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Letter from the Secretary of the Interior, transmitting report of the Surveyor-General of New Mexico on private land claim known as the Rito de los Frijoles grant, No. 133.

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S. Exec. Doc. No. 212, 51st Cong., 1st Sess. (1890)

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L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Report of the surveyor-general of New Mexico on private land claim known as the Rito de los Frijoles grant, No. 133.

AUGUST 15, 1890.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, August 14, 1890.

SIR: In pursuance of the requirements of the eighth section of the act of Congress approved July 22, 1854 (10 Stat., 308), I have the honor to transmit herewith for Congressional action the report of the United States surveyor-general for New Mexico on the private land claim in said Territory known as the Rito de los Frijoles grant, reported No. 133; also copy of a letter dated August 11, 1890, from the Commissioner of the General Land Office transmitting the report.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 11, 1890.

SIR: I have the honor to transmit herewith, for submission to Congress, the report, in duplicate of the United States surveyor-general of New Mexico, under the eighth section of the act of Congress approved July 22, 1854 (10 Stats., 308), upon the private land claim known as the Rito de los Frijoles grant, reported No. 133.

By reference to the record in the case, consisting of copies of translations from alleged originals, it appears that on February 28, 1803, José Antonio Salas petitioned the lieutenant-colonel and governor *ad interim* setting forth that the grant of the farm which he possesses, called the Rito de los Frijoles, given by Governor Cachupin and revalidated by Governor Auza, had been lost, the original of which is in the archives of the government, he entreated that the original be delivered him for the purposes he deemed fit.

No attention appears to have been taken by the governor of this petition.

On April 1, 1814, Antonia Rosa Lujan petitioned the governor to reinstate her in the possession of her claim, alleging that she had held and lived upon the claim until 1811, when they were compelled by order of the governor to vacate said tract for alleged complicity in some robberies committed near them.

She asked to be allowed to return, to be accompanied by two men, promising to live peaceably, and aid in the suppression of any non-law abiding persons.

On April 2, 1814, the governor *ad interim* referred the petition to Antonio Ortiz for report as to whether the petition should be denied or favorably acted upon.

On 3d of same month, Ortiz made his report to the governor, who, on the following day, after considering the report, decided that Maria Rosa Lujan, resident of the Cañada de Cochiti party interested in the case may move to the tract which she solicits as her property, which is on the Rito de los Frijoles, with the two citizens whom she mentions, Isidro Hartado and Santiago Hartado.

This appears to be all the written evidence of title presented by the parties.

It appears that on the 5th of October, 1872, John S. Watts, as attorney for the heirs of Antonia Rosa Lujan, filed a petition with the surveyor-general, praying confirmation of their title to a certain tract of land, giving natural boundaries, but specifying no particular quantity.

Subsequently, on March 19, 1881, Messrs. Chaves and Wade filed a supplementary petition for same parties, substantially the same as the first. With this petition they filed a "sketch map" showing the approximate boundaries of the claim, giving an irregular shaped tract, covering an estimated area of 4,500 acres.

It appears from the evidence submitted that the land claimed has been in the possession of the grantee and her heirs as far back as witnesses could remember.

The report of the surveyor-general on this claim dated March 14, 1882, recommends the claim for confirmation.

The preliminary survey of this claim made in 1883, covers an area of 23,022.23 acres, which quantity of land is now segregated from the public domain and reserved from sale, or other form of disposal under the eighth section of said act of Congress of July 22, 1854, to satisfy the claim of the petitioners, whose "sketch map," representing the quantity claimed, only covers an estimated area of 4,500 acres.

I would respectfully suggest that some definite action be taken looking to the early settlement of this claim.

In the event of its confirmation it should be limited to the land actually in possession to be located within the natural boundary calls and not to exceed the quantity of 4,500 acres, the area claimed in their amended petition.

I am, sir, very respectfully, your obedient servant,

LEWIS A. GROFF,
Commissioner.

The SECRETARY OF THE INTERIOR.

RITO DE LOS FRIJOLES GRANT—NO. 133.

TRANSCRIPT OF DOCUMENTS ON FILE IN THE OFFICE OF THE U. S. SURVEYOR-GENERAL FOR THE TERRITORY OF NEW MEXICO, IN RE THE PRIVATE LAND CLAIM IN THE NAME OF THE HEIRS AND LEGAL REPRESENTATIVES OF ANTONIA ROSA LUJAN FOR THE "RITO DE LOS FRIJOLES" TRACT.

ORIGINAL PETITION OF CLAIMANTS TO SURVEYOR GENERAL.

[Report No. 133. File No. 106. Antonia Rosa Lujan. Rito de los Frijoles tract.]

TERRITORY OF NEW MEXICO,
County of Santa Fé.

To the Hon. James K. Proudfit, Surveyor-General of the Territory of New Mexico :

Your petitioners, the heirs and legal representatives of Antonia Rosa Lujan, deceased, daughter of Juan Antonio Lujan, residents of the Territory of New Mexico, counties of Santa Ana and San Miguel, would respectfully state to you that they are the lawful-owners in fee of a certain grant of land called the Rito de los Frijoles tract, situate in the county of Santa Ana, Territory of New Mexico. That some time previous to the year 1780 the said tract was granted by the Government of Spain to Andres Montoya, the grandfather of Antonia Rosa Lujan. That said Montoya, by reason of his advanced age and insufficient means could not use the tract, but in the year 1780 requested Governor Anza, at that time on an official visit through his province and present at Cochiti, to transfer or make over the said grant to his (Montoya's) son-in-law, Juan Antonio Lujan. That this was done then and there by said Governor Anza, and Juan Anto. Lujan entered in due form on the said tract, lived upon it, and improved it until his death and left it to his heirs.

That said heirs dwelt there until about the year 1811, when, on account of some robberies committed in that vicinity, Governor Manrique ordered the owners, said heirs, to vacate said tract. This order was complied with, and no one possessed the tract until the year 1814, when Antonia Rosa Lujan, wife of José Antonio Salas, daughter of Juan Antonio Lujan, and granddaughter of Andres Montoya, having proved that she had no complicity in said robberies and having aided in bringing the real offenders to justice, petition Governor Manrique for permission to re-occupy her property. The governor commissioned Antonio Ortiz, a citizen of Santa Fé, to inquire into and report upon the matter, and Ortiz having in the same year made his report, Governor Manrique decided that Antonia Rosa Lujan, the petitioner, should again move on to her land, and live there under strict injunctions not to allow any suspicious characters in that neighborhood. This she did, and lived on the said tract until her death, leaving it to her descendants, who still live there and occupy the tract.

Your petitioners would further state that said heirs are by name as follows, to wit: David Salas, Inez Salas, and one other, whose name is not known, and for whom Tomas Salas is agent; children of José Francisco Salas, deceased, son of Antonia Rosa Lujan, deceased; Miguel, Anselmo, Felipe, and Donaciano Salas, children of Anastacio Salas, deceased, son of Antonia Rosa Lujan, deceased; Rafael, Juan, Domingo, and Tomas Salas, and Simona Salas, children of Guadalupe Salas, deceased, daughter of Antonia Rosa Lujan, deceased; all of which said heirs and legal representatives are residents of Santa Ana and San Miguel Counties, in the Territory of New Mexico.

Your petitioners would further state that they have in their possession, and herewith file in your office, and ask that they be made a part of this petition, three original documents or title papers which have descended to them in regular course from their ancestors, carefully preserved as legal evidence of their title, which said title papers are marked as exhibits A, B, and C herein, and sworn translations of the same into the English language, are herewith also filed to accompany them. A brief résumé of these title papers will develop the following facts—

Exhibit A.—This document contains four distinct instruments of which—

No. 1. Is a petition of Antonia Rosa Lujan, dated at Santa Fé, New Mexico, April 1st, 1814, to Governor Manrique, stating that her grandfather Andres Montoya presented himself before Governor Anza while the latter was on a judicial visit at Cochiti, and called to his mind that he held a grant to the Los Frijoles tract, made to him by Governor Mendimeta but could not use it on account straightened circumstances and advanced age, and requested the governor to transfer the same to his (Montoya's) son-in-law, Juan Antonio Lujan. This the governor agreed to and consummated, and Lujan, the father of the petitioner, dwelt on the land and improved it until his death, leaving it for the benefit of his children, who held it until 1811, when they were ordered to leave it by the governor on account of some robberies having been committed by some vagabonds in that vicinity. That the petitioner was instrumental in bringing said robbers to justice. That she is poor, and has a large family to support, and wishes now to re-occupy her property; and she offers a certificate of Friar Antonio Cavallero under date of 1807 in proof of her father's right, and the status of the grant.

