MEMOS, LETTERS, CORRESPONDENCES

July 30, 1924.

MEMORANDUM FOR MR. WELLS.

(Pueblo Lands Board.)

The attached letter from Mr. Walker does not seem to call for anything more than a convenient reference to Sections 3364 and 3365 of the New Mexico Statutes Annotated, 1915. The sections referred to by Mr. Wilson in his letter to Mr. Walker are as follows:

> Sec. 3364. Real Estate - Adverse possession - Land grants - Paper title.
>
> Sec. 19. In all cases where any person or persons, their children, heirs or assigns, shall have had possession for ten years of any lands, tenements or hereditaments which have been granted by the government of Spain, Mexico or the United States, or by whatsoever authority empowered by said governments to make grants to lands, holding or claiming the same by virtue of a deed or deeds of conveyance, devise, grant or other assurance purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said lands, tenements or hereditaments, within the aforesaid time of ten years, then and in that case, the person or persons, their children, heirs or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance as aforesaid, in preference to all, and against all, and all manner of person or persons whatsoever; and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this State, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in possession, shall be forever barred, and the person or persons, their children, heirs or assigns so holding or keeping possession as aforesaid for the term of ten

years, shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments: Provided, That if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for commencing such action shall in favor of such persons be extended so that they shall have one year after the termination of such disability to commence such action; but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued and to no other.

Sec. 3365. Recovery of lands - Adverse possession.

Sec. 20. No person or persons, nor their children or heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments, against any one having adverse possession of the same continuously in good faith, under color of title, but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments so held, shall be commenced within ten years next after the cause of action therefor has accrued: Provided, That if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for commencing such action shall in favor of such persons be extended so that they shall have one year after the termination of such disability to commence such action; but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued and to no other. "Adverse possession" is defined to be an actual and visible appropriation of lands, commenced and continued under a color of title and claim of right inconsistent with and hostile to the claim of another; and in no case must "adverse possession" be considered established within the meaning of the law, unless the party claiming adverse possession, his predecessors or grantors, have for the period mentioned in this section continuously paid all the taxes, State, county and municipal, which during that period have been levied upon the land or interest claimed, whether assessed in his name or that of another.

Section 3364 was considered in Montoya v. Gonzales, 232 U. S. 375.

An extra copy of this memorandum is submitted for transmittal to Mr. Walker if this action is found to be desirable.

Respectfully,

L
WAM

February 3, 1931

MEMORANDUM

With reference to allotments to Indians on the Public Domain in the States of New Mexico and Arizona, attention is invited to the fact that Congress itself in the Indian appropriation act approved June 30, 1913 (38 Stats. 77), gives clear intention to stop allotments in severalty on the public domain to any Indian whether of the Navajo or other tribes within the states mentioned.

The provision in the act mentioned, page 1, for the survey, etc., and allotment of lands in severalty under the provisions of the act of February8, 1887, (24 Stats. 388) is for an appropriation of $200,000 for the survey and subdivision of Indian reservations and lands to be allotted under authority of law, and then follows the proviso that no part of such appropriation shall be used for the survey, resurvey, classification, appraisement or allotment of any land in severalty upon the public domain to any Indian whether of the Navajo or other tribes within the States of New Mexico and Arizona.

The appropriation mentioned is the one that had been used for paying expenses of agents to allot Indians on the public domain. The act making appropriation for the fiscal year 1915 contained the same prohibition against use of the surveying and allotting appropriation in allotting Indians on the public domain, but it was changed to the extent that no part of the sum shall be used for the allotment of lands in severalty on the public domain to any Indian whether of the Navajo or other tribes within the States of New Mexico and Arizona, who <u>was not residing</u> upon the public domain prior to June 30, 1914. This same provision is contained in all subsequent Indian acts and is in the Indian bill for the fiscal year 1932. It will thus be seen that the Congress itself for 16 or 17 years has gone on record as opposing allotments on the public domain to Indians in Arizona and New Mexico unless they lived on the public domain prior to June 30, 1914.

2 EMB 3

L
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2 EMB 3

February 14, 1931.

The Attorney General,

Washington, D. C.

Sir:

I have the honor to forward herewith for your information, and for the files of the Department, a copy of a supplemental or additional Report of losses sustained by non-Indian claimants of lands lying within the boundaries of the San Ildefonso Indian Grant. This report is made under Section 7 of the Act of June 7, 1924, made necessary on account of certain reversals made by the United States District Court. The losses sustained by the claimants amount to the total sum of $15,684.41. The report of additional losses sustained by the Indians of this Pueblo through court action, as required by Section 6 of this Act, was filed with the Department while I was in Washington.

There is also enclosed an amendment to Report No. 1 of lands in the Pueblo of Taos, correcting the description of Private Claim No. 265, parcel 1, which was awarded by the Board to the claimant, Felix D. Santisteven.

Respectfully,

CHJ:J

Member of Pueblo Lands Board.

February 16, 1931.

Mr. Charles E. Stewart,
Administrative Assistant,
Department of Justice,
Washington, D. C.

Re: Application of Mr. Jose E. Armijo for promotion.

Dear Mr. Stewart:

I have seen a copy of Mr. Fraser's letter of February 7, 1931, addressed to the Attorney General in which he comments upon the qualifications and work in general performed by Mr. Armijo. His statements and recommendations are heartily concurred in.

Mr. Armijo possesses qualifications above the average lawyer, and has been and is now rendering a service to the Government for which, in my opinion, he is not adequately compensated. I am, of course, familiar with living conditions in Santa Fe, and I do not hesitate to say that it is most difficult for him or any other man with a family to make ends meet on a salary of $3500.00. Should Mr. Armijo be forced to sever his connection with the Department for this reason, Mr. Fraser would be greatly hampered in winding up his court work here, as it would be impossible to secure another man of like qualifications and experience who could render the assistance now given and required.

It is believed that the court work on the Pueblo cases will continue during this calendar year, and even for a longer period should any appeals be taken on cases yet to be heard.

I am, therefore, suggesting to you, in the interest of the service and as a matter of good business, that the salary of Mr. Armijo be liberally advanced if funds to make the promotion are available.

Sincerely yours,

MEMORANDUM

Prepared by Joe Sena, with reference to the Board's action adverse to the Indians upon the several Pueblos passed upon. This would include all the original reports for the Pueblos passed upon.

The Board has decided against the Indians in cases covering 17,335.59 acres, and the Board has awarded for this land $407,967.41,- an average of $23.53 per acre.

In the case of Pecos, the area is 18,841.56 acres, and the value on the basis of $1.50 awarded per acre, is $28,144.99.

If Pecos is included in the rest, the total land lost to the Indians by action of the Board, is 36,150 acres, and the award, including Pecos, amounts to $436,112, making the average, with the Pecos situation included, of about $12.00 per acre.

The Board has passed upon 5,532 claims.

Total number of grants or purchases passed on	22
Acreage of same	775,944.1
Total number of adverse claims	5532
Acreage of same	63287.05
Per cent. of acreage returned to Indians by Court*	01%
" " " " " " " " Board	61%
Total acreage returned to Indians by Court*	9014.94
Total compensation awarded by Board to Indians which does not include additional awards made subsequent to Court decisions	$436,112.40
Average award per acre	$23.53

*Does not include the cases yet pending in Dist. Court: Acoma, Santa Clara, Cochiti, Laguna and Pojoaque.

Note: In computing averages and per centum Pecos Grant was excluded.

GEORGE W. NORRIS, NEBR., CHAIRMAN
WILLIAM E. BORAH, IDAHO
CHARLES S. DENEEN, ILL.
FREDERICK H. GILLETT, MASS.
ARTHUR R. ROBINSON, IND.
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FELIX HEBERT, R. I.
HENRY F. ASHURST, ARIZ.
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THADDEUS H. CARAWAY, ARK.
WILLIAM H. KING, UTAH
HUBERT D. STEPHENS, MISS.
C. C. DILL, WASH.
SAM G. BRATTON, N. MEX.
JOHN P. ROBERTSON, CLERK

United States Senate

COMMITTEE ON THE JUDICIARY

Albuquerque, New Mexico,
May 19, 1931.

Honorable Charles H. Jennings,
Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Mr. Jennings:-

Your kind offer to furnish data respecting certain features of the work performed by the Pueblo Lands Board prompts me to transmit herewith a copy of my letter to Mr. Warner, which will be self-explanatory.

With renewed assurance that your cooperative attitude is deeply appreciated, and extending personal regards, I am

Sincerely yours,

Sam G. Bratton

SGB/REM

May 11, 1931

Hon. R. H. Hanna,
First National Bank Bldg.,
Albuquerque, N. M.

Dear Judge:

I am enclosing herewith copy of a memorandum that I filed with the Committee showing total acreage and valuation of lands, including improvements and water rights awarded to the Indians as shown by substituted reports and final decrees. Of course these figures will be changed when we file our reports on Santa Clara, Pojoaque and Laguna. There is nothing at Acoma, as you know.

Sincerely yours,

CHJ-S
enc.

Shiprock, New Mexico.
5/11/31

Mrs. Charles H. Jennings,
1017 Barton Avenue,
Cherrydale, Virginia.

Dear Madam:

Your husband has asked, through a personal friend, that we ship you some Navajo blankets. We are shipping an assortment which we hope you will like, and which will be enough for you to start on. At the present time, we happen to be short on rugs on account of making previous shipments, and for that reason cannot make a full shipment.

As to jewelry, baskets, and pottery, we do not handle enough to make commercial shipments, but we suggest that you might get satisfaction from the following parties with whom we have dealt.

For jewelry, McAdams Trading Co., of Gallup, New Mexico or Rocky Point Trading Post, Gallup.

Baskets: N. Porter Saddle & Harness Co., Phoenix, Arizona.

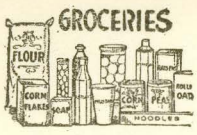
Hopi pottery, (which is really the most substantial and the best seller) : Tom Pavatea, Polacca, Ariz.

We thank you for the order, and hope that everything will be satisfactory.

Very truly yours,

Shiprock Trading Co.
by Gwendolin Evans.

P.S. Failed to mention that we do not sell rugs on consignment. We suggest that, if you feel that you cannot use any of the rugs in the shipment, you return them at once, so that we can make other disposition of them. However, do not feel that we want to be hasty about it. Take as much time as necessary to weed out the ones you cannot use, if there are any.



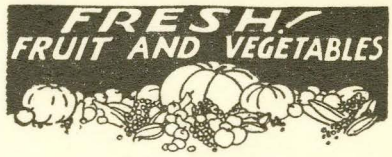
THE KUT ZE MUH

GENERAL MERCHANDISE

R. O. Marmon, Prop.

LUNCH GOODS, GASOLINE and OILS

LAGUNA, NEW MEXICO



June 17,1931.

Mr.Charles H.Jennings,
Member,Pueblo Lands Board,
Santa Fe,N.M.

Dear Mr.Jennings:

This is an acknowledgement of your kind favor as of the 15thinst.,with enclosure of drawings, covering claims in which I am interested as shown by your report. Allow me,to express my gratefulness to you,for your kindness in this matter,as it is exactly what I have been desirous of securing for sometime and assure you that it will be the means of making a more intelligent check up, on my property,and will enable me to place my fence lines to fully conform to said survey.

I presume,that you would be very busy at this time,due to the fact,mentioned by you. In this connection,allow me to congratulate you and the other members of the Lands Board,for your admirable services, which you have rendered to the best of your abilities,as your task was not an easy one by any means; and amid constant protests no doubt,to what the Board has done since its creation by Congress,you can fully say,that you have done the gigantic task assigned to you,to untangle thousands of claims to the best of your knowledge and belief- which is all any human being can do. My personal attitude towards your admirable board,has at all times been in the most superlative terms, someone had this great task to perform,and it happened to fall on you gentlemen which constitutes your present boaad; and my assurance to you,is that you have all done the best that you knew how,under-trying circumstances. In closing,allow me to again express my gratefulness for what you have done for me personally in the matter of my claims. With kindest personal regards to yourself and to balance of the members of your borad. My kind wishes also go with you hence,when you shall have completed your big task,hoping that at some future time,we may have the pleasure of meeting again. May success and happiness be yours whereever you shall go.

Most sincerely yours,

R.O.Marmon,

April 28, 1931.

Dear Mrs. Abbott:

I am not sure that you have been advised of the location of the new highway leading into Santa Fe from Tesuque. It seems that the west line extends over into your lot 30 ft., just east of the garage. As located, the road will about destroy the frontage where I think you wanted to erect a small cottage. I understand that a suit in condemnation has been instituted and that at a later date damages for the taking will be assessed by the Commissioners.

As I shall only be here for a short time, I suggest that you communicate with Mr. Gilbert with a view of having him look after your interests. It appears that the city authorities, as well as the Governor, are back of the location and that nothing can be done now to change it. If you have to lose the land, you should have adequate damages for the loss. Mr. Gilbert is your friend and I am confident that he will do all he can to protect you.

I returned to Santa Fe in February to assist in winding up our work. It is possible that we will be able to file our final reports by June 1st. On June 30th the Pueblo Lands Board as now constituted will go out of business, having performed its duties in an acceptible manner to all parties concerned, except John Collier.

