueblo of Nambe, I read to them the foregoing document presented by Vicente Duran de Armijo. I also read to them, in a clear and audible voice, the provisions made by the said governor and captain-general, where his excellency directs and orders that possession be given to him of the lands the petition asks for, but afterwards the Indians of the aforementioned pueblo, having made opposition on the ground that the granting of the land asked for by the petitioner would be a great injury to them, although it did not belong to the pueblo, they voluntarily agreed to give to the said Vicente Duran de Armijo a piece of land for himself, his children, heirs, and successors from the lands of the pueblo, in the place of that he asked for, and which would be so much to their injury. In view of which, his excellency provides that he shall not have the lands he asks for, but that which may be selected with the consent of said Indians, and I, the said senior justice, as aforesaid, all the natives of the aforesaid pueblo being present and informed of his excellency's order, and of all that had been agreed upon with the said Vicente in the presence of the said governor and captain-general, they stated that they would assign, and did assign, to the said Vicente Duran de Armijo a piece of land to the west of said pueblo of Nambe, on the borders of their lands; that on the said western side a small portion is bounded by lands of the pueblo of Pajaoque, whose boundary is a dry gulch (arroyo) that runs into the Nambe River, that is on the southern side of said river of Nambe, and on the east by a stone mound and a medium-sized cedar, which is the boundary between the pueblo and the said Vicente; and on the north this little piece is bounded by said river, and on the south by a ditch (acequia), which runs along the foot of some barren hills, the distance being cords of fifty varas each from the river aforesaid to the said acequia; and the large piece of land which they gave to the said Armijo, which is north of said river, contains seven hundred and forty varas in latitude, which is understood to be from east to west, and from north to south it contains five hundred and fifty varas; the boundaries of which are—on the north some stone mounds scattered along some

barren hills, which form the boundary of the lands of General Don Juan Paez Hurtado, and on the south is bounded by the river of said pueblo; on the east the boundary is a cross on the side of the main road and lands of the Indians of said town, and on the west lands of General Juan Paez de Hurtado, which boundaries were marked by several mounds of stone, and on one of them is a holy cross, which is to serve as a boundary and division, of which two pieces of land I gave him royal possession.

This claim, No. 31, was confirmed by Congress by the act of June 21, 1860 (Stats. 12, p. 71), and has been surveyed in place; and is located west of the pueblo of Nambe.

These two claims have as a basis the grant to Vicente Duran de Armijo, made in 1839. The grant to Duran de Armijo was for land to the west of the pueblo of Nambe; and having procured a confirmation for that grant, the claim for land east of said pueblo must fail, as Armijo never had a grant in that vicinity. His petition asked for land east of said pueblo, but the Indians having objected to his locating there, the governor directed that he be placed in possession of lands to which the Indians would not object, and the justice in giving possession has placed him to the west of Nambe.

Vicente Duran de Armijo never having a grant east of said pueblo, could not convey to Ortiz land to which he had no title.

Having failed to establish either a legal or an equitable title to land east of the pueblo of Nambe, and having a confirmation of the land granted to Armijo in 1839, the present claim should fail.

For the reasons stated, I recommend—concurring with the surveyor-general—that Congress pass a bill rejecting this claim.

I am, sir, very respectfully your obedient servant,

WILLIAM A. J. SPARKS,

Commissioner.

HON. L. Q. C. LAMAR,
Secretary of the Interior.

[Private-land claim No. 87. Sierra Mosca grant. Gaspar Ortiz grantee.]

SUPPLEMENTARY.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. Mex., January 22, 1886.

The surveyor-general of the Territory gave his opinion in this case on the 22d of April, 1874, recommending the confirmation of the grant, which was duly forwarded to the General Land-Office and transmitted to Congress. Under recent instructions from the Land Department, I am requested to recognize the action of my predecessors wherever the public interest seems to demand it; and in compliance with such instructions I now submit the following supplementary report in the case:

The paper filed as the original grant is a manifest forgery. It bears date September, on the 20th of October, 1806, and purports to be signed by I. R. Alencaster, then governor of this Territory. I have carefully compared the signature with all the signatures of the governor to be found in the archives of this office, being five in number, and it bears little, if any, resemblance to them. The petition to the governor, the purported decree of that officer, and the certificate of the alcalde as to delivery of possession, as well as the name of that officer and his attending witnesses, all appear to be in the same handwriting. The awkward and bungling manner in which the pretended decree of the governor is written condemns the paper. It begins as follows:

"Village of Santa Fé, and September, on the twentieth of October, one thousand eight hundred and six, before me, the captain and governor of the province of New Mexico," &c.

It is scarcely credible that the governor would have attached his name to such a document. I find that all papers in the archives of this office, to which his genuine signature is attached, are fairly written and grammatically constructed. The purported decree filed by the claimant is badly written, as well as badly constructed. In no document to which the genuine signature of Governor Alencaster is attached is

he designated as the "captain and governor of the province of New Mexico," nor are any similar terms used. A comparison of the signature of the alcalde on the paper in question with other signatures of that officer in the records of this office, convinces me that his signature is also forged, and this strengthens the conclusion that the governor's name and all the papers in the case are spurious. No evidence was adduced that these papers were ever in the Government archives. On the contrary one witness, Jesus Maria Ortiz y. Baca, testified that he found them among the papers of his father, Matias Ortiz, after his death, who was the executor of the will of Gaspar Ortiz. This shows very clearly that the papers were never deposited in the archives, where they probably would have been if the grant had been genuine, as the lands lie near Santa Fé. But the claim made in this case would be utterly unwarranted if the signature of the governor were genuine.