No. 2. This paper is an original order of Governor Manrique written on said petition, dated at Santa Fé, April 2, 1814, commissioning Antonia Ortiz to inquire into the case and report to him.

No. 3. Contains the report of Ortiz in the premises, and states that Antonia Rosa Lujan presented him the certificate of Friar Antonio Cavallero, but he did not regard it as sufficient, whereupon she brought Lieut. Romero before him, who stated that in the time of Gov'r Mendinueta Juan Anto. Lujan, having commenced clearing the Frijoles tract, two brothers, Miguel and Domingo Romero, raised some objection, and Gov'r Mendinueta decided at their instance that Lujan should not break ground there as the land belonged to the heirs of Andreas Montoya, but that afterwards, Romero having compromised with Lujan (who seems to have been his partner), the latter proceeded to cultivate said tract, and conducted himself well up to the year 1811. All of which he transmits to the governor for his information.

No. 4. Is the final decision and decree of the governor, deciding that Rosa Lujan may occupy the tract and resettle it as her property, but must not allow any disreputable persons around, and is dated at Santa Fé, N. M., April 4, 1814.

Exhibit B. Is an entirely separate instrument, dated at Santa Fé, February 28, 1803, in which Juan Antonio Salas (above seen to be husband of Rosa Lujan) petitions the governor, setting forth that the grant to the Frijoles tract, which he possessed, made by Gov'r Cachupin, and reauthorized by Governor Auza, was lost, and requests that the original on file in the Government archives be given him for the ends of justice.

Exhibit C. Is another separate instrument, and is dated at the mission of Cochiti, December 28, 1807. In it Friar Antonio Cavallero certifies that, when Governor Auza was on his judicial visit to Cochiti, Andreas Montoya came before him and stated that he had a grant from Gov'r Velez Cachupin of the Frijoles tract, but on account of advanced age he could not work it, and requested Gov'r Auza to transfer it to his (Montoya's) son-in-law, Juan Antonio Lujan, which was done, Auza, as governor, having full power to do so; and that said Lujan occupied it and worked it largely until his death, when he left it to his children; that this certificate was made at the request of José Antonio Salas, husband of Antonia Rosa Lujan for the ends of justice.

Your petitioners would further state that ever since the making of the original grant to Juan Anto. Lujan, and its reauthorization to Antonia Rosa Lujan, she, her heirs and assigns have been in the peaceable, lawful, and quiet possession, occupancy and use of said lands, without any adverse claim of any kind being set up or made by any one to said lands. And, that this use and occupancy alone for so great a length of time would and does constitute, and should be decided as amounting to a good and valid title, even if there were no original title papers filed in the case.

Your petitioners would further state that in the title papers herewith filed in this case the boundaries of said grant are not directly mentioned, but are indirectly referred to as the boundaries of the grant in that locality made to one Andres Montoya, the grandfather of Antonia Rosa Lujan. And it would seem probable that from the lapse of time, and the petition of Jose Antonio Salas (Exhibit B, herein) that the original grant has been lost. The archives have been searched without success, but your petitioners would respectfully refer you to the petition in confirmed private land claim No. 38, to Ramon Vigil, which is the grant lying immediately to the north of the "Los Frijoles" tract, from which it appears that the original grant to Andres Montoya was made previous to the year 1742, and that the southern boundary of said confirmed private land claim No. 38, is described as the northern boundary of the lands of Captain Andres Montoya. Your petitioners would further request that, if the original title to the grant of Andres Montoya can not be found, that they be allowed to prove the natural and permanent land marks and boundaries of said grant as known for more than half a century; and your petitioners aver and believe that the same will be found to be substantially the following: On the north the limits of the grant to Pedro Sanchez: on the east the Del Norte River; on the west the Rocky Mountains and on the south the grant known as Cañada de Cachiti.

Your petitioners would further state that, as said lands have never been surveyed, it is impossible to state with any degree of certainty the number of acres contained within the limits of said grants, nor can a moderately correct plat or map of said lands be made until the same are surveyed, but your petitioners herewith present a sketch giving an approximate idea of the shape and position of said grant.

Your petitioners would further state that the perfect nature of their grant, and its actual ownership and possession under a valid title at the date of the treaty of Guadalupe Hidalgo, February 2, 1848, entitle said petitioners to have said title investigated and approved by the hon. surveyor-general of the Territory of New Mexico under the 8th section of the act of Congress approved the 22d of July, 1854. See Statutes at Large, Vol. 10, page 309.

Your petitioners would further state that under the 8th and 9th articles of the treaty of Guadalupe Hidalgo of 2d Feb., 1848, the said title of the said petitioners was entitled to be "inviolably respected" and to be retained without subjection to any "tax, contribution, or charge whatever." See Statutes at Large, Vol. 9, pages 329, 330.

Your petitioners would further state that the long and uninterrupted occupancy and possession of said grant under Spain and Mexico made the title of the said petitioners perfect at the date of said treaty of Hidalgo, and entitles the said petitioners under the said act of July 22, 1854, to present said title to the surveyor-general, and if the same shall be found bona fide to have the same reported to Congress for confirmation, to the legal heirs and representatives of the said Antonia Rosa Lujan. Your petitioners would further state that the quiet and peaceable possession and occupancy of said lands, under a grant from Spain and Mexico, ever since the 2d of February, 1848, entitles your petitioners to a confirmation of their title under the laws of the said Territory of New Mexico, Feb. 1, 1853 [see compiled laws of New Mexico, page 516], and the laws of the United States, and to respectfully ask that said grant be recognized and confirmed by the United States as a bona fide grant, and that it be surveyed when confirmed, and that upon the approval of said survey a patent to the said heirs and legal representatives of Ant'a Rosa Lujan be issued.

All of which is respectfully submitted to the hon. surveyor-general of New Mexico for his action in the premises.

JOHN S. WATTS,

Attorney for the heirs of Ant'a Rosa Lujan.

(Indorsed:) Filed Oct. 5, 1872.

SUPPLEMENTAL PETITION OF CLAIMANTS TO SURVEYOR-GENERAL.

To the Hon. H. M. ATKINSON,
U. S. Surveyor-General:

Your petitioners, the heirs and legal representatives of Antonia Rosa Lujan, the deceased daughter of Juan Antonio Lujan, represent to your honor that they are the legal owners and actual occupants of a certain tract of land known as the Rito de los Frijoles tract. That said tract of land lies in the county of Bernalillo and Territory of New Mexico, and is bounded as follows: On the north by the southern limits of the grant to Pedro Sanchez, known in the office of the surveyor-general for the Territory of New Mexico as confirmed private land claim No. 38; on the east by the Rio Grande del Norte; on the west by the Rocky Mountains; and on the south by the grant to the Cochiti Indians. They further represent that said tract of land has not been surveyed and it is not possible to give any accurate description thereof; but they herewith file for the inspection of your honor as correct a sketch of the same as circumstances permit, and your petitioners further represent that the said tract of land was by Governor Manrique granted to one Andres Montoya at some time previous to the year 1780; that the said Andres Montoya continued to live on the tract of land so granted until the year above named, when, at and by his request, the said land was transferred by the then governor of the Territory of New Mexico to Juan Antonio Lujan, the son-in-law of the said Andres Montoya. And they further represent that the said Juan Antonio Lujan and his successors continued to live upon the said tract of land until the year 1811; that in said year, owing to certain depredations having been committed in the vicinity of said Rito de los Frijoles tract of land, Governor Manrique, the then governor of the said Territory, ordered the successors of the said Juan Antonio Lujan to vacate the premises; that they complied with this order and lived out of said land until the year 1814; that in the year last named Antonia Rosa Lujan, the daughter of the said Juan Antonio Lujan, and granddaughter of the original grantee, Andres Montoya, petitioned his excellency the governor to restore to herself and successors the tract of land of which they had been deprived, as hereinbefore stated. That the said governor appointed one Antonio Ortiz of the City of Santa Fé to report upon the truth of the averments made in the petition of the said Antonia Rosa Lujan. That the said Antonio Ortiz duly reported thereon, and the said governor thereupon issued a decree restoring the said Antonia Rosa Lujan and her successors for ever to the said Rito de los Frijoles tract of land. And your petitioners further represent that they and their predecessors have had, ever since said decree restoring the said tract of land to them, the uninterrupted, quiet and peaceable possession and enjoyment thereof, and that they know of no adverse claim to said tract of land.

And your petitioners further represent that the original papers showing the facts hereinbefore stated are on file in your office as private land claim, No. 106, the same having been filed for approval by John S. Watts, attorney, but as yet no action has been taken upon said papers.

And your petitioners further represent that said documents show:

I. The petition of Antonia Rosa Lujan to his excellency, Gov. Manrique, citing the grant to her grandfather, Andres Montoya, of the premises hereinbefore described, the transfer to her father by Governor Anza and at the request of the said Andres Montoya, and asking to have the said premises restored to herself and successors.