Mrs. Jennings has not been well for several months and I am more than anxious to finish my work here so that I can be with her.

Jim Cassell tells me that you are starting for the west very soon and will probably stop over at Trinidad for a visit with friends and relatives. I hope I shall be able to see you again before leaving for the east.

Give my verykindest regards to Colonel and Mrs. Abbott.

Sincerely yours,

COPY

Albuquerque, New Mexico,
May 19, 1931.

Honorable Louis H. Warner,
Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Mr. Warner:-

Supplementing our recent exchange of letters, please furnish, among other data, the following:

1. A tabulation of the appraised value of the Pueblo Lands, indicating not only such value, but the acreage involved and the classification thereof made by the appraisers, including the amount of the award and the amount for improvements upon the land.

2. A complete copy of the appraisement in each Pueblo.

3. The number of claims sustained by the Board, that is to say, claims in which it was held that Indian title had been extinguished, including the total acreage involved.

4. The number of claims in which it was held that Indian title had not been extinguished, including the total acreage involved.

5. The classification of land made by the appraisers and the classification made by the Board, comparing and contrasting differences of quantity in each class and differences in value. I should like this information in each Pueblo separate from the others.

Trusting that this burden will not be unduly heavy, and with personal regards, I am

Sincerely yours,

SGB/REM

June 10, 1931.

Mr. R. O. Marmon,

New Laguna, New Mexico.

Dear Mr. Marmon:

I will be greatly obliged if, when down at New Laguna, you will call at the Putney store and ask the Manager what action, if any, he has taken inregard to claim for broken pottery contained in a shipment made by him (insured parcel post) to Mrs. Jennings at Washington, D. C.

A list giving description and prices of each broken piece was sent to me by Mrs. Jennings and forwarded to the firm. The postmaster here informed me that it was the duty of L. B. Putney, Inc., the sender and holder of the insurance receipt, to file the claim. I have written the firm several times but have had no reply. I do not understand why I should be treated so discourteously by a firm such standing. of I do not believe for a moment that the owners would approve of such treatment toward a customer. It is not good business.

If I do not get the satisfaction I am entitled to I shall take the matter up with higher authority.

Sincerely yours,

May 29, 1931.

Attorney General,
Washington, D. C.

Sir:

I have the honor to inclose herewith copies of additional reports filed to day on claims in the Pueblo of Pojoaque, to wit:

1. Report of additional awards made to the Indians caused by court reversals $4844.42

2. Substituted report of losses sustained by non-Indians and confirmed by the Court $1767.26.

Reports of claims in the Pueblo of Santa Clara are in course of preparation and copies for the files of the Department will be forwarded at an early date.

Respectfully,

2 Incls.

Santa Fe, New Mexico.
April 25, 1930.

The Attorney General,

Washington, D. C.

Sir:

I have the honor to enclose herewith for your information and for the files of the Department, the following additional or supplemental reports on claims in the Indian Pueblo of Cochiti, made necessary by reversals of the United States District Court by Decree dated April 9, 1931, towit:

1. Report showing additional Awards made to the Indians of $13,130.56.

2. Report showing losses sustained by non-Indians who in the opinion of the Board and of the court entered upon said lands in good faith, to but failed to sustain their claims, $9,417.14.

Delay in forwarding these reports which were prepared soon after the Decree of April 9, 1931, was caused by the absence of a member of the Board.

The contested cases in the Pueblo of Santa Clara have been set down for hearing

May 5th, and similar reports following the action of the court will be prepared and forwarded soon thereafter.

Respectfully,

Member Pueblo Lands Board.

CHJ:J
Encl.-2

May 29, 1931.

Travis Curio Shop,

Taos, N. M.

Dear Mr, Travis:

The Agent of the Express Company here says for you to send to me the receipt given to McKinney or whoever delivered the packages at Ute Park, and he will start tracer. He says that the receipt will show number placed on each package, weights, etc.

Please do this at once and oblige.

I wrote you somedays ago but have had no reply.

Truly yours,

May 30, 1931.

L. B. Putney, Inc.,

New Laguna, New Mexico.

Gentlemen:

I am inclosing herewith list of broken pottery sent to me by Mrs. Jennings. She has entered a complaint with the Parcel Post Division of the Brightwood post office, and that office is to take the matter up with you as you are the shipper and hold the insurance receipt, and as they say, should take the initiative in the matter. I am very sorry that the pottery was broken as it was what Mrs. J. was very anxious to have.

I suggest that you duplicate the pieces and send them to

Mrs. Louise M. Jennings,
3440 14th Street, North West,
Washington, D. C.

pending the settlement with the Post Office Department.

I wired you of the loss and I think I wrote you a confirmatory letter, but up to date have had no reply.

Very truly yours,

June 1, 1931.

Shiprock Trading Company,

Shiprock, New Mexico.

Dear Mr. Evans:

Your letter of May 11th, addressed to Mrs. Jennings, 1017 Barton Avenue, Cherrydale, Va., was forwarded to me on May 15th, but did not reach me until to day. Mrs. J. received the blankets and I am advised that she is opening up her shop this morning.

When I discussed the matter with Mr. and Mrs. Radcliffe they assured me that you would send the blankets on consignment, and it was my understanding that the order was placed by Mrs. Radcliffe on those terms. In your letter to Mrs. Jennings you advised that you did not sell rugs on consignment. I am sorry that such is your rule. I feel that Mrs. J. will succeed with her venture as Navajo rugs are not on display in Washington. As soon as her shop becomes known I am sure that there will be a great demand for rugs and that she will become a very satisfactory customer.

In view of the fact that I have spent considerable money in getting her started I shall apreciate it if you will allow me to pay half of the bill on the 15th and the remainder on July 15th. I do not know that she will return any of the rugs. The chances are that she will keep all of them.

I trust that the suggested settlement will meet with you approval.

Very truly yours,

SCHEDULE

OF THE APPRAISEMENT

made by the Pueblo Lands Board of the loss to the Indians of lands, title to which the Board found extinguished in its Taos reports, in the area which the Board found lands could not have been recovered by reasonable prosecution under the Pueblo Lands Board Act. (This schedule is not to be included or kept in any report of the Board, but to be retained carefully in the Taos files of the Board for reference in case the appraisement of damages is questioned by Collier or others, in which case this appraisement of damages can be verified by Messrs. Hagerman, Cochrane, and Radcliffe).

(H.J.H.)

SCHEDULE of
Loss to Indians.

176.50	acres	@	$40.00	$ 7,060.00
880.30	"		45.00	39,613.50
8.20	"		50.00	410.00
25.70	"		55.00	1,413.50
1,090.70				48,497.00

Pendleton Woolen Mills

Blankets — Pendleton, Oregon

R. Ortega & Co

El Paso, Texas

P.O. Box 81 - Pottery; drum work

H. H. Tammen Co

Denver, Col

~~Indian dolls~~

Bursum bill-
Pueblos.
HLU)- AEB.
SWW)

December 22, 1923.

Memorandum for Mr. Riter.

We cannot agree with the tentative conclusion which is reached in the draft of the opinion which you have sent to us. The reason for the view we take are these:

These Pueblos received from the United States about fifty years ago patents in fee to the lands which this bill proposes to affect. These patents issued pursuant to Acts of Congress recognizing and confirming in the several Pueblos the right to the title and directing that patents of the United States issue. Having parted with its title, we cannot see under what principle of the law or what authority the United States may assume to grant rights in those patented lands to others. We cannot distinguish the case from one in which the United States had parted with title to a white person or to an individual Indian. While we recognize the right of the Government so far as legislation with respect to tribal Indians is concerned, in our judgment it does not extend to interference with the title to lands which has already vested in so far as that supervision or interference attempts to take away or impair that vested title.

We do not think that the legislatinn relating to the Five Civilized Tribes furnishes any criterion for upholding the power of Congress to deal with these Pueblo lands. In the case of the Five Civilized Tribes the legislation of Congress proceeded pursuant to agreements negotiated with the tribes by the Five Civilized Tribes Commission; and in several instances the legislation was subject to the ratification by the tribe. This last is true particularly as to the Creeks. The patent or deed under which was acquired the land affected by the legislation respecting the Five Civilized Tribes contained a reservation of reversionary right to the United States. In providing for the allotment of these tribal lands in severalty pursuant to the agreement with the Tribes, Congress provided that the Principal Chief of each tribe should execute and deliver to each allottee a deed conveying all the right, title and interest of the Indian Nation in and to the land embraced in the allotment certificate. These conveyances were to be approved by the Secretary of the Interior, which was to serve as a relinquishment of all the right, title and interest of the United States in and to the land, and the acceptance by the allottee of the deed was to constitute his assent to the conveyances of all the lands of the tribe as provided for in the legislation and as a relinquishment of all his right, title

and interest to the same, except to the proceeds of lands reserved from allotment. Secs. 34, 36 and 37, of the Act of March 1, 1901, ch. 675, 30 Stat. 848, 855, affecting the Cherokees. See also the supplemental agreement of July 1, 1902, ch. 1375, 32 Stat. 716, 725, Secs. 58, 59 and 60; Original Creek Agreement, Sec. 23, Act of March 1, 1901, ch. 676, 30 Stat. 861, 868; Seminoles, Act of July 1, 1888, ch. 542, 30 Stat. 567, 568; also Sec. 8 of the Act of March 1, 1903, ch. 994, 32 Stat. 982, 1008; Choctaw and Chickasaw, July 28, 1898, ch. 517, 30 Stat. 495, 507. This last legislation did not require the deeds of the Chief to be approved by the Secretary.

We do not regard as controlling in this case the statement made by Mr. Justice Vandevanter in United States v. Sandoval, 231 U.S. 28, 48, that the situation of the Pueblos is essentially the same as it was with the Five Civilized Tribes. We think the case falls more within the doctrine which he declared in the later case of Lane, Secretary, v. Pueblo of Santa Rosa, 249 U.S. 110, that action by the Secretary, the effect of which was asserted to dispose of lands of the Pueblo, would be not an act of guardianship but an act of confiscation.

The cases which announce the doctrine that with respect to the tribal property of Indians the power of Congress is plenary

and the extent to which it can go is a political, not a judicial question, arise with respect to lands which are held under ordinary Indian occupancy, claim or title with the fee in the United States, and therefore that doctrine must be limited to cases of that kind; it cannot be extended to a case where the United States has by solemn grant vested in a tribe the full legal title to the land. An example of that is Nadeau v. Union Pacific, 253 U.S. 442. In that case (p. 446) Mr. Justice McReynolds said:

> The lands were but part of the domain held by the tribe under the ordinary Indian title -- the right of possession and occupancy -- with fee in the United States.

We have no such case here.

It is important to remember that the patents issued to these Pueblos were in precisely the same form as those issued to non-Indians pursuant to confirmation by the Court of Private Land Claims and by Congress of titles asserted under Spanish and Mexican laws.

If we are correct in our view, it is clear that this proposed legislation cannot receive judicial sanction. It might be possible for Congress to undertake legislation which would authorize the recognition of occupancy of claims adverse to the Pueblo; that would really be enacting a statute of limitation,

the effect of which would be to pass title from the Pueblo to the one asserting the prescriptive right. In so far as the bill assumes to do that, we do not think it would be objectionable as unconstitutional, but it would be objectionable in its present form in that it acts retrospectively and does not afford the Pueblo any time to assert its right by action of ejectment or otherwise.

There is a wealth of authorities on the proposition that while it is within the power of the legislature to prescribe a statute of limitation where none exists or to shorten an existing statute of limitation, yet the power thus exercised is qualified by the requirement for reasonable time in which to assert rights which, under the new statute of limitation, would be barred at the time of its enactment.

Of course, the rule is well settled that the legislature has power to remove the bar of the statute of limitation and to thus revive the cause of action theretofore barred, but that is applicable where the statute is merely a bar to the remedy and not to the right; where, however, a title has been acquired, as for instance by prescription, it has been held that the raising of the bar of the statute by extending the period of limitation is an unconstitutional interference with vested rights.

This last rule has some bearing upon the question here, because, if Congress could not pass an act extending a statute of limitation and thus affect the right to title of land acquired by prescription, it would seem by reason and principle impossible for it to vest a title by prescription under a new statute of limitation which would operate to cause an immediate transfer of the title.

We suggest that whatever the conclusion be, that it would be advisable not to formulate it as an opinion but rather to incorporate the conclusion as "our views" in a letter to Senator Bursum, thus treating it as informal,-which we understand is what the Attorney General has in mind.

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL HOLLAND.

In the estimate of expenses of the Department of Justice for fiscal year 1926 submitted to the Bureau of the Budget, appears the following:

Item 46. Salaries and Expenses, Pueblo Lands Board,..$57,250.

This item arises under an Act entitled "An Act to quiet the title to lands within Pueblo Indian land grants," approved June 7, 1924.

The following is the text of the proposed appropriation, and a detailed statement of the items constituting the additional amount of $57,250:

"For salaries and expenses, personal and otherwise, of the Pueblo Lands Board, as authorized by the Act entitled "An Act to quiet the title to lands within Pueblo Indian land grants, and for other purposes," approved June 7, 1924; to be expended under the direction of the Attorney Genera; to be available in so far as may be necessary for such salaries and expenses at the seat of government.