In what purports to be the petition presented to the governor by Ortiz, it is stated that he is in the possession of the grant formerly belonging to Vicente Duran de Armijo, made by Governor Don Gaspar Domingo de Mendoza, and the possession delivered by the chief alcalde of the town of Santa Cruz de la Cañada, Don Juan Garcia de la Mora, on the fifth day of the month of October, in the year one thousand seven hundred and thirty-nine. No boundaries are set forth in the petition, and the petitioner requests a grant of the lands "according as recited in the grant of the former petitioner, Vicente Duran de Armijo." By referring to the record of the private land claim number thirty-one (31), in the name of Gaspar Ortiz, reported upon by the surveyor-general of this Territory July 2, 1859, and confirmed by Congress June 21, 1860 (12 Stat. p. 71), it will be seen that in the year 1739 Vicente Duran de Armijo presented his petition to the governor, requesting that lands lying east of the lands of the Indians of Nambé be granted him. On the 25th day of September, 1739, the governor acted on said petition, and in doing so stated that the Indians objected to the granting of lands lying east of their pueblo, for the reason that it would prejudice their rights, and the governor directed that other lands in that vicinity might be granted in lieu of those asked for, that would not be injurious to the Indians, and directed the alcalde to carry out his directions. On the 5th day of October, 1739, Juan Garcia de la Mora, as the senior justice and war captain of the new city of Santa Cruz, reported that in accordance with the decree of the governor he proceeded to place said Armijo in possession of lands, and that he read the decree of the governor in the presence of said Armijo and certain Indians of the pueblo, and the Indians objecting to the delivery to Armijo of the lands petitioned for on the east of their lands they voluntarily offered to give him a piece of land belonging to them west of their pueblo, and then the justice recites that with the consent of said Vicente Duran de Armijo and one of the Indians there was measured off for said Armijo lands described as follows:

"A piece of land to the west of said pueblo of Nambé on the borders of their lands; that on the said western side a small portion is bounded by lands of the Pueblo of Pojuaque, whose boundary is a dry gulch (arroyo) that runs into the Nambé River, that is, on the southern side of said river of Nambé, and on the east by a stone mound and a medium-sized cedar, which is the boundary between the Pueblo and the said Vicente, and on the north this little piece is bounded by said river, and on the south by a ditch (acequia) which runs along the foot of some barren hills, the distance being three cords of 50 varas each from the river aforesaid to the said acequia; and the large piece of land which they gave to the said Armijo, which is north of said river, contains 740 varas in latitude, which is to be understood to be from east to west, and from north to south it contains 550 varas, the boundaries of which are on the north, some stone mounds scattered among some barren hills, which form the boundary of lands of General Don Juan Paez Hurtado, and on the south it is bounded by the river of said Pueblo; on the east the boundary is a cross on the side of the main road and the lands of the Indians of said town, and on the west with lands of General Juan Paez de Hurtado, which boundaries were marked by several mounds of stone, and on one of them is a holy cross which is to serve as a boundary and division." It will thus be seen that the lands granted to Vicente Duran de Armijo were west of the lands of the Indians of Nambé. The petitioner claims under this grant and asks to have confirmed to him the lands so granted, but asserts that they were east of the lands of the Indians of Nambé. As they are west of these lands, and have been surveyed and set off to the representative of Gaspar Ortiz as shown by the records of this office, the claim for lands on the east of the Indians of Nambé must fail, whether the signature of the governor is genuine or not.

His action, if he had any power to act, could only refer to and affect the lands granted to Armijo, which have already been surveyed and set off to the claimants as stated.

It may be proper to add that Mr. Proudfit, who gave the opinion referred to in this case, was bound by instructions from the Land Department to "ascertain the origin, nature, character, and extent" thereof, and to "make a full report" for the information of Congress; but his opinion occupies less than a page of small-sized

paper, and the entire investigation seems to have been conducted in the loosest manner possible. No witness was questioned on cross-examination, and no apparent efforts were made to protect the interests of the Government. In view of the facts presented, I have no hesitation whatever in recommending the rejection of this claim by Congress.

Copies in triplicate of this supplementary opinion are forwarded as required, the other papers in the case having already been transmitted.

GEORGE W. JULIAN,
Surveyor-General.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico.

The foregoing six pages contain a full, true, and correct transcript of the original on file in this office in private land claim reported No. 87, in the name of Gaspar Ortiz y Pais, and known as the Salto del Agua, and also as the Sierra de la Mosca 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 twenty-eighth day of January, A. D. 1886.

[SEAL.]

GEORGE W. JULIAN,
Surveyor-General for New Mexico.

S. Ex. 37—2

○