II. The certificate of Friar Antonio Caballero verifying the statements made in said petition.

III. The order of said governor to one Antonio Ortiz to report upon the facts of the case.

IV. The report of said Ortiz.

V. The decree of said governor restoring the premises to the petitioner and her successors and dated at Santa Fé, April 4, 1814.

VI. The petition of Juan Antonio Salas, the husband of the above-named Antonia Rosa Lujan, reciting the facts above mentioned, and stating further that the original grant to Andres Montoya had been lost, and asking that the duplicate among the archives of the governor might be given to him.

And your petitioners, believing that they have a just and legal title to the said premises, they hereby petition your honor to take such favorable action thereon in accordance with the treaty of Guadalupe Hidalgo, and the act of Congress approved July 22, 1854. And they further ask that the said tract of land may be surveyed and set off to them in accordance with said grant.

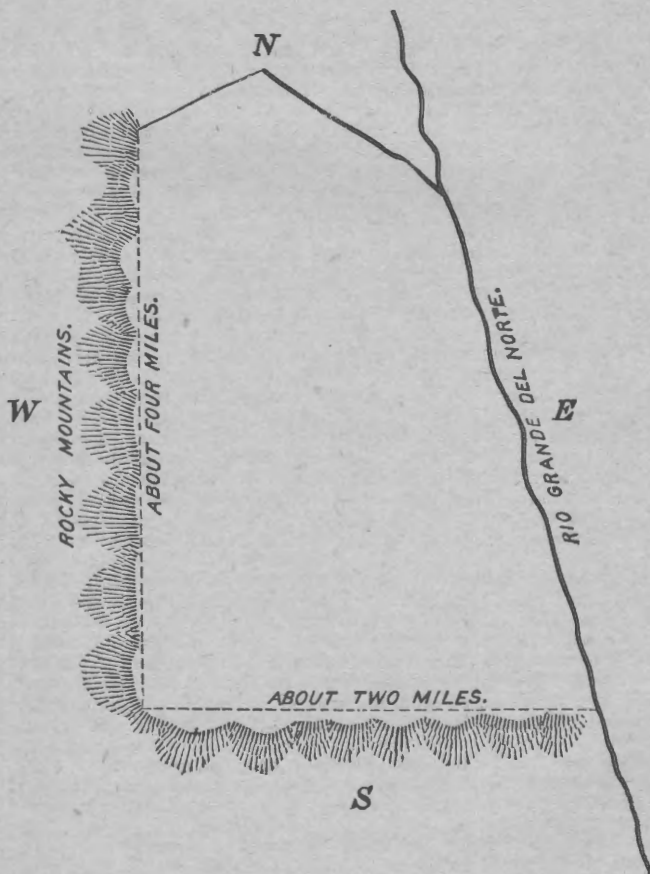
Most respectfully submitted by—

CHAVES and WADE,
Attys for petitioners.

(Endorsed :) Filed, March 19, 1851.

CLAIMANTS' SKETCH MAP.

Grant to Ramon Vigil.



Grant of Cañada de Cochiti.

PLAT OF THE RITO DE LOS FRIJoles GRANT.

CLAIMANTS' EXHIBIT A (SPANISH).

[Dos reales. Sello. Dos reales. Sello. Sello tersero. Dos reales. Años de mil ochocientos seis, y ochocientos y siete. Valga pa. el bienio de 1814 y 1815. Rubrica.]

Sor. The. Coronl. Govr. Interino:

Anta. Rosa Lujan, vecina de Nra. Señora de Guadalupe de Cochiti, parece ante vm. en toda forma de dro. con la mas devida atencion qe. por dro. es conferida, y dice Sor. qe. hace presente ante la superioridad de vm. qe. allandoe en vecita General el Sor. Dn. Juan Bactista de Anza se le precento mi abuelo Andres Montolla aciendole presente qe. tenia una merced concedida por el Sor. Dn. Pedro Fermin de Mendinueta, Govor., qe. fue de esta Prova, y qe. por allarce abansado no podia usar ni cultivar la por sus corfedades y qe. se le hiciera la gracia de trásferir la merced a favor de mi Pe. Juan Anto. Lujan, qe. era llerrio de mi sitado abuelo quien puso toda solicitud en cultivar el sitado sitio qe. comunnte. llamar los Frijoles, poblandolo desde aquel tiempo asta qe. murio dejandolo a beneficio de sus hijos qe. somos los qe. lo emos tenido y poceido con el dro. ve. adquirimas de Nro. difunto Padre, asta el año de 811, qe. se nos comunico la orden de vm. qe. nos retiraramas del sitio por aberce.

Verificado algunos robos echos por otras personas imparciales qe. se habian agredado abivir, alli, sin tener conogimto. de su proceder, a cuja orden sedio el devido obedecimto. asta el precente año y conciderandome livre de el delito qe. aquellos mas entretenidos dieron é hicieron para qe. yo y mi familia careseo mas de nro. bien estar y estemos padeciendo necesidades qe. por esa causa tenemos siendo asi qe. por mi se descubrio y se justifico la causa dando yo parte a la justicia para qe. se puciera el remedio qe. si necesario fuere lo sertificare el Sor. The. de nro. partido; y allandome sumamte, con una mui corta suerte de tierra para sembrar y poderme sostener yo y mi familia se ase preciso molestar la atencion de vm. para qe. si lo tubiere a bien y fuere de su agrade se me conceda poblar nuebante. el referido sitio acompañada de dos hombres qe. son Isidro Urtado y Santiago Urtado, aquienes les permito accion interviya, con la interesada qe. estos selen y belen qe. no siga daño ni perjuicio a los vecinos de aquel sitio ni á otros ningunos sino vivir pasificos y mantenernos con algun alivio; y para justificacion de ser justa mi solicitud qe. por dro. ago a la piedad de vm. juntamte. precento una sertificacion, dada por el R. P. Fr. Anto. Cavallero desde el año de 1807 en la qe. consta el dro. qe. me aciote y la consecion qe. á mi difunto Padre se le confiro, por el sitado Sor. Govor. In. Bactista Anza conformandose con la justification qe. a mi dro. habla, suplico a vm. rendidamte. se sirva concederme la gracia qe. solicita qe. en hacer como lo pido recibire merced en justicia qe. inpedro y en lo necesario y juro en toda forma no proceder con malicia.

ANTONIA ROSA LUJAN.

STA. FEE, y Abril 1, 1814.

SANTA FÉ, 2 de Abril de 1814.

Con atencion a mis repetidas tareas en el despacho de este Govno. por esa causo no me hablo en el caso de oir por mi a la parte presentada en esta instancia por lo que comisiono al efecto pa. que entienda en ella en toda integridad a justicia a Dn. Anto. Ortiz, veco. de ista villa, qe. en presunza. de los documtos. que cita la interesada y de los amendantos. que hubo para retirar por disposicn. de este Govo. a los que se hallaban de Pobladores en quel citio nombrado los Frijoles por sus malos procedimtos. y no hallarse en ellos ninguna formalidad de las prevenidas en aquel lugar como son de casas y demas requisitos de todo poblador si no es en vivir estos en cuebras lo mis mo q. los gentiles, practicara dho. dho. Sor. comisiono. las diligencias correspondientes al efecto de si cambiar o no ascenderá la solicitud de la suplicante pa. qe. con lo que remita resolver lo que parezca de justicia.

MAURRIQUE.

SANTA FÉ, 3 de Abril. de 1814.

En birtud del Decreto del Señor The. Coronel y Governador Interino en que me comisiona, sobre que practique las diligencias pertenecientes de Antonia Rosa Lujan, vecina de la Cañada de Cochiti, digo que habiendome hecho cargo de su escrito, y pedidole los documentos que en el expresa, solo me ha presentado una certificacion que en el año de mil ochocientos siete les dio el M. R. P. custodio Fr. Antonio Cabellero y no paresiendome suficiente justificacion para discernir sobre el particular de que se trata les he pedido otras constancias ó documentos que probaran su justificacion y habiendo traído al Alfz. de milicias Dn. Mariano Romero a mi presencia, con el fin de que declarara lo que sabia sobre lo dicho, digo que en tiempo del Señor Governor D. Pedro Fermin de Mendinueta, habiendose puesto Juan Antonio Lujan a romper y desmontar en la posesion del citio de los Frijoles que demandan, le salieron al impedimento. D. Domingo Romero, difunto, y su hermano Migl. Romero; presentandose á dho. Sor.