Compensation of representative of the President.....	$10,000
Traveling expenses of said representative.....	1,000
Compensation of representative of Department of Justice.....	6,500
Traveling expenses of said representative.....	750
Compensation of representative of Interior Department.....	6,500
Traveling expenses of said representative.....	750
3 stenographers, at $1500 each.....	4,500
Traveling expenses of said stenographers.....	250
Compensation of Interpreter.....	2,000
Compensation and expenses of witnesses.....	15,000
Compensation of Clerk to the Board.....	2,500
Rent of accommodations.....	2,500
Supplies and equipment.....	5,000
	$57,250

The amount allowed by the Bureau is as follows:

Salaries and Expenses, Pueblo Lands Board

Field Service:

	Number of employess	Variable
	Total salaries and wages, field service	$34,000.00
01	Total personal services	34,000
05	0510 Telephone service	500
06	Travel expense	2,000
11	1110 Rent of Buildings	2,500
	Total	$39,000.

In order to carry out the provisions of the Act of Congress approved June 7, 1924, it will be necessary to employ an experienced Court Reporter, who speaks spanish, to take the testimony of witnesses appearing before the Board.

A competent surveyor will also have to be employed in order that the provisions of the act may be carried out; to describe the lands by metes and bounds, illustrating where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians and perform other duties as described in said Act.

A Special Assistant to the Attorney General will be necessary, almost as soon as said Board commences to function, and as soon as evidence is taken, so as to represent the Indians as wards of the Government and prepare to institute and conduct suits to quiet title as soon as reports of the Board are filed, as is provided by said Act. If such Special Assistant is to be paid out of the funds of this appropriation, provision should be made for the same. If the appropriation providing for pay for Special Assistants to the Attorney General.

is broad enough to cover this case, it is not necessary that it be mentioned herein.

In the original estimate $2500.00 was estimated for to cover employment of a clerk to the Board. It now develops that an experienced man with a knowledge of law, and who speaks spanish, cannot be secured for less than $4500.00.

This appropriation should include an equal salary for the three members of the Board as they are and should be on an equal footing and should receive the same salaries, and this is a necessary expense that should go in the appropriation.

I believe that before this estimate is submitted to the Director of the Budget that it should be submitted to the Secretary of the Interior and that a representative of the Interior Department should be present when this matter is presented to the Director of the Budget.

These remarks apply, of course, to the estimate that has been submitted for the remainder of the fiscal year ending June 30th next.

Respectfully,

_____

Assistant Attorney General.

Approved:

_____

Representing the Attorney General.

CHJ:MM

July 24, 1924.

MEMORANDUM FOR MR. ATTORNEY GENERAL STONE

(With reference to the title to the bridge across the Missouri River at Fort Leavenworth, Kansas, conveyed to the United States by the Fort Leavenworth Bridge Company by deed dated December 2, 1920.)

It appears from the abstract and other papers examined that the bridge in question is on the Fort Leavenworth Military Reservation; that the Kansas and Missouri Bridge Company, a Kansas corporation, was authorized to construct said bridge by an act of Congress approved July 20, 1868, and that operations commenced in 1869, by the contractor L. B. Boomer and Company of Chicago, Illinois.

Before the bridge was completed the Kansas and Missouri Bridge Company executed the following mortgage deeds to secure the payment of funds borrowed to finance the project:

Deed dated May 4, 1871, to Max Heidelback and Milton Courtright;
Deed dated September 13, 1871, to Elias Frank and George C. Campbell.

In 1874, a bill was filed in the United States Circuit Court for the District of Kansas by Heidelback and Courtright, trustees, against the Kansas and Missouri Bridge Company and others, for the purpose of foreclosing the mortgage dated May 4, 1871. As a result of this suit,

the bridge and its approaches on either side of the river and all land and real estate acquired by reason of the construction of said bridge, were ordered sold and were conveyed July 18, 1876, by the Special Master appointed in said cause, to the Leavenworth Bridge Company, a Kansas corporation.

On June 30, 1880, the Leavenworth Bridge Company gave a mortgage on said property to John Shanklin and A. E. Tousalin to secure the payment of a certain bonded indebtedness. Default having been made, John H. Shanklin, surviving trustee, instituted suit in the Circuit Court for the District of Kansas for the purpose of foreclosure. Under this proceeding the title to the bridge and its appurtenances passed to Emanuel L. Rieser by deeds dated November 5, and 6, 1900.

On November 10, 1900, Emanuel L. Rieser, joined by his wife, conveyed the bridge and its appurtenances to Simon Sterne. By deed dated July 3, 1901, Simon Sterne and wife conveyed the property to the Fort Leavenworth Bridge Company.

On December 2, 1920, the Fort Leavenworth Bridge Company conveyed said bridge, including its approaches on either side of the river, together with its franchises and rights and privileges, to the United States for a consideration of $35,000. The deed to the United States was recorded in Leavenworth County December 8, 1920, in Book 251, pages 144 and 145.

The certificate of the abstractors dated December 30, 1920, shows that there were no judgments, foreign executions, mechanics liens, or

suits pending indexed against the Kansas and Missouri Bridge Company, the Leavenworth Bridge Company, or the Fort Leavenworth Bridge Company, affecting said bridge since the Act of Congress dated July 20, 1868.

The certificate also shows that all taxes were settled and paid.

In view of the statements contained in the abstract and related papers, I am of opinion that a valid title to the property in question, free of all encumbrances, was vested in the United States on December 8, 1920, date when deed from the Fort Leavenworth Bridge Company was accepted and recorded in Leavenworth County, Kansas.

Respectfully,

June 17, 1930.

Honorable Seth W. Richardson,
Assistant Attorney General,
Washington, D. C.

Sir:

I have before me a photostat of a memorandum prepared for you by Mr. Foster on the question as to whether or not supplemental legislation is necessary in order to enable the Pueblo Lands Board to function after it has filed its last report, discharged its employees and closed its doors.

Solicitor Finney, in a memorandum to the Secretary of the Interior, dated April 3, 1930, copy of which was furnished this office, expressed the opinion that under the present law the Board had ample authority to continue its operations until all additional awards and reports had been made, and until the specific duties imposed upon the Board by the Act creating it had been fully discharged.

At first I was of the opinion that the bill should be amended, but after careful consideration I have reached the conclusion that further legislation is not necessary.

The Board will be able, I think, to file its last report by August first, and will also be able by that date to make the additional awards to the Indians made necessary by court action, in all pueblos where no appeal has been taken. A supplemental report will also be made to the Secretary of the Interior on losses sustained by non Indians as a result of court action in all pueblos where no appeal has been taken, as provided by Section 7 of the Act.

When this work has been accomplished I see no reason for the Board as now constituted to remain in session here awaiting further court action. In all probability it will be a year or more before all suits now pending and to be filed can be finally disposed of, assuming that no appeals will be taken.

The suggestion of the Assistant Secretary, referred to in the memorandum is, I think, a good one. Ex-Governor Hagerman of the Board is also Special Commissioner to the Navajos and will have his headquarters here in Santa Fe indefinitely. The records of our office should be turned over to him for safe keeping, and when it becomes necessary to make additional awards the other two members, whoever they may be, can return to Santa Fe for that purpose, if deemed necessary.

In the meantime I respectfully request that a letter be written directing me, when the work referred to has been performed, to report to the Department for other assignments, and to remain there until such time as my presence in Santa Fe may be required.

Respectfully,

The suits to quiet title on the following Pueblos are now finally adjudicated, to-wit:

Jemez, Tesuque, Nambe, Taos (main case), Santa Ana, Santo Domingo, Sandia, Isleta.

Appeals to the Circuit Court of Appeals for the Tenth Circuit are now pending in the following Pueblo cases, to-wit:

Taos (Tenorio Tract). (This appeal is by defendants.)

San Felipe.

Authority will be requested to appeal the Picuris case.

The following Pueblos still remain to be tried, to-wit:

San Juan; San Ildefonso; Acoma; Laguna; Cochiti; Santa Clara and Pojoaque.

CHJ:MM

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL

WELLS.

Subject: Status of title to certain lands in Orange County, Southern California, alleged to have been fraudulently and illegally listed and certified to the State of California as "agricultural" when in fact they were known to be "mineral" lands.

PRELIMINARY STATEMENT.

On August 30, 1914, Mr. J. B. Shoenfelt of Muskogee, Oklahoma, left a memorandum with the Commissioner of the General Land Office in which he charged fraudulent practice in connection with the acquisition of title to lot 1 (N½ of the NW¼), lot 2 (SE¼ of the NW¼), S½ of the NE¼, E½ of the SE¼ and SW¼ of the SE¼ of Section 8, T. 3 N, R. 9 W., Los Angeles District, California.

In consequence of this complaint Field Inspector T. J. Belcher and Special Agent C. D. Hamel were sent into the field to investigate and report whether the lands involved were mineral, and if so, whether it could be shown that they were known to be such prior to the date title passed to the state. Reports were made and on July 27, 1915, all papers in the case were sent by the Commissioner of the General Land Office to Mr. E. J. Justice, at San Francisco, Special Assistant to the Attorney General, for examination and report as to whether in his opinion the Government could "surely prevail" in case it should be determined

to institute proceedings to set aside title.

On November 3, 1915, Mr. Justice returned the papers to the Interior Department with a letter somewhat indefinite in its conclusions as to whether suit should be instituted. The Commissioner on November 20, 1915, wrote a second letter to Mr. Justice stating that the parties who had brought the matter to the attention of his Department insisted that a great fraud had been practiced upon the Government and that it was the duty of the Government to proceed to attack the titles acquired. In a letter dated November 26, 1915, Mr. Justice advised the Commissioner that he had written a letter to the Department of Justice indicating a desire for an opinion on the matters involved. This letter is to be found in Department File 180430.

Under date of December 4, 1915, the Commissioner of the General Land Office transmitted to this Department all papers bearing on the subject for consideration in connection with the letter of Mr. Justice dated November 26, 1915.

After the papers had been examined here, the Attorney General, in a letter dated April 19, 1916, addressed to the Secretary of the Interior, said:

> From investigations made by agents of your Department it seems to be established that the lands in question are valuable oil lands, and for the purposes of this communication it will be assumed that they were known to be valuable for oil at and prior to the time of their selection by the state some forty-six or forty-eight years ago. However, it also appears that in 1886 there were filed in the General Land Office several affidavits specifically alleging that the lands in question, together with others in that

vicinity were mineral in character. Those affidavits were accompanied by notices of mining claims on adjoining sections and the parties desired an adjudication by your Department of the true character of the lands involved.

On October 14, 1886, the Commissioner of the General Land Office, in a letter addressed to the Register and Receiver stated that the affidavits did not present such a case as would justify the office in making an investigation of any of the tracts that had been covered by patents or approved selections, and no other action appears to have been taken.

In view of these facts I deem it unnecessary to enter into a full discussion of the legal questions that would certainly arise should a suit be instituted to recover title to the lands involved. The information furnished the General Land Office in 1886, though unusually specific and definite, was not at that time considered sufficient to justify action looking to a setting aside of the title, and while it is true that the investigations recently made by your Department have disclosed a great deal of additional information, it is probably no more than would have been secured if the matter had been followed up when it was first presented to the Commissioner thirty years ago.

I feel that under these circumstances it would be altogether unwise to institute legal proceedings at this late date for the purpose of recovering the titles to these lands.

This, however, will not preclude your Department from determining whether any title at all passed by the certification.

While it would seem that title to the lands selected as school indemnity passed by virtue of the Secretary's approval under the Act of 1853, making a grant of school lands to the State of California, no reference is made to the law under which the lands selected for internal improvements were certified to the State, and it may be (upon which, however, I do not intend to express an opinion) that these lands were certified pursuant to the provisions of Section 2449 of the Revised Statutes, in which event, as held in the Attorney General's opinion

> of November 19, 1915 (30 Opinions 485), the certification would be null and void, if the lands were not of the character contemplated by the grant.

A copy of the Attorney General's letter of April 19, 1916, will be found in Department File #180430.

It appears that upon receipt of this letter and the papers in the case the matter was treated as closed by the Interior Department, and that no further action has since been taken by that Department. The papers, at the request of Attorney General Stone, are again before this Department for further examination and consideration.

The reports of these two Government agents, and the mass of data assembled upon which the reports were based, comprise several hundred pages, and it would be impossible in a memorandum to repeat the detailed circumstances they refer to, or to satisfactorily discuss the many questions of law they suggest.

It is believed, however, that some of the early history and the most essential facts relating to these lands up to the time the lands were listed to the state and thereafter should be referred to in order that the basis for the charges of fraud, made by Shoenfelt and his associates, may be clearly understand.

EARLY HISTORY.

The State Mineralogist in a report published in 1885 said:

> Petroleum has been known to exist in California since the earliest settlement of the Country. The Black Maltha, oozing from the earth and in standing pools, flowing from springs on the hill sides, was evidence of the fact, still no attempt was made to utilize this valuable material in any large way until 1857.

In the History of Los Angeles County, by Thompson & West, page 68, appears the following:

> Away back in the fifties we find parties boring for oil in different parts of the county (Los Angeles). Mr. B. Dreyfus, Judge Drydon, the Pioneer Oil Co., Gilbert & Co., and others prospected and sank wells with more or less success. In San Fernando Mountains the Philadelphia and California Petroleum Company struck a flowing well in 1859 and for several years everybody had oil on the brain.

The following was taken from Warner's History published by Thompson & West:

> Bituminous springs are numerous near the coast. There are two principal deposits in Los Angeles County. The most important so far (because most developed) is that on the Brea Ranch between Los Angeles and Santa Monica, and the second is found in the Canada de la Brea and throughout the northerly portions of Anaheim and Santa Ana townships. There are many other known deposits within the limits of the County, but of minor importance.
>
> In 1854 Dr. Trask (mineralogist) declared this to be the most valuable of all the mineral productions of Southern California. He estimated that at that time not less than 4000 tons lay exposed upon the surface of the ground in Los Angeles and San Bernadino Counties. Its market value in San Francisco for the manufacture of gas was $16. per ton.
>
> The deposit in the Canada de la Brea was worked for some years and for a time the Gas Light Company of Los Angeles obtained their supply at this point. In 1868 a New York Company bored here for oil, and the abandoned shafts are now filled with liquid bitumen of the consistence of coal tar.

The following was copied from report of survey made by State Geologist Whitney, commenced in 1860:

About seven miles due west of Los Angeles is the most important of the tar springs seen in this vicinity. It is from here that most of the asphaltum used in the town is obtained. Over a space of fifteen to twenty acres the bituminous material (which seen by us in the winter had exactly the consistency and color of tar) was oozing out of the ground at numerous points. It hardens on exposure to the air and becomes mixed with the sand and dust blown into it and is then known as "Brea." * * * At one place there was a pit seven yards square and six or seven feet deep from which the tar had been taken * * . The brea is used almost exclusively for covering roofs at Los Angeles, selling in 1861 at the springs for $1. per barrel.

On May 30, 1850, the residents of Los Angeles County memorialized Congress for the establishment of a Custom House at Los Angeles, and among the important items mentioned for export was "mineral tar," which was the name by which liquid asphaltum was known. This memorial was found in Volume 7 of Publications of the Historical Society of Southern California.

NEWSPAPER PUBLICATIONS RELATIVE TO OIL AND OIL SHIPMENTS FROM LOS ANGELES in 1860.

The following item appeared in the Los Angeles Star under date of February 25, 1860:

> Kerosene Factory - We understand a party from San Francisco is about to start an establishment for the manufacture of kerosene (oil of tar) from the bitumen abounding in this vicinity. If the enterprise succeeds, it will be of great moment to our community.

The Los Angeles News in its issue of March 31, 1860, carried the following:

> Coal Oil - In a few days Messrs. Gilbert & Company will be ready to begin operations upon the bitumen which abounds in this vicinity, and which is said to possess every requisite for oil purposes.

The Southern News of Los Angeles in its issue of September 26, 1860, carried the following item of news:

> There was shipped from Los Angeles by Steamer Senator, on the 8th instant, 1200 gallons of kerosene oil from the manufactory of Mr. Gilbert,

Notwithstanding the known character of these lands, the Surveyor of Los Angeles County in 1861, issued to James P. Sargent, the following school land warrant:

> State of California,
> County Surveyor's Office.
>
> I hereby certify that in accordance with the provisions of an act to provide for the location of school land warrants, unsurveyed lands, and for the issuance of title for the same approved April 18, 1859, and with instructions from the Surveyor General, I have located as a portion of the 500,000 acre grant school land warrant No. 207 for 320 acres of public land in the County of Los Angeles not surveyed by the United States, at the request of James P. Sargent, being the
>
> $N\frac{1}{2}$ of the $NW\frac{1}{4}$ of Section 8; the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ and the $S\frac{1}{2}$ of the $NE\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 8; and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ and the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 9, T. 3 S, R. 9 West, San Bernardino.
>
> I further certify that I am well acquainted with the method of surveying the public lands and that said location was made by actual survey from known United States corners in accordance with the United States system of surveys.
>
> (Sgd.) Ebenezer Hadley,
> County Surveyor Los Angeles Co.
>
> May 6, 1861.

This certificate was followed by directions from the Surveyor General, addressed to the Register and Receiver at Los Angeles. It recites that the land described had been selected by the State of California in part satisfaction of the 500,000 acre land grant under the

provisions of "an act to provide for the location of school land warrants, unsurveyed land, and for the issuance of title for the same" approved April 18, 1859; that said land had not been sectionized by the United States, and the Register and Receiver were directed to note the selections upon their plats as soon as the same were returned to their office. It appears that the two above described papers were recorded in the Recorder's office at Los Angeles, March 7, 1865, at the request of one R. S. Carlisle.

Inspector Belcher, in his report, states that James P. Sargent, in his application for the above land, to which he later received a patent from the state, made affidavit that said land was not reserved from sale by any law of Congress. This affidavit, or a copy thereof, is not among the papers submitted. Belcher states further that one McLendon claimed that James P. Sargent was "turned down" on his application at the San Francisco U.S. Land Office more than once during the years 1861 and 1862. This assertion, however, could not be verified as the records in that office were destroyed during the great fire.

No further action appears to have been taken on Sargent's school land warrant until the year 1868, although, as before stated, it had been recorded at Los Angeles March 7, 1865, at the request of R. S. Carlisle.

The facts relating to Mr. Carlisle's participation in this transaction, as shown by the Hamel report, are enlightening. According to Judge A. J. King and William Jenkins, well-known citizens of Los Angeles, Robert S. Carlisle was associated in business with James P. Sargent,

the latter owning a ranch in Santa Cruz and Santa Clara Counties, from which large quantities of asphaltum were shipped to San Francisco for commercial purposes. Carlisle, it appears, resided during the years covered by the facts herein on what is known as the "Williams Ranch," only a few miles distant from Brea and Soucal Canyons, and must have known of the asphaltum deposits.

The following was copied by Agent Hamel from an editorial appearing in the Los Angeles News of January 31, 1865:

Petroleum Excitement.

> The people of San Francisco and the upper county have run wild on "petroleum." Here the excitement has become intense. Everybody's lot now corners in a cold tar spring, as that substance is usually termed here. A stranger would gather the idea - from the nature of the present bustle in relation to the matter here at this time - that petroleum was a new discovery in this section. This is not the case; it is an old story here. The fact that mineral reservoirs of pure petroleum underlie this portion of California was known to the oldest inhabitants. The latest comers have a general knowledge of the existence of this deposit. From the substance formed at the innumerable outlets or seepages to the surface of the earth, roofing is made. In this locality little else is used at the present time. It is under the feet and over the heads of all the inhabitants. Whole tracts of land are found in this region which cannot be traversed on foot in consequence of the thick coating of soft "tar." Oil was manufactured from the substance near this city by Mr. Dryfuss, formerly of Anaheim, prior to the year 1857. Mr. R. Carlisle & Co. have manufactured a "kerosene" from one of these springs in Monterey County with profit for several years. * * *

On February 21, 1865, James P. Sargent gave a power of attorney to R. S. Carlisle, which was duly recorded in Los Angeles County. By this instrument Carlisle was authorized to sell and convey Sargent's interest

in lands situated in Los Angeles County, particularly those tracts lying between the Canada Soucal and Canada de la Brea.

The Los Angeles News of February 28, 1865, contained the following caution notice dated February 21, 1865, the same date of the power of attorney referred to:

> Caution: All persons are hereby notified not to purchase any oil springs or petroleum springs on or east of the Canada de la Brea, said springs being situate about 30 miles east of Los Angeles, City and eight miles north of Anaheim, County of Los Angeles, State of California, as the undersigned are the sole owners of the above mentioned property. (Sgd.) Sargent & Carlisle.

This conclusively shows that both Sargent and Carlisle knew this to be mineral land on February 21, 1865, a date long prior to the actual selection by the state. In this notice Sargent and Carlisle claim to be the sole owners of this property. Agent Hamel's report shows that he made a careful search of the records, including the County Tax Books of Los Angeles County, but failed to find evidence showing that James P. Sargent or the firm of Sargent and Carlisle owned any real estate in Los Angeles County prior to 1869, when this property was deeded to Sargent by the state.

There is circumstantial evidence of the partnership of Sargent and Carlisle in this land in the fact that on December 30, 1897, James P. Sargent and wife of Santa Clara County, conveyed to the widow of Robert S. Carlisle the SE¼ of the NE¼, the NE¼ of the SE¼ of Section 8, and the NW¼ of the SW¼ of Section 9, for a consideration of $1.00. This deed

covered 120 acres, or approximately one-half of the entire area included in the selection made on behalf of Sargent. A copy of this deed is attached to Hamel's report marked "E". Mr. Hamel cites further evidence of the character of this land and of the knowledge of Sargent and Carlisle of its character. He states that on March 16, 1865, the Los Angeles Asphaltum and Petroleum Mining District was organized and mining laws and regulations adopted.

In less than two weeks after the organization of this district, that is on March 18, 1865, thirty-five persons located thirty-six claims of 1000 feet square on this asphaltum, bitumen, naptha and petroleum lead herein called the Soucal Canyon lead.

The location notice describes the claims as follows:

> said claims are situated in the Soucal Canyon and are located on fractional sections 8 & 9 and numbered from 1 to 36 inclusive in T. 3 S, R. 9 W. of the San Bernardino Meridian.

The name of R. S. Carlisle appears under the number 35 as one of these locators. This location notice was recorded in Book "A" of Mining Claims March 20, 1865, and also in Miscellaneous Records of Los Angeles County March 22, 1865.

The following was copied by Mr. Hamel from the certificate of the Mining Recorder attached to the above location notice:

> Whereas the above named parties did on the 7th day of March 1865 make application to me, the undersigned Mining Recorder of the aforesaid district to be placed in possession of the mining property described in the foregoing notice, and having proceeded to the above described premises and finding the same to be <u>not upon private property</u> and not having been before located under the laws of this district, did place the said parties on the 18th day of March, 1865, in peaceable and quiet possession of said premises. * *

It might be suggested that Sargent and Carlisle could have readily secured title to this land under the mining laws. The difference in cost, however, was a big item. The necessity of keeping up assessment work on each claim before a patent could be applied for meant a large investment. It would therefore be more economical to allow the mineral locations to lapse, conceal from the Government the mineral character of the land, and proceed with the state selection, the initial step in that direction having been taken in 1861.

It appears that the state, under date of February 25, 1868, selected the land described in Sargent's school land warrant, that the selection was approved June 4, 1870, and certified to the state June 10, 1870, in Clear List No. 10.

On April 5, 1869, more than a year before the state selection was approved by the Secretary of the Interior, the state executed a deed in favor of James P. Sargent for lots 1 and 2, S½ of NE¼; NE¼ of the SE¼ of Section 8, and the NW¼ of the SW¼ and the SW¼ of the NW¼ of Section 9. This deed was recorded in Los Angeles County July 15, 1870. Agent Hamel states that in his examination of the records in Los Angeles County he found that three locations (mineral) had been made in 1876 on some of the ground included in this selection.

It will be noted that Sargent's location does not cover the S½ of the SE¼ of Section 8. This location was made by one Leander Ransom with the consent of James W. Shanklin, Register of said district, selected

by the state August 13, 1868, in lieu of certain lands in Section 36, T. 9, R. 7 W., which were in the ocean, and certified to the state June 10, 1870, in Clear List No. 10.

On October 12, 1882, these and other lands were patented by the state to James W. Shanklin, Register of the State Land Office. From Hamel's report it appears that on March 2, 1874, a deed was made by Leander Ransom and others conveying to James W. Shanklin an undivided 1/3 interest in various tracts, among them the S½ of the SE¼ of Section 8/

It appears further that James W. Shanklin was Register of the United States Land Office in San Francisco during the years 1868-9, and was such officer on October 15, 1868, the date when he gave his consent to the location referred to. Shanklin subsequently became State Surveyor General and Register for the State Land Office at Sacramento, and was such in 1880 and1882, as shown by various certificates examined.

Hamel, in his report dated April 19, 1915, states that certain lands in Sections 8 and 9 were located in 1913, and conveyed to W. A. Stutsman in 1914, and that affidavits of labor were recorded in same year; that the location notice is signed by various persons said to be interested in the Olinda Land Company and the Olinda Oil Company, which companies were at the date of his report in possession and relying for their title upon the selection made by the state. There is attached to the agent's report of February 24, 1915, a copy of a mining location notice showing that the E½ and the SW¼ of the SE¼ of Section 8, containing 120 acres was located by J. B. Shoenfelt and associates on December 31, 1913. This is the same Shoenfelt who raised the question of fraud.