Governor, Don Pedro Fermin de Mendinueta, quien sentencio que dho. Lujan no rompiera ni poblara en aquel citio por corresponder a los herederos de Andres Montoya, quien habia habido el referido sitio por proveydo del Señor Governor, y anuencia de sus hermanos y haber pagado al difunto D. Felipe Tafaya, dosientas obejas que le dara el dicho Montoya segun consta por su recibo pero despues D. Domingo Romero habiendose combenido con dho. Lujan le mando como parcionero que era por parte de su esposa que abriera lavor, pero con la condision de que no habia de hacer casa de terrado, de pribar los abrebaderos ni esponer quejas de daños, y los que dice dho. Don Mariano Romero se portaron de buena fee hasta el año de 1811, como consta por los documentos que dice el referido D. Mariano Romero estan archivados en el archibo de esta ciudad.

Y no habiendo mas justificacion que la espuesta paso estas diligencias a manos del Sor. Governor, pa. que determine lo qe. sea a su superier Agrado, y lo firme en dicho día, mes y año.

ANTONIO ORTIZ.

STA. FÉ, Abril 1, 1814.

En vista del resultado de lo practicado pr. D. Anto. Ortiz, segun aparece en su antecedente informe conbengo en que Maria Rosa Lujan, vesina de la Cañada de Cochiti, interesada en esta insta. se traslade al citio que solicita como propiedad sulla que es en el Rito de los Frijoles con los dos vesinos que anuncia, Pedro Hurtado y Santiago Hurtado, entendido de que por ningun titulo ni motivo á de permitir en aquel citio á ninguna persona que no sea concida pr. de buenas costumbres pues la causa de haber resuelto el Govor. despoblar antes de esto el referido sitio fue por abitarlos barrios individuos de mal proceder los que es comstante estubieren presos en la carcel de esta Capital, por los referidos robos de reses que halli comitieron en varios vecinos, todo lo que fue bien justificado y spre. que en lo subsesibo se observe el que aquellos pobladores trastornen el buen orden de su proceder no habra lugar á que continuen en el enuneiado puesto y si seran apremiados con el rigor de la Ley y pa. que no se le ponga embaraso ni impedimto. á la demandante pa. los fines que solicito doy el presente en dho. día, mes y año, y que presentara á los jueces a quien corresponda pa. su inteliga. y cumplimfo. en la parte que les tocan.

JOSEPH MAURIQUE.

CLAIMANTS' EXHIBIT B (SPANISH).

Sr. The. Coronl. Govr. Inro. Dn José Maurrique :

José Antonio Salas, vesino de la Cañada de Cochiti, mante vmd. se presenta con la mas debida submission y dice que por quanto se le a perdido la merced del rancho que posee yamado el Rito de los Frijoles dada por el Señor Govor. Dn. Thomas Velez Cachupin y refundada por el Sr. Dn. Juan Bautista de Anza, cuio original se alla en el archibo del Gobierno y consiendi la grande falta que me hase suplico rendidamente se me franquee dho. original para los fines que me conbengan quedando pronto a exhibir el coste correspondiente, por todo lo qual a vmd. pido y suplico se digne exceder a la suplica que solisito que en aserlo resebire merced y juro no ser de malisia.

JOSÉ ANTO. SALAS.

STA. FEE, Febrero 28 de 1803.

CLAIMANTS' EXHIBIT C (SPANISH).

Fr. Antonio Cavallero de la Regular observa. del ordn. de Menores de Nro. Serafico P. Sn. Franco. Pr. Gral. Difr. Actual de esta Santa custodia y ministro cura parroco de la missn. de Nro. Serafico Doctor Sn. Buenava. de Cochiti, certifico en quanto puedo y el derecho me permite que en el año de mil setecientos yochenta andando en su visita juridica el Señor Coronel Dn. Juan Bapta. de Anza, Govr. de esta Proa., llego á esta de Cochiti, y haviendose presentado por suplica mia el vecino Andres Montoya, que ya es difunto á dicho Sr. Govr. le dijo pasase por su vista una merced ó instrumento que trahia en que se le concedia y permitia poseer un pedezo de tierra ó rancho de pan llevar sito, en el paraje que llaman el Riito de los Frijoles, cuya merced se le fue dada en tiempo de Dn. Tomas Velez Cachupin, Govr. que fue de este Reino la tubo en su poder algunos años sin usar de ella, ni menos beneficiar dicho rancho ó sitio, por su abanzada edad, y no tener medios suficientes, para desmontar y romper dicho sitio, hasta que vino dicho Sr. Govr. Anza a su visita y hecho capaz S. S. de todo tras-paso y cedio dicha merced y sitio á un yerso suyo llamado Juan Antonio Lujan para que este lo poseyese, y usase libremente sin que ninguno le pusiese obire, que asi era su

voluntad convino en ello el Sr. Govr. y paso la merced y posesion de tal rancho al referido Juan Antonio Lujan que ya es difunto todo lo referido paso delante de mi que me hallaba presente, empezó dicho Lujan a poner en corriente dicho rancho, para lo qual trabajo muchissimo en desmontarlo por hallarse heriazco, haviendole yo prestado herramienta de azadones, hachas, arados y bueyes, hasta que ultimamente lo puso en corriente de poderse sembrar. Lo poseyo unos, cuatro ó cinco años, que despues de ellos, murio, y se lo dejo á sus hijos, y herederos y por suplica que me hizo uno de sus yernos del difunto Lujan el que esta casado con una hija del difunto llamada Antonia Rosa Lujan y el se llama José Antonio Salas, le diese una certificacion en la que constasen las circunstancias del modo que estaba dicho rancho, y sitio y no pudiendome negar á cosa tan justa, se la di en los terminos referidos anterior es para los fines que le convengan, dada en esta dicha Missn. en 28 dias del mes de Diciembre de 1807 as.

FR. ANTONIO CAVALLERO.

TRANSLATION OF CLAIMANTS' EXHIBIT A.

[L. S. Two reals. Seal third, two reals, years of one thousand eight hundred six and eight hundred and seven. Good for the two years of 1814 and 1815. Rubric.]

Sir Lieutenant Colonel and Governor, ad interim :

Antonia Rosa Lujan appears before you in all legal form with the most due attention which is by law conferred upon her, and states, sir, that she calls to recollection before your superiority that when the Sir Governor Juan Bactista de Anza was upon a general visit, my grandfather, Andres Montoya presented himself before him, calling to his recollection that he had held a grant made to him by the governor, Pedro Fernin de Mendinueta, governor that was of this province, and that on account of finding himself advanced in years he could not use it, nor cultivate it by reason of his lack of means, and that he would do him the favor to transfer the grant in favor of my father Juan Antonio Lujan, who was son-in-law of my said grandfather, who took every pains in cultivating the said tract which they commonly call *Los Frijoles*, dwelling there from that time until he died, leaving it for the benefit of his children, we who are the ones who have held and possessed it by the right which we acquired from our deceased father until the year 811, when your order was communicated to us that we should vacate said tract on account of some robberies having occurred, committed by other indifferent persons who had banded themselves together to live there; without having any knowledge of their acts, to which order due obedience was given up to the present year, and, considering myself free from the crime which those evil-disposed persons perpetrated and committed that I and my family should be deprived of our good position, and we are suffering necessity which we have on that account, the fact being that it was found out through me and the case adjudicated, I giving information at the trial in order that the remedy might be applied, which, if it should be necessary, the lieutenant of our precinct will certify, and finding myself with an extremely small piece of land to plant and enable me to support my family makes it necessary to trouble your attention, in order that if you should see fit, and it were agreeable to you, you allow me to settle again the aforesaid tract in company with two men, who are Isidro Urtado and Santiago Urtado, to whom I allow a life interest, with the understanding that they take care and watch that there does not follow any injury or damage to the neighbors of that tract nor to any others, but to live peaceably and support ourselves with some comfort; and, in proof of my petition being just which I make to your mercy, I humbly offer a certificate given by the Reverend Father Friar Anto. Cavallero during the year 1807, in which appears the right which sustains me and the concession which was conferred upon my deceased father by the said Governor Juan Bactista Anza, and conforming yourself to the justifying plea which speaks in my favor, I earnestly entreat you that you be pleased to do me the favor which I solicit, that in doing as I ask, I will receive grace in justice which I impetrate and in whatever is necessary, etc. I swear in due form that I do not act in malice:

ANTONIA ROSA LUJAN.

SANTA FÉ, and April 1, 1814.

SANTA FÉ, April 2, 1814.

In view of my excessive duties in the administration of this Government, on that account I do not find myself able to hear in person the party before me in this petition, wherefore I commission for this purpose, that he may take cognizance of it in all the integrity of justice, Mr. Antonio Ortiz, resident citizen of this city, who by a review of the documents cited by the party interested, and of the proceedings formerly had for displacing, by order of this Government, those finding themselves as set-

tlers in that tract called *Los Frijoles*, because of their evil deeds, and not finding amongst them any formality in defensive improvements in that place such as houses and other things required of all settlers, on the contrary that they live in caves the same as barbarians—the said commissioner will make the returns corresponding in the premises, whether it shall be changed or the petition of the suppliant denied, in order that by the result what seems just may be determined.

MAURRIQUE.

SANTA FÉ, April 3d, 1814.

In virtue of the decree of the lieut.-col and governor ad interim, in which he commissions me to make a report regarding Antonia Rosa Lujan, resident of the Cañada de Cochiti, I state that having taken her writing in charge and requested of her the documents mentioned in it, she has only presented me with a certificate, which, in the year 1807, the Minister Reverend Father Guardian Friar Antonio Caballero gave them, and it not seeming to me a sufficient justification for a decision in the matter treated of therein, I have requested of them other records or documents to prove her justification; and having brought the Lieut. of Militia Mariano Romero before me for the purpose of declaring what he knew respecting the foregoing, I state, that in the time of Governor Pedro Fermin de Mendinueta, Juan Antonia Lujan having commenced breaking up and clearing off in the possession of the tract of *Los Frijoles* which they claim, there come out to hinder him Domingo Romero, deceased, and Miguel Romero his brother, presenting themselves to the said Governor Pedro Fermin de Mendinueta, who decreed that said Lujan should not break ground nor settle on that tract because it belonged to the heirs of Andres Montoya who had held the said tract under decree of the governor and friendship of his brethren, and because of having paid to Felipe Tafoya, deceased, two hundred ewes which said Montoya owed him, as appears from his receipt. But afterwards Domingo Romero, having agreed with said Lujan, ordered him as partner which he was on the part of his wife to open up fields, but on the condition that he should not build a house with towers, hinder the watering places, nor lay himself liable to complaint and damages (who, the said Mariano Romero says, conducted themselves in good faith up to the year 1811) as appears from the documents which the aforesaid Mariano Romero says are deposited in the archives of this city.

And there not being any justification further than that set forth I transmit these proceedings to the hands of the governor that he may determine whatever may be of his superior pleasure, and I signed it on said day, month, and year.

ANTONIO ORTIZ,

SANTA FÉ, April 4, 1814.

In view of the result of the proceedings had by Antonio Ortiz, as appears from his foregoing report, I decide that Maria Rosa Lujan, resident of the Cañada de Cochiti, party interested in this case, may move to the tract which she solicits as her property which is on the *Rito de los Frijoles*, with the two citizens whom she mentions, Isidro Hurtado and Santiago, Hurtado, it being understood that for no title or cause shall she permit on that tract any person who is not known as of good habits, since the governor's reason for having resolved heretofore to depopulate said tract was because there frequented there various individuals of evil deeds whom as appears of record were prisoners in the jail of this capital for the repeated robberies of beeves which they committed there upon various residents, all of which was fully proven, and forever in the future if it is observed that those settlers depart from good order in their actions, opportunity to continue in said place will not be given them, and they shall be punished with the rigor of the law, and, that no embarrassment or impediment may be placed in the way of the plaintiff for the purposes which she solicits I give these presents on said day, month, and year, and that she may lay before the proper judges for their information and fulfillment in the part corresponding to them.

JOSEPH MANRRIQUE.

The foregoing is a correct translation of its original in Spanish to the best of my knowledge and belief.

J. H. WATTS.
Translator.

Sworn to and subscribed before me at Santa Fé, N. M., this 26th day of September, A. D. 1872. Witness my hand and notarial seal.

[SEAL.]

JOHN WATTS,
Notary Public.

TRANSLATION OF CLAIMANT'S EXHIBIT B.

[Translation.]

Sir Lieutenant-Colonel and Governor ad interim :

José Antonio Salas, resident of the Cañada de Cochiti, appears before you with the most profound submission and states that whereas he has lost the grant of the farm which he possesses, called the *Rito de los Frijoles*, given by the Governor Thomas Velez Cachupin, and re-authorized by Juan Bactista de Anza, the original of which is found in the archives of the Government, and knowing the great inconvenience it causes me, I earnestly entreat that said original may be delivered to me for the purposes I may deem fit, holding myself ready to exhibit before the proper court, on account of all which I beg and entreat you would be pleased to grant the request which I solicit, that in doing so I will receive grace, and I swear not to act in malice.

JOSÉ ANTONIO SALAS.

SANTA FÉ, February 28, 1803.

The foregoing is a correct translation of its original in the Spanish language to the best of my knowledge and belief.

J. H. WATTS,
Translator.

Sworn to and subscribed before me at Santa Fé, N. M., this 26th day of September, A. D. 1872.

Witness my hand and notarial seal.

[SEAL.]

JOHN WATTS,
Notary Public.

TRANSLATION OF CLAIMANT'S EXHIBIT C.

Friar Antonio Cavallero, of the regular original practice of the order of minors of our serafic father, San Francisco, as actual defender-general of this sacred charge and minister priest parroquial of the mission of our serafic father, Doctor San Bur-naventura de Cochiti, certify as far as able and the law permits me, that in the year of one thousand seven hundred and eighty, while proceeding on his judicial visit the Sir Colonel Juan Baptiste de Anza, governor of this province, he arrived at this of Cochiti, and the citizen Andres Montoya, who is now dead, having presented himself to the said sir governor, I said to him that he should glance over a grant or instrument which he brought, in which he is granted and permitted to possess a piece of land or farm of cultivable land situated at the place which they call *Rito de los Frijoles*, which grant was made to him in the time of Tomas Velez Cachupin, governor, that was of this kingdom. He held in his possession for some years without using it or improving said farm or tract, on account of his advanced age and not having means sufficient to clear off and break up said tract, until the said Sir Governor Anza came on his visit, and his lordship being empowered in all respects, transferred and ceded said grant and tract to a son-in-law of his called Juan Antonio Lujan in order that this one might possess it and use it freely without any one impeding him, that such was his pleasure.

The sir governor decided upon this and turned over the grant and possession of said farm to said Juan Antonio Lujan, who is now deceased.

All this aforesaid took place before me, who was present.

Said Lujan commenced to work said farm on which he labored very much in clearing it off, it being virgin land, that afterwards he died and left it to his children and heirs, and by request made to me by one of the sons-in-law of the deceased Lujan, who is married to a daughter of the deceased called Antonia Rosa Lujan, and his name being José Antonio Salas, that I should give him a certificate of the facts appearing in the circumstances of the state of said farm and tract, and not being able to deny a thing so just, I gave it in the said foregoing terms for the purposes which may seem proper.

Given at this said mission on the 28th day of the month of December, 1807, A. D.
FR. ANTONIO CAVALLERO.

The foregoing is a correct translation of the original, in Spanish, to the best of my knowledge and belief.

J. H. WATTS,
Translator.

Sworn to and subscribed before me, a notary public in and for Santa Fé Co., Territory of New Mexico, this 26th day of September, A. D. 1872.

Witness my hand and notarial seal.

[SEAL.]

JOHN WATTS,
Notary Public.

TESTIMONY OF WITNESSES.

[Heirs of Antonio Rosa Lujan, deceased. Los Frijoles tract.]

MANUEL HURTADO, being by the surveyor-general duly sworn, on his oath declares:

Question (by John S. Watts, attorney for present claimants). What is your name, age, and residence?—Answer. My name is Manuel Hurtado, my age I do not know precisely, but I am at least seventy-five years old; am a very old man, and I live at the pueblo of Cochiti. I was born in the Cañon of Cochiti, north of the present pueblo.

Q. Do you know the Rito de los Frijoles tract of land, so called, and if so, please state its locality?—A. I know the tract mentioned, but know nothing of the grant for the land there. The place is about seven leagues to the north of the pueblo of Cochiti.

Q. Whom is the tract reputed to belong to?—A. To the Salas.

Q. How long have you known the Rito de los Frijoles place?—A. All my life.

Q. Has it been lived upon and occupied, and by whom?—A. It was so occupied by José Antonio Silas and his wife Antonia Rosa Lujan. These both died at the pueblo of Cochiti and were buried in the church at the pueblo, they and all the inhabitants at the Cañan or Rito de los Frijoles having been compelled to abandon the place on account of the hostilities of the Navajo Indians.

Q. Since that expulsion have any of the heirs of Salas and Lujan returned to the place and occupied it?—A. They have not. One of them, however, three years ago went to live and cultivate there, but he was killed by lightning there, and since then no one has gone to live there.

Q. If you know who are the heirs of said Salas and Lujan please name them.—A. Juan Salas is one, Miguel Salas another, Rafael Salas another, males, and females, Dominga Salas, her sister Guadalupe Salas another, their sister Anastacia Salas. Of all these all the males are alive, and of the females only Dominga, and they all reside here in New Mexico.