Mr. Hamel, in his report of April 19, 1915, calls attention to a suit then pending in the United States District Court at Los Angeles, instituted by W. A. Stutsman v. Olinda Land Company, Fullerton Oil Co., and others, involving the title to certain lands in Section 9, covered by a location made by the plaintiff and others. In the complaint it was alleged that John Hancock, who surveyed township 3, R. 9 W., was interested in the selection made, and that he did not at the time he made the survey include in his notes and in the preparation of the plats information showing the mineral character of the lands in that township, and that he was interested with Leander Ransom and J. W. Shanklin at all times in the various selections covering lands in the township. Hamel states further that an examination of the records of the State Land Office shows that a large area in township 3 S, R. 9 W., was selected and evidently conveyed to James W. Shanklin; that all this land was mineral in character; that wells were being operated on most of Section 17 and part of 15; that efforts were being made to reach oil on other sections; that the greater portion of the lands were selected by Leander Ransom and subsequently patented to James W. Shanklin, and that all of these transactions had their inception at the time James W. Shanklin was Register of the United States Land Office at San Francisco, and that the patents were issued during the time he was Register of the State Land Office and State Surveyor General and issued upon his direction to himself. Numerous other filings on these lands of a similar nature are referred to both in the Hamel and Belcher reports. Mr. Belcher, in his investigation of the Sargent lands, reported that there was much room for extended

inquiry in this Southern California section which he believed would result in the recovery by the Government of large areas of valuable oil lands, and that to do this work it would require the best efforts of several special agents.

Mr. Belcher's report is prefaced with 12 pages of findings. The more important are reproduced:

> 1. That the land in Section 8, T. 3 S, R. 9 W. is unsuitable for Agricultural purposes and has been known petroleum land since the year 1853; and very commonly and currently known as petroleum land since the year 1860 or thereabouts. Report pp. 58-60.
>
> 2. That it appears without particular and specific investigation having been made that title to considerable, if not all, of the lands in this part of Southern California has been obtained as agricultural land when it was never suited for such purposes and was, in fact, known mineral (petroleum) land.
>
> 3. That the original patent to lands in Section 8 has been secured by mispepresentation as agricultural land, when there is evident reason for believing that James P. Sargent, who obtained the patent, knew that the land was mountainous and canyon dotted, and worthless except for petroleum.
>
> 4. That James P. Sargent in his application for the land to which he received a patent from the state, made affidavit that the land was not reserved from sale by any law of Congress.
>
> 5. That the Santa Fe Railroad officials are interested in this case (Sargent's case).
>
> 6. That on January 26, 1854, the Attorney General of California rendered an opinion to the effect that in his judgment school land warrants could not be legally located on public land before the land was surveyed. Report pp. 88-9.

7. That there appears to be no doubt that this whole section of country was known as petroleum land prior to the year 1860.

8. That it should be noted that the patent issued to James P. Sargent by the State of California is dated April 5, 1868, whereas the state selection to these lands was not approved until June 4, 1870.

9. That there is official record to show that the land in the Brea-Soucal section, wherein Sections 8 and 9 are situated, were withdrawn from entry. Report pp. 134-136.

10. That the allegation is made that "there are known cases in California where sections of public land were out in the ocean, and land script wrongfully issued for same by state authorities." pp. 174-175.

11. That James Sleeper, Assessor of Orange County and for more than 20 years resident thereof, states that the land in Sections 8 and 9, T. 3 S, R. 9 W., never has been assessed as agricultural land, but has been and is assessed as mineral. p. 28.

12. That patent issued to Sargent before the selection by the state had been approved by the Department of the Interior. pp. 54-60.

13. That this section (8) is today a heavy petroleum section.

14. That at least 8 corporations are now operating Sections 8 and 9 and producing oil under lease. pp. 39-40.

15. That official notice was given the Commissioner of the General Land Office May 31, 1865, of the existence of petroleum in this particular vicinity. p. 136.

16. That on December 31, 1913, mineral claim filings were made on this land by J. B. Shoenfelt, P. W. Matson and others, pp. 236-13.

17. That all mineral rights were reserved to the United States in all patents to public lands issued by the State of California.

18. That new and additional filings were offered on these lands in 1886, but such filings were refused by direction of Acting Commissioner Stocklager of the General Land Office, pp. 142-155.

19. That it was general public knowledge that certain public officials were being severely criticised and grave charges alleged against them in their public capacities as indicated in newspaper articles in 1864, more especially in the Los Angeles News of July 30, 1864, in a withdrawal discussion of Catalina Island ownership. pp. 165-173.

20. That the land in Sections 8 and 9 are decidedly hilly, mountainous and rough, with a criss-cross of gulches, ravines and canyons and precipitous dips and with little sign of vegetation except the SE¼ of Section 8, where there are about 60 acres of level land, a portion of which is set out to oranges. pp. 26,156,59,102,104,106,109 & 110.

21. That the failure of the Petroleum Development Co. to file a copy of its articles of incorporation with the Clerk of Orange County disqualifies it from instituting suit in Orange County, p. 31.

22. That Sections 8 and 9 were included in the deed of the Pajara Verde Mining District, which was formed in Los Angeles June 20, 1865.

23. That notwithstanding the failure to find at Los Angeles and several other U. S. Land Offices in California, a copy of a letter addressed by the Commissioner of the General Land Office March 17, 1865, to the land office at Humboldt, it appears that similar instructions as to the "withdrawal" of petroleum lands was issued and that official reference to this fact is found on page 26 of the report of the Secretary of the Interior for 1865, and that copy of this letter to the Humboldt Land Office was published in the Los Angeles News July 1, 1865.

24. That the Santa Fe Railroad Company, through the Petroleum Development Co. has been taking petroleum (oil) from this land since about 1889, in which year the Petroleum Development Co. was organized.

25. That throughout this general section where oil wells are in operation, the Countyy is hilly to mountainous, crissed-crossed with ravines and canyons and decidedly of rough topography.

It seems that Belcher's "finding" that the lands involved were withdrawn in 1865 was predicated upon the report of the Commissioner, appearing in the Annual Report of 1865. The report as quoted is as follows:

> The land offices at Humboldt, California, reported in January, 1865, that petroleum, or coal oil, had been discovered in certain townships, and it was believed that deposits in that section are extensive and destined to become valuable.
>
> Information likewise has been received at Denver leading to the belief that such deposits exist also in Colorado. Instructions have therefore been dispatched to the effect that it was not the policy of the Government to deal with petroleum tracts as ordinary public lands any more than with auriferous or other mineral or salines, and hence the district land offices were required to report the exact description of any and all tracts strictly of the character mentioned, and withhold the same from disposal by the Government unless specially instructed.

On May 31, 1865, Charles A. Beebe, Register of the Los Angeles Land Office, addressed a letter to the Commissioner of the General Land Office, reporting the existence of large petroleum deposits on the Government lands in that district; that many flowing springs of crude petroleum on most of the unsurveyed lands were being occupied by settlers or oil speculators, while others had made locations under the mining laws adapted to the mining of that particular substance; that the lands where the flowing springs are situated were valuable for that purpose alone while but a small portion of the Government lands containing said springs were susceptible for agriculture or grazing.

In the news column of the Los Angeles News of July 1, 1865, the following item was found:

Petroleum Lands and Mining Titles - The following is from a letter of instructions from the Department of the Interior dated March 17, 1865, addressed to the Register and Receiver of the Humboldt Land District:

> It is not the policy of the Government to deal with petroleum tracts as ordinary public land, any more than with auriferous or saline lands, hence you will report the exact descriptions of any and all tracts strictly of the character mentioned and withhold the same from disposal by the Government, unless otherwise especially instructed.

From Beebe's letter and the newspaper article quoted, Belcher evidently concluded that the instructions given the Humboldt office had also been given the Los Angeles office. In the reports particular reference is made to two mining locations of Burdett Chandler on lands in Section 10 in Township 3, and certain affidavits relating to the mineral character of the land. These are the affidavits mentioned in the Attorney General's letter dated April 19, 1916.

While the reports of the Inspectors are not as full and complete as might be desired, sufficient evidence has been produced, in my opinion, to show that the lands referred to are mineral in character and were known to be such prior to the date title passed to the state.

LAW APPLICABLE TO THE FACTS.

The selection made by Sargent was based on the Act of Congress approved September 4, 1841, granting 500,000 acres of land for school purposes. The portions of that act relating to the grant are Sections 2378 and 2379 R. S., as follows:

> Section 2378. There is granted, for purposes of internal improvement to each new state hereafter admitted into the Union, upon such admission, so much public land as, including the quantity that was granted

to such state before its admission and while under a territorial government, will make 500,000 acres.

Section 2379. The selections of lands granted in the preceding section, shall be made within the limits of each state so admitted into the Union, in such manner as the legislatures thereof respectively may direct; and such lands shall be located in parcels conformably to sectional divisions and subdivisions of not less than 320 acres to any one location, on any public land not reserved from sale by law of Congress or by proclamation of the President. The locations may be made at any time after the public lands in any such new state have been surveyed according to law.

California was admitted by the Act of March 9, 1850, (9 Stat. 452). Section 3 of the act reads:

That the State of California is admitted into the Union on the express condition that the people of the said state through their legislature or otherwise shall never interfere with the primary disposal of the public lands within its limits.

Section 2318 R. S. reads:

In all cases lands valuable for minerals shall be reserved from sale except as otherwise expressly directed by law.

The Act of 1841 has been interpreted by the Supreme Court in Wolsey v. Chapman, 101 U.S. 755. In that case the court held that it was not the intention of Congress by the Act of 1841 to give to the state power to take lands which had been actually reserved by the United States for other purposes.

This view was upheld in case of Utah v. Allen, 27 Land Decs.53.

The Act of March 3, 1853, 10 Stat. 244, was an act to provide for the survey of public lands in California and the granting of preemption rights therein, and for other purposes. By section 6 there were granted

to the State of California Sections 16 and 36 in each township for public school purposes, and by the 7th section the state was authorized to select other lands in lieu of any portions of said sections where any settlement shall be made before the same shall be surveyed. Under the provisions of the Act of February 26, 1859 (11 Stat. 385), as embodied in Section 2275 R. S., such settlements operate as a basis for lieu selections by the state.

In the case of Mining Company v. Consolidated Mining Co., (102 U.S. 167) the Supreme Court held that the grant of the 16th and 36th sections of public lands to the State of California for the purpose of public schools by the Act of March 3, 1853, which grant contained no express reservation thereform of mineral lands, was, notwithstanding, not intended to cover such lands.

Section 2449 R. S. particularly referred to in the Attorney General's letter of April 19, 1916, deals with the question of title and the listing of lands selected under the various grants of Congress. That section is as follows:

> Section 2449. Where lands have been or may hereafter be granted by any law of Congress to anyone of the several states and territories, and where such law does not convey the fee simple title of the lands, or require patents to be issued therefor, the list of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office under the seal of his office, either as originals or copies of the originals on records shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby, but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, the lists so far as these lands are concerned

> shall be perfectly null and void, and no right, title, claim or interest shall be conveyed thereby.

In the case of Kyle & Thompson vs. Tubbs (23 Calif. 441), involving the question of state ownership of certain swamp lands, the court held that the title to the lands depended entirely upon the single question: "Are they swamp lands within the Act of Congress? If they are not, neither the state nor its officers have any right, power or authority to sell or convey them."

The Supreme Court passing on this question in Sherman v. Buick, (93 U.S. 216) said:

> In such case the patent is not merely voidable but absolutely void.

The Act of July 2, 1862, was an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanical arts. This act contains the provisions, "that no mineral land shall be selected or purchased under this act."

The Act of July 23, 1866, (14 Stat. 218) was enacted apparently for the avowed purpose of finally determining the question as to selections by the state of California. The act provides:

> No selections made by said state contrary to existing laws, shall be confirmed by this act * * * or to any lands which have been reserved for naval, military or Indian purposes by the United States, or to any mineral land or to any land held or claimed under any valid Mexican or Spanish grant.

In view of the fact that these lands appear to have been listed without authority, not being of the character contemplated by said acts, the listing would undoubtedly be null and void.

STATUTE OF LIMITATIONS

Section 8 of the Act of March 3, 1891, (26 Stat. 1099) provides as follows:

> That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents.

This section, in connection with Section 2449 Revised Statutes, was construed, in a lengthy opinion by Attorney General Gregory (30 Opinions 485), in which, after stating that certification was an authorized method of conveying title and had the force and effect of a patent, held, in effect, that the Secretary of the Interior could exercise jurisdiction over excepted mineral lands after the lapse of the limitation period.

LACHES

It has been almost fifty years since the Department of the interior approved the selections involved, and something like thirty-nine years since it was distinctly advised of the mineral character of these lands.

For years before the approval and ever since, knowledge of such mineral character was and has been universal and notorious.

While laches cannot be imputed to the Government, yet there remains to be considered the increasing tendency of the courts to minimize this rule so as to bring it within the limits of a reasonable application to the stale demands of the Government, as well as those

of the private litigant.

In the circumstances the question arises: With what tolerance or respect will a court of equity regard a complaint which could have and should have been made at least forty years ago?

While I concur generally in the findings of the Special Agents regarding lands particularly described, I am of opinion that the reports made in 1915 are not sufficient, after a lapse of nearly ten years, during which period many complications undoubtedly have arisen, to permit of a definite recommendation of any suit or suits to set aside titles.

I also find from my examination of the papers that there are other lands referred to by the Special Agents, the acquisition of title to which should be exhaustively investigated.

If, in view of the foregoing, you are of opinion that suit should be instituted for recovery of titles and for an accounting, I recommend:

1. That further investigation be made of the lands involved as well as other oil-bearing lands in the vicinity concerning which no report has been made.