Q. Please state, if you can, the boundaries of the Frijoles tract?—A. They are on the north the Cañada Aucha at the Potreros de Pajarito, on the east the Rio del Norte, on the south the edge of the Cañon del Alamo, and on the west the edge of the Valles Mountain.

Q. Have you any interest in this claim?—A. I have none.

MANUEL (his x mark) HURTADO.

Sworn to and subscribed before me this November 26, 1872.

J. K. PROUDFIT,
Surveyor-General.

[Los Frijoles. Private land claim, file No. 106.]

In the matter of the investigation of this claim, the grant to Antonia Rosa Lujan.

Present: H. M. Atkinson, surveyor-general; D. J. Miller, translator and interpreter; S. M. Barnes, U. S. district attorney, and Amado Chaves, attorney for the claimants under the said grant. The following testimony was presented and taken down:

TOMAS SALAS, being by the surveyor-general duly sworn, on his oath declares:

Question (by Amado Chaves, attorney for claimants). What is your name, age, and residence?—Answer. My name is Tomas Salas, my age is forty-five years, and my place of residence is at the town of Peña Blanca, in the county of Bernalillo, and Territory of New Mexico.

Q. Do you know the tract of land known as the Rito de los Frijoles grant; if so, please state where it is situate?—A. I know the tract, which is situate upon the other side of the Rio Grande del Norte and above the Cañada de Cochiti, now in the said county of Bernalillo. I have known the tract all my life. It was first occupied by Antonia Rosa Lujan, and afterwards by her children.

Q. To whom does the land belong now?—A. To the children of Antonia Rosa Lujan.

Q. Under what title or claim did Antonia Rosa Lujan hold said land if you know?—A. She held under a grant which she had therefor.

Q. State if you know them, the boundaries of the tract.—A. On the south the mouth of the Cañon del Alamo, so called, on the west the mountain, on the north a place called the Potrero or natural horse corral, and on the east the Rio Grande del Norte.

Q. Do you know of any adverse claim to this land?—A. I do not.

Cross-examination

Question (by S. M. Barnes, U. S. district attorney for New Mexico). Can you read and write?—Answer. I can.

Q. Have you ever seen or read the papers in the grant for the land you refer to sought to be confirmed in this case?—A. I have seen them and read them.

Q. When and where?—A. I saw and read them at my house about two or three weeks ago. It was the last but not the only time I had seen and read them as they had been in my possession till then.

Q. How long had you had the papers in your possession and whom did you obtain them from?—A. I had them in my possession ever since I can remember, they having been delivered to me at the death of my father, Francisco Salas, who was the eldest child of Antonia Rosa Lujan.

Q. Have these papers ever been out of your possession since you first obtained them and before the commencement of this proceeding to confirm the grant, and if so in whose possession were they then in?—A. They were never out of my possession except when delivered to the office of the surveyor-general for filing.

Q. Are you interested in having this grant confirmed, and if so to what extent are you so interested?—A. I am so interested as one of the heirs, being a grandson of the original grantee, and am interested to the extent of a natural desire that the grant be confirmed, and I claim to own a part of the land. I do not live upon the tract but cultivate a portion of it.

Q. How much within the boundaries of the tract is enclosed or fenced in?—A. The cultivable portion of the tract is mainly in cañon, whose sides form a natural enclosure or fence, so that little constructed fencing is used.

Q. What do you know, if any thing, about any mines or minerals upon the grant—state what they are if any you know of.—A. I have no knowledge upon the subject whatever.

TOMAS SALAS.

Subscribed and sworn to before me this March 22, 1881.

HENRY M. ATKINSON,
Surveyor-General.

In the matter of the investigation of the claim, file No. 106, alleged grant to Antonia Rosa Lujan.

Investigation resumed this 8th day of March 1883.

Present: H. M. Atkinson, surveyor-general, Dav. J. Miller, translator.

No attorney present.

ANTONIA JOSE LUCERO, of lawful age, having been first duly sworn, deposeth and saith:

Ques. State your name, age, occupation and place of residence.—Ans. My name is Antonia Jose Lucero; I am seventy-six years old; reside at Peña Blanca, Bernalillo County, New Mexico, and am a farmer.

Ques. How long have you lived at Peña Blanca?—Ans. About fifty-two years and was born in the Cañada de Cochiti, where I lived for sixteen or seventeen years, from whence I moved to Peña Blanca.

Ques. Are you acquainted with a tract of land known as the Rito de los Frijoles tract, or grant to Antonia Rosa Lujan; if so, how long have you known it, where is it situated, and what are its boundaries?—Ans. I have known such a tract for all my life; I used to go there every summer to visit my great grandfather, Sebastian Salas. It is situated in Bernalillo County, I think, Territory of New Mexico. It is bounded on the north by the Canada Aucha and the Potrero del Pajarito, that are close together, on the east the Rio del Norte, on the south the Cañon del Alamo, on the west by the top of the Valles Mountain.

Ques. Who has occupied this tract since you have known it?—Ans. The descendants of Antonia Rosa Lujan have always lived there and she lived there.

Ques. Is Antonia Rosa Lujan now living?—Ans. She died in the Cañada de Cochiti on this land when I was quite small.

Ques. How do you know there was any grant to this tract of land to Antonia Rosa Lujan?—Ans. I knew it because I saw it when I went to the Rito; I saw the written grant papers.

Ques. In whose possession were these papers when you saw them?—Ans. In the hands of Rosa Lujan.

Ques. Can you read and write?—Ans. No.

Ques. Then how do you know they were the grant papers you saw?—Ans. Because I heard my grandfather, Juan Domingo, read them.

Ques. How old were you when you first heard them read?—Ans. I was about ten years old.

Ques. How did your grandfather come in possession of the papers, and what was the occasion of his reading them to you?—Ans. I was a boy around there and happened to hear my grandfather read them at the request of Antonia Rosa Lujan.

Ques. When and where did this occur?—Ans. At my grandfather's house; I do not recollect when, as I was quite young.

Ques. If you were so young how do you happen to remember the boundaries so well?—Ans. I heard them read by my grandfather and I knew the points mentioned.

Ques. Had you ever at that time seen any of the points mentioned?—Ans. Yes, sir; I had been at them.

Ques. How many times did you ever hear the grant papers read; was it only that time you speak of?—Ans. I heard them read four times.

Ques. When was the second time you heard them read, when and where and by whom?—Ans. The second time was at my grandfather's, Juan Domingo, and by him.

Ques. How did he happen to be reading them again?—Ans. After the death of Rosa Lujan's husband she brought the papers again to my grandfather to read. I was then about 22 years old.

Ques. How about the third time you heard them read?—Ans. She, Antonia Rosa Lujan, brought them again to my grandfather to read.

Ques. How long was it between the second and third times you heard them read?—Ans. It was about a month.

Ques. When was the fourth time you heard them read, and when and where and by whom were they read?—Ans. It was about a month, more or less, after the third time I heard them read by my grandfather.

Ques. Did you see the grant papers at these various times which you mention as having heard them read?—Ans. I saw them in the hands of my grandfather and was listening, but did not have them in my own hands.

Ques. Examine these papers and state if you have ever seen them before.

[Here was shown the witness the original grant papers filed by claimants.]

Ans. I may have seen them but can not read; but think they are the same that were in the hands of Antonia Rosa Lujan, and which I heard read by my grandfather; my eyesight is bad and I can not tell without hearing them read. [Here the papers, Exhibit A, were read to witness, when he further answered.] It is the same that I heard my grandfather read, and I have no doubt of it.

Ques. Have you any interest in this grant?—Ans. I don't know whether I have or not; I may have, and if so will know. I am not related to the grantee in any way, but my grandfather lived there and his son, who was my uncle, was married to Antonia Rosa Lujan.

The latter had a number of children. Two sons are now living.

ANTONIO JOSE (his x mark) LUCERO.

Subscribed and sworn to before me this 8th day of March, 1883.

HENRY M. ATKINSON,
Surveyor-General.

CLAIMANT'S BRIEF.

[Rito de los Frijoles tract. The heirs, assigns, and legal representatives of Antonia Rosa Lujan vs. The United States.]

Brief of petitioners.

The muniments of title in this case are on file in the office of the surveyor-general for the Territory of New Mexico, and are known as private land claim No. 106.

By reference to these papers it will be seen that they were filed in the office of the said surveyor-general, on or about the 5th day of October, 1872, by Hon. John S. Watts, acting as attorney for the above-named claimants. And by reference to the testimony of Tomas Salas, taken before hon. surveyor-general March 22, 1881, it is seen that the said papers were in the continued possession of said Salas up to and until the date of said filing, and that he received them from his father, who, in turn, received them from his mother, the above-mentioned Antonia Rosa Lujan, the original grantee of the tract of land claimed. As a further proof of the authenticity and genuineness of the said papers; attention is also called to confirmed private land claim No. 38 to Ramon Vigil, being the grant of land lying immediately north of the tract claimed by petitioners, in which papers the grant to Antonia Rosa Lujan, known as the Rito de los Frijoles tract, and herein claimed, is spoken of as the southern boundary of said private land claim No. 38.

By reference to the muniments of title in question it will be seen that at some time previous to the year 1742 the tract of land known as the Rito de los Frijoles

tract, situated in the county of Bernalillo and Territory of New Mexico, then an ultramarine province of the King of Spain, was granted to one Andres Montoya by Pedro Fermin de Mendinueta, the then governor of said province; that the said Andres Montoya continued to live upon the tract so granted until about the year 1780, when, at his request, the said tract was transferred, in accordance with the usages and customs then in vogue, with the consent and by the authority of Governor Anza, the successor of the said Pedro Fermin de Mendinueta, to one Juan Antonio Lujan, the son-in-law of the said Andres Montoya; that the said Juan Antonio Lujan and his successors lived upon and cultivated the tract of land so granted and transferred until about the year 1811; that in that year, owing to certain depredations having been committed in the neighborhood of the said tract of land, one Manrique, the then governor, ordered the said Juan Antonio Lujan and those claiming under him to vacate the premises; that in the year 1814 Antonia Rosa Lujan, the daughter of the said Juan Antonio Lujan and granddaughter of the said Andres Montoya, petitioned the said governor to restore to her and her successors the land originally granted to her grandfather, transferred to her father, and of which, two years before, he had been deprived as above stated; and that Governor Manrique, in accordance with the prayer of this petition, and with due regard to the legal formalities in vogue at the time, made a re-grant of the Rito de los Frijoles tract of land to the said Antonia Rosa Lujan and her successors forever.

By reference to the testimony of Manuel Hurtado, taken before the hon. surveyor-general November 26, 1872, it will be seen that the said Manuel Hurtado was and had been acquainted with the Rito de los Frijoles tract all his life; that he was personally acquainted with the said Antonia Rosa Lujan, and that to his certain knowledge she and her successors had lived and cultivated the said tract of land since the year 1814, and that they still occupy and have an undisputed possession of the said tract.

It would seem therefore beyond a reasonable doubt, in view of the confirmatory statement made in the private land claim No. 38 as hereinbefore mentioned, and after a comparison of the signatures in said papers with those purporting to be the same as file in the office of the surveyor-general and known to be genuine, that said papers are valid and unimpeachable. It is contended, therefore, that the claimants had at the time of the acquisition of the Territory of New Mexico by the United States a perfect, valid, and indefeasible title to the tract of land claimed under the laws then in force.

In the papers above mentioned and under which the petitioners claim it will be observed that no boundaries to the tract of land in question are directly given; but they are indirectly referred to as being the same as those mentioned in the grant to one Andres Montoya. It is probable, however, that this original grant has been lost or destroyed, and this supposition is confirmed by the petition on file in this case, in the office of the hon. surveyor-general, of one Salas, wherein he prays that the then governor may cause to be given to him the copy in the government archives of the grant conveying to Andres Montoya, his wife's grandfather, the tract of land in question, and further alleges that the original papers had been lost.

Whether or not the prayer of this petition was ever granted does not appear, but the original Spanish archives have been searched and the papers referred to have not been found.

But it is contended by the claimants that this fact does not affect their right to have the tract of land claimed, approved, confirmed, and set off to them by the Government of the United States.

There can hardly be any doubt of the genuineness of the papers under which they claim, in view of the facts of the case, and after a comparison of the signatures in said papers with those purporting to be the same on file in the office of the hon. surveyor-general and known to be genuine. Attention is again called to the confirmed private land claim of New Mexico, No. 38, which not only affords an independent proof of the genuineness of the grant in question, but in the muniments of title of said confirmed grant the grant to one Andres Montoya is referred to as the southern boundary of said confirmed grant. This establishes conclusively the northern boundary of the grant in question. The claimants contend that about what are and have been for a long series of years the limits of the Rito de los Frijoles tract of land there is and never has been any dispute or question whatever. For generations the boundaries of this tract of land have been known and recognized by all persons familiar with that portion of the Territory. And it is here laid down as an undisputed principle of law that where any tract of land is mentioned without giving the boundaries thereof, which afterwards comes in issue, it is entirely relevant and admissible to prove the limits of the tract in question by oral testimony, where better can not be obtained, and such testimony, if in the judgment of the surveyor-general worthy of credit, must be conclusive.

Consistently with this principle, attention is called to the testimony of Thomas Salas and Manuel Hurtado, taken before the hon. surveyor-general, March 22, 1881,

and November 26, 1872, respectively, by which it will be seen that what is now and has been for a hundred years known as the Rito de los Frijoles tract of land, is bounded as follows: On the north the lands granted to Ramon Vigil (confirmed private land claim of New Mexico, No. 38); on the south the Cañada de Cochiti grant, as yet unacted upon by the surveyor-general; on the east the Rio Grande del Norte, and on the west the Rocky Mountains. It will be observed that the testimony of these two witnesses coincide, so far as they go, with the independent proof afforded by the confirmed grant of Ramon Vigil.

It is a well-known historical fact that the representative authorities of neither the Spanish nor Mexican Governments had any system of surveys analogous to that made use of to-day in the territories of the United States, nor in fact any system at all, and that in all descriptions of land recourse was necessarily had to natural rather than artificial boundaries. Now, assuming the Rito de los Frijoles tract of land to have been confirmed under a genuine grant, and the northern boundary thereof to be conclusively established by the reference thereto in the confirmed grant hereinbefore mentioned, it is a legitimate conclusion, in the absence of other natural land-mark, that the Rio Grande del Norte is the eastern boundary of the tract in question. That such is the fact is shown by the testimony of the two witnesses hereinbefore referred to, and the same force of reasoning will apply to the southern and western limits of the tract in question.

The attention of the hon. surveyor-general is respectfully called to the decision of the Supreme Court of the United in the case of the United States vs. Moreno, 1 Wallace, 400, which, upon examination, will be found to be almost identical with the one in question.

A summary of the facts in the case alluded to shows that after the acquisition of California by the United States, under the treaty of Guadalupe Hidalgo, one Moreno presented a petition the board of commissioners established by the act of Congress, of 3d March, 1851, to ascertain and settle private land claims in California, and conferring powers analogous to those possessed by the hon. surveyor-general for the Territory of New Mexico, to have his title confirmed to a certain piece of land known as the Rancho de Santa Rosa, and claimed under a grant from the Republic of Mexico, in pursuance with the provisions of the statute above stated. The commissioners having confirmed the grant, an appeal was taken by the United States to the district court of California, and that court having affirmed the report of the commissioners, the United States brought the case into the Supreme Court by appeal.

It was objected on behalf of the United States to the decree of the district court:

I. That the "grant is proved by secondary evidence of handwriting without the legal basis for its introduction having first been laid."

II. That the location and quantity of land are entirely uncertain both in the grant and *deseño*. And the Supreme Court held, Mr. Justice Swayne delivering the opinion:

"The first objection refers to the proof of the signatures of the governor and secretary to the deed to Moreno, without those officers being called or their absence accounted for. There are no subscribing witnesses to the deed. It was therefore allowable, according to the common law, to prove the signatures by any one acquainted with their handwriting. Such testimony was as competent and valid as the testimony of the writers themselves: It is in no sense secondary evidence. Sec. 2, Phillips on Evidence, 4th American Edition, 604. If no objection be made, the existence and contents of a record may be proved by parol evidence, and a court of errors will not for that reason reverse the judgment. In this class of cases, where the documentary proof of title is plenary, and no suspicion is raised as to its genuineness, it is the settled rule of this court to regard such evidence as both competent and sufficient."

In regard to the second objection, that "the location and quantity of the land are entirely uncertain both in the grant and the *deseño*," the court says:

"It is proved by the testimony of three witnesses that Santa Rosa was a well-known rancho * * * and that there was not the least difficulty either in identifying it or in ascertaining its boundaries. There is no contradictory evidence on the subject. The district court held the evidence to be sufficient, and we concur in that opinion. * * * It is not necessary to the validity of the title that the land should have been surveyed and the quantity ascertained."