2. That an abstract be prepared showing a complete chain of title from the Government down to the present date.

The abstract should include (a) an accurate description of the lands; (b) the names of the present holders under the Sargent and Ransom selections, as well as the names of all individuals and corporations operating on the land under mineral locations, leases, etc.,

and (c) all mortgages, deeds of trust and court proceedings which in any way affect the title to the lands involved.

3. That, in case of mineral locations, competent evidence be secured to show that the requirements of the mineral laws, both state and federal, in the acquisition of title, have or have not been observed.

4. That a statement of the quantity of oil and other mineral products taken from the land be furnished to enable the Department to determine the liabilities of present holders and their predecessors in title.

Respectfully,

180430

November 24, 1924.

Memorandum for the Attorney General.

Status of title to certain lands in Orange County, California, alleged to have been fraudulently and illegally listed and certified to the state of California as agricultural when in fact they were known to be mineral lands.

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The lands in question are oil lands in Orange county, California, worth millions of dollars, and constituted part of the public domain of the United States. Certain of these lands were certified to the state of California in 1870 in part satisfaction of the grant made to the state in aid of internal improvements, and other portions were certified to the state in 1869 as school indemnity. If these lands were known to be mineral at the time of their transfer by the United States then the transfer was void, as agricultural lands only were to be certified.

Evidences of fraud and misrepresentation run through all the proceedings. An examination of the record can leave but little doubt that these lands were known to be mineral years before their transfer by the government and as early as 1858.

The proof that the lands were known to be mineral at least four or five years previous to certification to the state as agri-

cultural lands is overwhelming. As an instance of this I cite you to a notice published in the Los Angeles News of November 21, 1865 (these lands being certified to the state as agricultural lands in 1869-70), as follows:

> Caution: All persons are hereby notified not to purchase any oil springs or petroluem springs on the east of the Canada de la Breu, said springs being situated about thirty miles east of Los Angeles City and eight miles noth of Anaheim, County of Los Angeles, State of California, as the undersigned are the sole owners of the above mentioned property.
>
> (Signed) Sergent & Carlisle.

Sergent, who signed the above notice, also made mineral locations on these identical lands in 1865. Carlisle who signed the notice with Sergent, and another man by the name of Hunt, were killed in a quarrel over oil lands near those in question. This occurred previous to the transfer of these lands as agricultural from the United States to the state of California.

In 1886 there were filed in the General Land Office affidavits alleging fraud in the transfer of these and other lands similarly disposed of by the United States, and also that they were well known to be mineral long before their transfer. These affidavits were specific and definite but no action was taken toward an investigation or looking to a recovery of the property by the United States.

The matter came up again in 1914 and the Department of the Interior sent two investigators to make a full and complete investigation. Their reports showed fraud and misrepresentation in the transfer of these lands, and they recommended suit for their recovery.

The Secretary of the Interior submitted these reports and the files in the case to the Attorney General and suggested that suit be brought "only if the government can surely prevail". The Attorney General on April 19, 1916, returned the files to the Secretary with a letter going fully into the facts and stating: "I feel that under these circumstances it would be altogether unwise to institute legal proceedings at this late date for the purpose of recovering titles to these lands."

It seems that the lapse of time was the only reason given why suit was not commenced in 1916. A large number of innocent purchasers would undoubtedly be involved and titles disturbed. Nearly 40 years have passed since this alleged fraud was brought to the attention of the government and no action taken. A comprehensive memorandum in this matter, prepared by Mr. C. H. Jennings of the Public Lands Division is hereto attached, and your attention is invited thereto.

There is also a case now before the Department of the Interior wherein one Ben McLendon and others seek to set aside as fraudulent a patent to about 30,000 acres of valuable oil lands in this same county and restore them to the public domain. The title in the McLendon case is founded upon a Mexican land grant for four square leagues of land; eleven square leagues were set off and patented to the claimant, an excess of 29,471.89 acres.

I understand there are other tracts of land in California where the facts as to title are substantially the same as in this case.

The question of laches on the part of the government comes up and I can do no better than to quote the words of Mr. Jennings in his attached report:

> It has been almost 50 years since the Department of the Interior approved the selections involved, and something like 39 years since it was distinctly advised of the mineral character of those lands.
>
> For years before the approval and ever since, knowledge of such mineral character was and has been universal and notorious.
>
> While laches can not be imputed to the government, yet there remains to be considered the increasing tendency of the courts to minimize this rule so as to bring it within the limits of a reasonable application to the stale demands of the government as well as those of the private litigant.
>
> In the circumstances the question arises: With what tolerance or respect will a court of equity regard a complaint which could have and should have been made at least 40 years ago?

However, the question of recovering these and other lands to the public domain where it would seem to belong will be continually coming up, and will tend to cast suspicion upon public officials until finally settled by the courts, and the longer the delay the less chance for recovery by the United States.

Is it not better for all concerned that what appears to be the strongest case be selected, that the title be brought down to date, and a test case commenced to recover these lands for the United States, and for an accounting of the profits in oil and kindred products taken therefrom?

If the government should prevail millions of dollars will be added to the treasury and many thousands of acres to the public domain. If the government should not prevail the suit would settle the title to the lands involved and the question of recovery be forever settled.

Respectfully,

March 21, 1930.

Honorable Ray Lyman Wilbur;
Department of the Interior

Dear Secretary Wilbur:

We shall seek an opportunity to take up verbally with you the matter referred to below.

This Association for about five years has financed the representation of the Pueblo Tribes by private counsel before the Pueblo Lands Board and the courts in all matters under the Pueblo Lands Act of 1924.

An essential element in the Pueblo Lands Act and in the work of the Lands Board, is that of compensation to the Pueblo Tribes for lands not recoverable by them through suit in their behalf by the Government, but which could in the past have been recovered through seasonable action by the Government as their guardian.

Where the Lands Board finds that a given disputed parcel of land is properly recoverable, and so reports, it of course <u>does not</u> in such case go into the subject of compensation or decree compensation.

The finding and action of the Lands Board on the question of ownership is not conclusive; title must be quieted through suits in the federal court.

The outcome, with respect to land recovery by the tribes, is contingent on the court's view of the evidence presented and the court's construction of points of law which are still in dispute. It is practically certain that ultimately a good many of the awards favorable to the Pueblos, made by the Lands Board, will be found not sustainable in court.

Indeed, if certain constructions of law, now in dispute between the Government and the adverse claimants, and under consideration by the Circuit Court, be decided adversely to the Government, a substantial part of all the Lands Board's findings favorable to the tribes will be nullified.

The above is preliminary. The matter of concern can now be stated.

When the Pueblo Lands Board has completed its report on the Last Pueblo, its functions as under the existing terms of the Pueblo Lands Act will have ceased. That completion is near at hand.

Thereafter, it is certain that some, and possible that a great many of the awards of land to the tribes will be upsetting in the courts.

Manifestly it was the intent of Congress for compensation to be paid to the tribes in all those cases where land not recoverable could have been recovered through seasonable suit in past time.

But with the termination of the Lands Board's existence, the machinery for investigating the question of Government liability and for determining the quantity of that liability will have ceased to exist.

Therefore, it appears that amendatory legislation should be adopted, during the present session of Congress if feasible, continuing the Lands Board in existence until all the adjudications in court are completed and expressly insuring that the Lands Board shall be able, where the land is lost to the Indians, to decree compensation in the event that it finds a government liability.

This subject was discussed at some length in conference with the Pueblo Lands Board and the Commissioner of Indian Affairs at Santa Fe, last August.

We are now given to understand that the Department considers supplemental legislation to be not necessary. It was apparently the unanimous impression at the conference above referred to, that supplemental legislation was in fact necessary.

Whatever uncertainty may exist (whatever construction may hold that the end can be achieved without supplemental legislation), it appears that nothing is lost and security and justice are served if the matter be made certain through amendatory legislation.

The subject is not one which involves a continuation of large administrative expenditures. The surveys of the Pueblo Lands Board exist in the nature of permanent records. The data for the determination of government liability and of the quantity of liability exists in the hearings and the surveys of the Board. The Board, had the law so directed it, could initially have laid down a finding in the matter of government liability and quantity of liability, to become effective in the event that its finding of a still existent Indian ownership was upset by the courts. But the law has not so directed the Board, and the Board has not filed such alternative findings.

The adjustment of these Pueblo Lands matters has entailed large work both by government and by outside agencies across many years. An effort has been made, and has succeeded on the whole, to lift the handling of Indian matters onto a plane of greater responsibility and greater justness, in this case, which has perhaps commanded more public interest than any Indian question of the last twenty years.

It will be regrettable if, through the failure to secure an amendment which probably would have unanimous support, the intent of Congress and of the Administration were accidentally defeated in considerable measure.

Respectfully yours,

JC:MP

Mr. Jemmup

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14920-30

C O P Y

UNITED STATES

DEPARTMENT OF THE INTERIOR

Office of Indian Affairs
Washington

Apr. 1, 1930

Hon. H. J. Hagerman,
Member Pueblo Lands Board.

My dear Governor Hagerman:

March 25, 1930, the Secretary of the Interior advised the Attorney General relative to ejecting unsuccessful claimants on tracts awarded to the Pueblo Indians by the Pueblo Lands Board under the Act of June 7, 1924 (43 Stat. L., 636), as follows:

> Careful consideration has been given the matter in connection with copy of letter to you of March 6 1930, from Mr.George A. H. Fraser, Special Assistant to the Attorney General; and I concur in your opinion that nothing is to be gained by disturbing such non - Indian claimants during this year - they to be permitted to make their 1930 crops, with the understanding that their occupancy of the lands in question will terminate the coming fall. In the meantime, action will be taken to obtain a full report in the case of each Pueblo from the Board mentioned of the losses sustained by the non-Indian claimants, with the recommendation of the exact amount that should be appropriated by Congress in settlement thereof.
>
> Report will then be made by this Department to Congress as required by section seven of the Act cited.

Mr. Fraser in the report above mentioned said that court decrees against the unsuccessful claimants had become final in the Pueblos of Tesuque, Nambe, Santo Domingo, and Santa Ana; that he was reasonably certain that no appeal would be taken as to Sandia and Isleta; and that appeals are pending in the cases of Taos and Jemez.

In response to your report of August 12, 1926, on Nambe, this Office advised you as to making reports under section seven of the Act, in part, as follows:

> * * * and sections 7 and 8, and section 6, by implication, appear to require that reports be made by

the Secretary of the Interior to Congress with recommendations as to your findings thereunder. The Act also authorizes the Pueblos to institute suit independently of the Government in certain cases within two years after the filing of reports by your Board, and grants these Indians the right of appeal and review in the courts.

As you are in possession of all the records, etc., on which its findings have been based and will have knowledge as to whether or not appeals have been taken by the Indians, and the status thereof, it is believed that you would be in a better position than this Department to prepare and formulate the reports required by the Secretary to be made to the Congress. It is therefore suggested that you when the proper time comes for submitting such reports, prepare the same to be signed by the Secretary and sent to the Speaker of the House of Representatives and the President of the Senate, giving the facts in full as disclosed by the records and the evidence submitted on which your findings are based, and making necessqry recommendations in the premises as required by the Act. * * *

April 25, 1927, you were advised, in part:

This Office would be glad to have your Board furnish, in addition to its reports, a brief itemized summary in each case, containing the findings and recommendations under sections 6, 7, 8, 14 and 15. Such a summary in the case of each Pueblo, to include those heretofore reported upon, would be of considerable help and would serve as a ready reference in considering your findings and recommendations relative to the various Pueblos.

The record shows that your Board from time to time furnished brief summaries, giving the amount of losses sustained by non-Indian claimants, and that such information has been furnished in the general reports of the Board. However, no recommendations have beenmade as to whether such amounts should be appropriated by Congress to compensate for such losses.

The record shows also that in a few instances the court has reversed the finding of the Board, which has necessitated the making of supplemental reports. The following is a list of the awards or valuation placed

by the Board on the claims of non-Indians who were unsuccessful and whose lands, improvements, and water rights were awarded to the respective Pueblos:

Tesuque.	Report submitted November 9, 1925. 65 claims embracing 272.30 acres----------	$50,755.31
Nambe.	Report submitted August 12, 1926. 65 claims, 3,187.61 acres----------	50,796.56
Santo Domingo.	Report submitted December 29, 1927. 18 claims, 91.09 acres--	5,809.55
Santa Ana.	Report submitted July 19, 1927. No Indian claimants.	
El Ranchito Grant	(Purchase) Five claims, 30.16 acres------	1,597.12
Sandia.	Report submitted January 10, 1928. 95 claims embracing 2,485.25 acres----------	47,359.74
Isleta.	Report submitted August 17, 1928. 50 claims,209.44 acres--	9,104.73

In view of the uncertainty that exists as to whether any changes in the figures given in the above schedule are necessary on account of court action, and of the fact that no specific recommendation for the appropriation by Congress of the amounts above set out has been made by the Board, we would like to have a full report submitted, giving the correct figures and the exact amounts that should be appropriated in each case by Congress, and making such recommendations as may be deemed necessary.

Should there be any other Pueblos than as mentioned upon which report can now be made they should also be included.

When the additional data is received we will then be in position to make such report and recommendation as may be necessary to be presented to Congress.

Please submit your report in triplicate; and early action would be appreciated.

Sincerely yours,

(sgd) C. J. Rhoads,

Commissioner

APPROVED: Apr. 5, 1930.

Jas. M. Dixon

First Assistant Secretary.

En esta Mision de San Agustin de la Isleta; en cuatro dias del Mes de febrero,del Ano de Mill setesienttos y sincuenta conparesieron Ante mi, el Capitan Migel Lusero,Alcalde Mayor,y Capitan a Gera de la Villa y su jurisdision de San Phelipe de Alburquerque; Franco.Padilla;Manuela Padilla; Diego Padilla; Bernardo Padilla Nicolas Padilla,Barbara Padilla; Pedro Padilla; todos ermanos leJitimos; y los hijos ofisiales deste dho. Pueblo de la isleta,elgouernador - Juan Domingo; Juan Joseph teniente; Y Domingo Sangre; capitan Meyer de la Gerra; Y su casique Y deMas ofisiales; A quienes Doy fe y conosoco; Y diJeron Dichos Padillas que bendian,a los dichos hiJos del Pueblo de San Agustin de la Jisleta;es a sauer Vn rancho que tienen De erensia de su Padre,Diego Padilla,Ya Difunto; el cual,linda con tierras de los dichos yJos,por la parte de la otre uanda del rio del Norte; ariba,y para abaJo rio AbaJo, linda con el sitio de Balensia; en un arroyo, Donde continueMente a estedo Muy continuo su lindero; el cual rancho des Poblado se pactaron dichos pedillas; con el pueblo,Y bendieron Por el presio y cuantia de Mill y tresientos Pesos; en Jeneros corientes del reyno es a sauer en dos Plasos; que Puntual enttriegan ochosientos Pesos. Y en todo octubre la demas cantidad; a conPletar los Mill y tresientos pesos; el cual sitio o rancho lo benden Por el presio dho,que Ya se dan por contenttos,satisfechos y Pagodos y que si mas bale o baler pudan les asen grasia y Donasion,pura,Mera y Perfecta yrrebocable que el derecho llama ynterbibos sediendo,y traspasando la acsion, derecho Y senorio que a dichas tiera tenian en los hiJos del dicho pueblo de San Agustin de la ysleta Para que las gosen,Y puedan bender y enaJenar a las personas que quisieren; Soure Que renunsian,las leyes de la Non numerate Pecunia Prueba Y Paga y la autentica prefide Y ousribus,y las de belayano,Y Justiniano y la de toro,y Mal partida Y las deMas que Puedan ablar a su fauor,Sobre que no s les Pondran Pleyto,ni deManda,Por si ni por sus hiJos erederos,Y susesores. Y Que si acaso Se lo Purieren Que no sean oydos en Juisio ni fuera del. Y da Poder a las Justisias de su MaJestad,Para que con todo rigor de derecho,lo conPelan,Y aPremien al cun-

. Y que [illegible]an libres de Senso,ypoteca y tri-

sus personas,Y bienes rayses Mue-

ron Antte mi dicho Alcalde Mayor y

o Y los de Mi asistensia en dicho

dia,Mes y ano dandole la fuersa Y bigor que esta esCritura se requierre firMandolo con los de Mi asistensia A falta de escribano Publico Y real Que no lo ay en este reyno, ni en muchas leguas en contorno de que Doy fee V supra - Otro si por no saber firmar los otorgantes lo firmaron a su ruego yno de los testigos; Bale-

f Miguel Lusero (Rubrica.)

Jues resetor:

A rruego de los otorgantes

Francisco Padilla

Manuela Padilla

Diego Padilla

Bernardo Padilla

Nicolas Padilla

Barbara Padilla

Pedro Padilla

tto. Miguel Montoya

(Rubrica.)

to.Saluado Martines

(Rubrica.)

testigo por todos los Padillas

(Rubrica.)

En este puesto de nuestra Senora de fonclara en beniente y dos de agosto del anao de mil setesientos y sinquenta i lluno digo yo fransico padilla en nober de to de dos los padillas que resebimos de los indios de la ileta la cantida de mil tresientos pesos por el sitio a satisfasion y conteento para que coste roge al sr alcalde firmara por todos nosotros los ermanos y fueron

tto. Miguel montoya

(Rubrica)

Miguel lusero

(Rubrica)

tto. domingo Baca

(Rubrica.)

Este titulo es registrado en el libro letra A.folio 43 a 44 lo que certifico firmo y sello para constancia. Santa Fe Enero 4 de 1849.

Donaciano Vigil

(Rubrica)

Registrador de tierras del Territorio de

Nuevo Mejico

In this Mission of San Agustin de la Isleta on the fourth day of the month of February of the year one thousand seven hundred and fifty personally appeared before me, Captain Miguel Lucero, Alcalde Mayor and War Captain of the town of San Felipe de Alburquerque and its jurisdiction, Francisco Padilla, Manuela Padilla, Diego Padilla, Bernado Padilla, Nicolas Padilla, Barbara Padilla, and Pedro Padilla, all legitimate brothers and sisters, and the native officers of this said Pueblo of Isleta, the Governor, Juan Domingo; Juan Joseph, Lieutenant; and Domingo Sangre Chief War Captain; and its Cacique and other officers, whom I certify I know; and the said Padillas said that they sold to the said natives of the Pueblo de San Agustin de la Isleta, that is to say: a rancho which they hold by inheritance from their father, Diego Padilla, now deceased, which is bounded above by lands of the said natives lying on the other side of the Rio del Norte, and below, down the river, by the tract of Balencia, at an arroyo where it continually has been very continuously; which rancho not occupied the said Padillas bargained and sold to the said Pueblo in the price and sum of one thousand three hundred dollars, in current goods of the country, towit: in two payments; in cash eight hundred dollars, and within the month of October the sum remaining to complete the one thousand three hundred dollars; which tract or rancho they sold for the said price and they admit that they are content, satisfied and paid, and that if it be worth more or may be worth more they make gift and donation to them, pure, absolute, perfect and irrevocable which the law calls inter vivos, granting and conveying the share, right and dominion wich in said land they had to the natives of the said Pueblo of San Agustin de la Isleta in order that they may enjoy them, and that they may sell and alienate unto such persons as they may wish; and in which they renounce the laws of the non numerate pecunia prueba y paga and the autnetica pre fide y ausoribus, and those of Velleius and Justinian and that of Toro, and mal Partida, and all others which may be in their favor, and that they will bring no suit nor demand against them, neither they now their child-

ren,heirs and successors;and that if they should bring any that they be not heard,neither in court nor out of it; and they give power to the Justices of His Majesty in order that with all rigor of law they be compelled and obliged to the fulfilment of this contract; and that they give/them free from tax, mortgage and tribute; and to the warranty of the same they obligate their persons and real and personal property,that which they have and that which they may hereafter have; thus they executed it before me the said Alcalde Mayor and Wat Captain and they signed it with me and my assisting witnesses on the said day, month and year, giving to it the force and vigor required by this instrument signing it with my assisting witnesses in the absence of a notary public or royal of which there is none in this Kingdom,nor within a radius of many leagues to which I certify ut supra. And furthermore: For the reason that the grantors do not know how to sign one of the witnesses signed it at their request. It is valid.

By request of the grantors

F Miguel Lusero (Rubric)
Delegate Judge

Witness: Miguel Montoya (Rubric)

Witness: Salvador Martines (Rubric)

Witness for all the Padillas (Rubric)

Francisco Padilla
Manuela Padilla
Diego Padilla
Bernardo Padilla
Nicolas Padilla
Barbara Padilla
Pedro Padilla

At this place of Our Lady of Fonclara on the twentysecond of August of the year one thousand seven hundred and fiftyone I,Francisco Padilla, say in the name of all the Padillas that we have received from the Indians of Isleta the sum of one thousand three hundred dollars for the tract to (our) satisfaction and content in order that this may appear I prayed the Alcalde to sign for all of us the brothers and sisters and they were

Witness: Miguel Montoya (Rubric)
Witness: Domingo Baca (Rubric)

Miguel Lusero (Rubric)
Delegate Judge

Court No. 273

File No. 4

In the United States Court
of Private Land Claims

The Pueblo de Isleta

vs

The United States.

The Lo de Padillas Tract.

EXHIBIT C

Transcript and translation of
mesne conveyance

Copy for U.S.Attorney

FILED in the office of the Clerk,
Court of Private Land Claims,
Jan. 27, 1896
Jas. H. Reed, Clerk
By _____ Deputy.

4 carbons

Report #1.

Pueblo Lands Board

Santa Clara Pueblo

Report of Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished.

A.

The Pueblo Lands Board, constituted under Act of Congress approved June 7, 1924 (43 Stat L. 636), hereby reports under Section 2 of said Act as follows:

Said Board having investigated the lands within the exterior boundaries of the land lying in the Counties of Santa Fe and Rio Arriba confirmed to the Pueblo of Santa Clara as shown on blue print map hereto attached and marked "Exhibit A," being a Spanish Grant, as confirmed by Act of Congress approved December 22, 1858, and patented November 1, 1864, has determined and hereby determines that title thereto in said Pueblo has not been extinguished, in accordance with the provisions of said Act of June 7, 1924, as to the lands described and set forth by metes and bounds as follows,

except certain tracts or parcels or parts of tracts or parcels marked Exceptions 1 to _____ inclusive, and indicated on blue print maps hereto attached and marked "Exhibits _____," and except the main line and station grounds and spur tracks of the Denver & Rio Grande Western Railroad Company, which said main line enters the Santa Clara Indian Grant at its northern boundary and extends across it in a southerly direction, subject, however, to any reverter to said Pueblo of said right of way, station grounds or any part thereof arising or resulting from the nature of the title to any portion of said premises acquired under the Acts of June 8, 1872, March 3, 1875 and March 3, 1877. Said railroad main line, and station grounds and spur tracks are shown on blue print maps hereto attached and marked "Exhibit A; And

Except the Western Union Telegraph Company line which rests entirely upon the right of way of the Denver & Rio Grande Western Railroad Company, and which was constructed and put in operation under an agreement with the Denver and Rio Grande Railway Company, and ~~the Denver and~~ the Denver & Rio Grande Western Railway Company, dated June 16, 1883, and also under an agreement between the said Western Union Telegraph Company,

and the Rio Grande Southern Railroad Company, dated September 10, 1890, which appears to have superseded all other agreements entered into between said parties. The approximate location of said line is shown on blue print map hereto attached and marked "Exhibit A"; except the main line of the Mountain States Telephone & Telegraph Company which enters said Indian Grant at its eastern boundary, extends to the town of Espanola and passes out of said Indian Grant at its northern boundary. The approximate location of said line is shown on blue print map hereto attached and marked "Exhibit A".

Since the installation of said system, a formal agreement, dated June 14, 1926, was entered into between the Pueblo of Santa Clara and the Mountain States Telephone & Telegraph Company, whereby, for a consideration of $31.88, said Pueblo granted to said Company, its successors and assigns, a right of way and easement for a telephone and telegraph pole line across the lands of the said Indian Grant, and whereas certain errors contained in said instrument raised the question as to the validity of the right of way and easement granted, a second agreement, dated November 26, 1927,

correcting said errors, was executed by said parties. Copy of this agreement, dated November 26, 1927 with approval thereon by Assistant Secretary John H. Edwards, dated January 13, 1928, is hereto attached and marked "Exhibit —".

(Here insert exterior boundaries of the Santa Clara Grant.)

x x x x

The foregoing grant is more particularly described by field notes of the General Land Office, in pursuance of a survey made by F. E. Joy U.S. Surveyor, _____, copies of which are on file in the General Land office, Washington, D. C., the office of the Cadastral Engineer, Santa Fe, New Mexico, and the Pueblo Lands Board, Santa Fe, New Mexico.

Exceptions Numbered 1 to _____, inclusive, herein referred to, are more particularly described as follows.

(Here insert descriptions)

x x x x

Attention is directed to the following described lands surveyed as Private Claims and parts of Private Claims, indicated on blue print maps marked "Exhibits _____", hereto attached, as Numbers 1 to _____, inclusive, and which are a part of the lands lying within the exterior boundaries of the Santa Clara Indian Grant, title to which the Board has determined has not been extinguished.

(Here insert description of the unextinguished claims and parts of claims

x x x

The Board further finds that the lands, title to which has not been extinguished, are burdened as follows:

1. By an 80 foot highway, known as Federal Aid Projects Numbered 111 & 128. Said highway enters said grant at its eastern boundary, and extends in a northwesterly and northeasterly direction through Sections 12, 2 and 35 of Township 20 North Range 8 East, M.D.M. to and across the North boundary of said grant.

Photostat of said Federal Aid Project Map No 128, showing a small part of said highway and formal approval thereon by F. M. Goodwin, Assistant Secretary of the Interior, dated January 15, 1924, subject to the provisions of the Act of March 3, 1901 (31 Stat 1058), is hereto attached and marked "Exhibit ____".

It is recommended that the application and Map be resubmitted by the State Highway Commission to the Secretary of the Interior for approval of the project under the provisions of the Act of June 7, 1924. ~~No evidence has been submitted to show that the County or State acquired title from the Indians for the right of way, but it does appear~~

Photostat of Federal Aid Project Map No 111, showing location of said highway through another part of the Santa Clara grant, which appears not to have been approved by the Interior Department, is hereto attached and marked "Exhibit ____".