The court further held in this case, and its statements are equally applicable to California and New Mexico:

"California belonged to Spain by the rights of discovery and conquest. The government of that country established regulations for transfers of the public domain to individuals. When the sovereignty of Spain was displaced by the revolutionary action of Mexico, the new government established regulations upon the same subject. These two sovereignties are the springheads of all the land titles in California existing at the time of the cession of that country to the United States by the treaty of Guadalupe Hidalgo. The cession did not impair the rights of private property. They were consecrated by the law of nations and protected by the treaty. The treaty stip-

ulations was but a formal recognition of the pre-existing sanction in the law of nations. The act of March 3, 1851, was passed to assure to the inhabitants of the ceded territory the benefits of the rights of the property thus secured to them. It recognizes alike legal and equitable rights, and should be administered in a large and liberal spirit. A right of any validity before the cession was equally valid afterwards, and while it is the duty of the court in the cases which may come before it to guard carefully against claims originating in fraud, it is equally their duty to see that no rightful claim is rejected."

In the United States *vs.* Anguisola, 1 Wallace, 358, the court held:

"That the United States have never sought by their legislation to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo to protect the rights of property of the inhabitants of the ceded territory or to discharge it in a narrow and illiberal manner. They have directed their tribunals, in passing upon the rights of the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity and the decisions of the Supreme Court, so far they are applicable. They have not desired the tribunals to conduct their investigations as if the rights of the inhabitants to the property which they claim, depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking in extending their authority over the ceded country, to enforce for forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded."

In 5 Wallace, 827, the Supreme Court say—and as Spain and Mexico had the same system with regard to the donation of the public land the statements of the court are equally applicable to both:

"Mexican governors made three kinds of grants or concessions of vacant public land:

"I. Grants by specific boundaries where the donee is entitled, of course, to the entire tract described.

"II. Grants by quantity, as of one or more leagues of land situated in a larger tract, and usually described by out-boundaries, where the donee is entitled to the quantity specified and no more.

"III. Grants of a certain place or rancho by some particular name, either with or without specific boundaries, where the donee is entitled to the tract according to the boundaries, if given; and, if not, according to the limits of the possession and settlement."

In *Alviso vs. The United States*, 8 Wallace, 337, the court say:

"Where a Mexican grant of land in California designates the land granted by a particular name, but does not give any boundaries, the grantee is entitled to the quantity specified within the limits of his settlement and possession if that amount can be obtained without infringing upon the rights of adjoining proprietors." (See, also, *Hornsby et al. vs. U. S.*, 10 Wallace, 224, and *Shuttle vs. Thompson*, 15 Wallace, 151.)

Respectfully submitted.

CHAVES & WADE,
Att'ys for Claimants.

SURVEYOR-GENERAL'S OPINION.

[The heirs and their assigns and legal representatives of Antonia Rosa Lujan *vs.* The United States Before the United States surveyor-general for the Territory of New Mexico.]

(*Opinion.*)

This claim is for a tract of land situate in the county of Bernalillo, Territory of New Mexico, and is presented for investigation in pursuance of the eighth section of the act of Congress approved July 22, 1854, and the treaty of Guadalupe Hidalgo.

The claimants allege in their petition that some time previous to the year 1780 the land was granted to one Andres Montoya, the grandfather of Antonia Rosa Lujan; that by reason of the advanced age and limited means of Montoya he could not use the tract, and at his request, in 1780, the grant was transferred to his son-in-law, Juan Antonio Lujan, who resided thereon until his death and left the same to his heirs; that the heirs resided thereon until about the year 1811, when, on account of some robberies committed in that vicinity, the governor, Maurice, ordered the heirs to vacate the tract, which order it is claimed was complied with, and no one was in possession of the tract until the year 1814, when Antonia Rosa Lujan, wife of José Antonio Salas, and daughter of Juan Antonia Lujan's and grand-daughter of Andres Montoya, having shown that she was not implicated in the robberies, petitioned Maurice, the governor of this, at that time an ultramarine province of Spain, for permission to re-occupy her property, which permission it is alleged was granted her.

The documents of title presented in the case by the claimants consist of what purports to be a petition to the governor, dated February 28, 1803, of Juan Antonio Salas,

husband of Antonia Rosa Lujan, setting forth that the grant papers, originally given to Andres Montoya, and the re-authorization of the grant to Juan Antonio Lujan by Governor Juan Bautista de Anza, had been lost, and praying that the originals of said documents on file in the archives be delivered to him.

The next document in order of date purports to be a certificate of Friar Antonio Caballero to the transfer of the grant or Frijoles tract to Juan Antonio Lujan by Governor Anza, as alleged in claimant's petition.

Neither of these documents is properly authenticated, although the same facts therein recited are stated in the petition of Antonia Rosa Lujan, upon which the signature of Governor Maurique appears.

These two documents are merely corroboration of the statement in the petition as to a previous grant to Andres Montoya and the re-validation or grant to Juan Antonio Lujan of the same tract, and although two witnesses testify that all the papers presented were in the possession of claimants and their ancestors as far back as they can remember, yet the two documents referred to lack the requisite evidence of authenticity and originality.

The document filed as Exhibit A consists of what purports to be a petition of Antonia Rosa Lujan, dated April 1, 1814, asking that the tract be granted or transferred to her; the order of Governor Manrique, written on the petition and dated April 2, 1814, wherein he commissions Antonio Ortiz to inquire into the alleged facts as set forth in the petition of Antonia Rosa Lujan. Then follows the report of Ortiz, and the final decision and decree of Governor Manrique, wherein he directs that Antonia Rosa Lujan may re-occupy the tract and resettle it as her property.

This document is shown by the testimony of Antonio José Lucero to have been in the possession of Antonia Rosa Lujan during her life-time, and upon comparing the alleged signature of Governor Manrique on the documents in this case with the signature of that official upon other documents on file in the old Spanish archives of this office, and in cases previously adjudicated, they are found to agree therewith, and his signatures upon these documents are believed to be genuine.

The evidence shows continuous occupation of the tract by Antonia Rosa Lujan up to the date of her death, and after that by her heirs, some of whom still reside thereon. At that period the governor of this province was empowered to alienate the public domain under certain conditions imposed upon the grantee.

The boundaries of the tract are not stated in the muniments of title presented, and while they were doubtless given in the original grant to Andres Montoya there are no means of determining the same except by parol evidence and the statement in the original title papers of the Ramon Vigil grant, reported No. 38, wherein the lands of Captain Andres Montoya is given as the south boundary of the Ramon Vigil grant made in 1742, and which has been confirmed by Congress.

In the survey of the Ramon Vigil grant, made 1877, the north boundary of the land of Andres Montoya (which constituted the south boundary of the Vigil grant) was identified by the deputy who surveyed the Vigil grant, as the south edge of the mesa on the north side of the Rito de los Frijoles.

The testimony of the three witnesses examined in the case agree that the north boundary is the Cañada Ancha at the Poteras de Pajarita; on the south the Cañon del Alamo; on the east the Rio Grande del Norte; on the west the Valles mountain. The testimony as to this last boundary is somewhat conflicting. One of the witnesses states it is the mountain, another the side of the mountain, another the summit of the mountain, so that in the survey of the tract it will be necessary to take further testimony as to how far the west boundary extends.

It appears from the evidence that the land within the boundaries named has been claimed by and in the actual peaceable possession of the grantee and her heirs from a period as far back as the witnesses had any recollection up to the present time.

It was a custom at times to make concessions of ranches by name, either with or without specific boundaries, where the grantee is entitled to the land within the boundaries given, and if no boundaries were given, they are entitled according to the extent of the possession and settlement. See 5 Wallace, 827.

"When a Mexican grant of land in California designates the land granted by a particular name, but does not give any boundaries, the grantee is entitled to the quantity specified within the limits of his settlement and possession, if that amount can be obtained without infringing upon the rights of the adjoining proprietors." (*Alviso vs. the United States*, 8 Wallace, 337. *Hornsby vs. the United States*, 10 Wallace, 224. *Shuttle vs. Thompson*, 15 Wallace, 151.)

So far as known there is no portion of the tract within the boundaries named by the witnesses claimed by other parties.

The claim is approved to the heirs and their assigns of Antonia Rosa Lujan.

A transcript in triplicate of all the papers in the case will be transmitted to Congress for its action in the premises.

HENRY M. ATKINSON,
U. S. Surveyor-General.

U. S. SURVEYOR GENERAL'S OFFICE,
Santa Fé, New Mexico, March 14, 1883.

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

The foregoing on 67 pages is a full, true, and correct transcript of the originals from which it was made, which originals are on file in this office, in the matter of private land claim No. 133, in the name of the heirs and legal representatives of Antonia Rosa Lujan, for the "Rito de los Frijoles" 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 the sixteenth day of August, A. D. 1889.

[SEAL.]

GEO. W. JULIAN,
U. S. Surveyor-General for New Mexico.