It is recommended that this plat be forwarded by the State Highway Commission to the Secretary of the Interior for approval under the provisions of the Act of June 7, 1924.

2. By an 80 foot road or highway, connecting with Federal Aid Project NO 111, and extending in a Northwesterly direction across the Rio Grande, passing through the town of Espanola; ~~on board~~ and continuing in a Northwesterly direction to and across the west boundary of said grant;

~~3. By a 100 foot right of way, Commencing in the town of Espanola and extending in a Southwesterly direction through said grant and paralleling the Denver Rio Grande Western Railroad right of way to the South boundary of said grant.~~

It does not appear that this road has been made a Federal Aid Project.

3. By a 100 foot right of way, commencing in the town of Espanola, and extending in a Southwesterly direction through said grant and paralleling the Denver Rio Grande Western Railroad right of way to the South boundary of said grant.

~~Photostat of said highway map, which does not appear to have been approved by the Federal Department, is hereto attached and marked "Exhibit ____".~~

It does not appear that this highway has

yet been made a Federal Aid Project.

4. By a highway, approximately 80 foot in width, ~~[illegible]~~ leading to Puye, and branching off from the 100 foot highway not far from the Indian village of Santa Clara.

As far as known no deed or deeds or other evidence of title covering the above highways, has been obtained from the Indians, but it does appear that these roads or highways have been used by the public for more than fifty years, and the Board has determined, and hereby determines that the Territory and State acquired by such use, an easement in and over said lands, subject only to a reversion to the Pueblo whenever said lands shall no longer be used by the public or the state as roads or highways or shall be abandoned by the state for a new location across said grant.

5. By what is known as the Espanola Telephone Company line which extends from the South boundary of the San Juan Grant to the Indian School building situated a short distance North of the Santa Clara Indian Village.

The Board is advised that this telephone line was installed in 1918 by the Trompas Lumber Company & the Federal Tie & Lumber Company, and

was later acquired by the Espanola Telephone Company, which said Company recently extended the line from the town of Espanola to the Indian School building at the request of the Superintendent of the Northern Pueblos.

The Board is advised that said Company has taken steps to acquire an easement over said grant, for a valuable consideration, and that when acquired the deed and plat showing location of said line will be forwarded to the Secretary of the Interior for approval under the provisions of the Act of June 7, 1924.

6. By a telephone line which extends from the town of Espanola northwardly until it crosses the northern boundary line of what is known as the Canada de Santa Clara Grant, ~~dated November 15, 1909~~, and which said grant is hereinafter referred to.

This telephone line, the Board is advised, was installed by the Forest Service and is at present used by its agents.

7. By power lines claimed and owned by Inland Utilities Company what is known as the ~~Espanola Valley Electric Corporation~~ connected with its power plant in the

Town of Espanola. It is understood that a large number of the poles carrying the lines of this Company rest in the public highway and do not therefore conflict with the Indian title.

The Board has been advised that said Company has taken steps to acquire an easement over said grant for its transmission lines, for a valuable consideration, and that when acquired the deed and a plat showing location of said transmission lines will be forwarded to the Secretary of the Interior for approval under the provisions of the act of June 7, 1924.

B.

Cañada de Santa Clara Grant - 490.62 acres.

The Board having also investigated the lands within the exterior boundaries of the land lying within the County of Rio Arriba, State of New Mexico, granted July 19, 1763 to the Santa Clara Pueblo Indians by Don Tomas Valles, the then Governor and Captain General of the Royal Provincia of New Mexico, as shown on blue-print map hereto attached and marked "Exhibit B", and

confirmed to the said Pueblo by the Court of Private Land Claims, January 12, 1895, and patented to said Pueblo, on a rehearing, November 15, 1909, has determined, and hereby determines that title thereto in said Pueblo has not been extinguished in accordance with the provisions of said Act of June 7, 1924, as to the lands described and set forth by metes and bounds as follows:

(Here insert description of the 490.62 acre grant.)

x x x x

There are no private claims on this grant so far as could be ascertained. The Forest Ranger, Harvey Sutton, is living on this grant, but it is understood that neither he nor the Forest Service is claiming title to the land occupied which he is living there with the consent of the Indians.

The Board is advised that the Santa Clara Lumber Company had cut from said grant approximately 3,000,000 feet of lumber under a contract entered into with the Indian office dated January 7, 1928, leaving very few

trees that could be sawed into lumber. The saw mill was moved from said grant about 4 months ago to Section 8 of the Executive Order lands.

The Contract, dated January 7. 1928, herein referred to, expires March 31. 1933, and grants to said Company the right to cut in all, 8,000,000 feet of lumber over an area of 4000 acres.

This small grant, bounded on the east by the old Santa Clara grant and on the north, south and west by executive order lands is burdened as follows:

1. By a telephone line which enters its eastern boundary, extends to the premises of the Forest Ranger and on through the Executive Order lands to Jemez. It is understood that this line is under control of the Forest Service and is used at present by its agents. ~~of the Forest Service.~~

2. By a road, approximately 30 feet in width, leaving the 100 foot highway therein referred to and extending west up through the Canon to near the west end of said grant. This road, the Board is advised, has been used by the Indians for many years and was repaired

and put in fairly good order by said Lumber Company. The road is now being used almost exclusively by the Indians, and as far as could be learned, neither the State County nor the public is claiming it or exercising jurisdiction over it.

The Board has investigated and determined that there are no lands other than the lands granted and particularly described herein, acquired by said Indians as a community, by purchase or otherwise, or held by them except the tract lying immediately to the west of the old Pueblo Indian grant, and known as the Santa Clara Pueblo Indian Reservation, which was set apart as a reservation for the use and occupation of the Santa Clara Indians by Executive Order dated July 29. 1905.

The Board is advised that one Juan Luis Garcia has a ranch on the Executive Order lands situated west of Puye, but that when ~~the Executive Order~~ these lands were surveyed his said ranch was segregated. The Board is further advised according to the first survey that, David Roybal, Moises Roybal, Abran Roybal, Palita Archuleta, Manuel Maestas and Salomon Garcia are claiming certain lands in the said reservation that a man by the name of Burt is operating a saw mill on

said lands. The Board however, is advised that a recent survey places these parties within the National Forest.

There is also a road or highway on this reservation extending from the west boundary of the Santa Clara Indian grant to Puye. This road has been graded and is used principally by tourists going to and from Puye.

The Board expresses no opinion as to whether executive order lands do or do not fall within the purview of the Act of June 7, 1924.

Respectfully submitted,
Pueblo Lands Board

By _____
Chairman

_____
For the Secretary of the Interior

_____
For the Attorney General

Dated at Santa Fe, N.M.

June 23, 1931.

The Attorney General,

Washington, D. C.

Sir:

I have the honor to forward, under separate cover, the following additional reports on claims in the Pueblo of Santa Clara, made necessary by Court action.

1. Report of additional awards made to the Indians for losses sustained, $27,154.87

2. Report of losses suffered by non-Indians, to be submitted to Congress by the Secretary of the Interior, as provided by Section 7 of the Act, $34,885.72

The final reports have now been filed on all the Pueblos except in the cases of San Felipe and Laguna. It is not known when the Circuit Court of Appeals will render an opinion in the San Felipe case. Mr. Fraser may, if a decision of this court is not satisfactory, recommend an appeal. A compromise in the Laguna case, approved by the Department, is still pending, and a final decree cannot possibly be handed down before the present Board closes its doors.

I have prepared reports in the San Felipe case and no changes will be necessary unless there are reversals, and such changes, if any, can be made by my associate, Mr. Hagerman, and the report sent to me to Washington. I have also furnished him with data in the Laguna case, and he can write up that report, which will be very simple, after the decree has been signed and entered.

In view of the circumstances I feel that I can accomplish nothing by remaining here beyond the date (June 30th) when the Board must, for want of funds, cease to function.

Respectfully,

CHJ-S
Enc.

Member.

SANTA CLARA PUEBLO

1. Archuleta, Juan M. Dec'd

P. C. 49, p.1

Manuel M. Archuleta wife Leonora R. - pt
Épimenia R. Archuleta (widow)
Nicolas E. Archuleta (single)
Victor Archuleta + wife Amabel

P. C. 49, p. 2.

Épimenia R. Archuleta (widow)

P. C. 49, p. 3:

Épimenia R. Archuleta (widow)

2. Atencio, Antonio A.

P. C. 69, p. 1.

Elfida Vigil wife Marina owners

Esperidion Vigil wife Margarita A.

P. C. 69, p.3.

.....

3. Justo Atencio, ~~widower~~

P. C. 45, p. 1.

4. Blackmar, Sr., F. S.

P. C. 146, p. 2.

Espanola State Bank own part.
W. L. Evans wife Mary L. part
B. F. Morris Jr. wife Jessie
J. P. Quintana + wife Felipa

::

5. Bond & Nohl Company, Frank Bond

P. C. 35, p. 1.

Episcopal church

Bond & Nohl Co.

P. C. 35, p. 2.

(Bond & Nohl Company) (arroyo)

P. C. 35, p. 3.

::

6. Frank Bond pt. Bond & Nohl Co pt.

P. C. 44, p. 1.

::

7. Catholic Church

P. C. 90, p. 1

8. Church - Methodist. United Brethren

P. C. 42, p. 1. Papers sent from

::

9. Delgado, Pablo R. wife Sofia S.

P. C. 40, p 1.

10. Denver & Rio Grande Railroad Company,
P. C. 84, p 1.

:::

11. Duzier, T. S. Oto Ludwig, rwp Antonio Calpico California claimant.
P. C. 79, p 1.

of the Assistant Attorney General in charge of his Division, letters addressed to United States Attorneys and other parties.

12. Espanola Mercantile Company

P. C. 80, p 1.

::

13. Evans, W. L.

P. C. 60, p. 1.

E. M. Valdez, vendor

Espanola State Bank's lien'd. mort. on this property filed abstract

14. Frank, Mrs. Jennie, Present owner C. L. Holmquest

P. C. 54, p l.

Name of wife Florence Holmquest

::

15. Frankenburger, F. R. wife Gertrude Randine

P. C. 43, p. l.

P. C. 43, p. 2.

Espanola Mercantile Co.

16. Garcia, Adolfo ~~v wife Ella~~

P. C. 53, p. 1.

Filogonio Rodrigues wife Amelia

Garcia, Adolfo wife Ella pt.

P. C. 53, p. 2.

otto Ludwig + wife Antonia, pt

Justo Atanacio (widower)

~~Garcia Adolfo wife Ella~~

P. C. 53, p. 3.

Filogonio Rodrigues wife Amelia

Garcia Adolfo wife Ella

P. C. 53, p. 4

17. Garcia, Exequiel (wife Consolacion L.)

P. C. 76, p 1.

P. C. 76, p.2.

18. Garcia, Jose L. wife Gloria
P. C. 77, p. 1.

Garcia Jose L wife Gloria
P. C. 77, p.2.

19. Garcia, Juan Luis, wife Donaciana M. — pt
P. C. 81, p. 1.
Drenia Garcia et vir Luis Borrego — pt.
Gregorio Garcia, single

::

20. Garcia, Manuel R. wife Fedelia
P. C. 67, p. 1.

Garcia Manuel R wife Fedelia
P. C. 67, p. 2.

Garcia, Manuel R wife Fedelia
P. C. 67, p. 3.

67, p3 (cont'd)

::

21. Gutierrez, Jose Domingo

P. C. 68, p. 1. (Possibly ~~not Latin~~)

amarante Virgil + wife Rita M.

P. C. 68, p. 2

Amarante Virgil + wife Rita M.

::

22. Hardy, Lewis T. see Mr Death

P. C. 37, p. 1.

23. Herrera, Felipe

P. C. 20, p 1.

Elises M. Vigil wife Juanita

24. Herrera - Estate of Jose Maria

P. C. 21, p. 1.

Elicio M. Vigil wife Juanita - pt
Benigno Roybal wife Refugio - pt.

:P. C. 21, p. 2.

Elicio M. Vigil wife Juanita - pt

Salamon Vigil wife Romana - pt

P. C. 21, p. 3.

Elicio M. Vigil wife Juanita - pt
Narciso Martinez wife Carmelita - pt

25. Hersch, Rosalia,
P. C. 52, p. 1.

Adolfo Garcia wife Ella

26. Hill, P. H. wife Genara.
P. C. 46, p. 1.

27. Ireland, A. H.

P. C. 57, p. 1.

Irene Morris, single, owner

28. Lucero, Elias T. unmarried

P. C. 39, p. 1.

29. Lucero, ~~Josefita~~ L. de

P. C. 14, p. 1.

✓ Martinez, Adam L. wife Elsie B. (owners)

Estate of Jose Lucero

P. C. 14, p. 2.

✓ P. H. Hill wife Genara - part.

30. Lujano, Bonifacio & wife Bonifacia

P. C. 26, p. 1.

P. C. 26, p. 2.

31. Lujan, Francisquita Mestos de widow

P. C. 27, p. 1.

32. Lujan, Maria Francisca

P. C. 92, p. 1.

Damian Lujan wife Zenaida

::

33. Manzanares, Francisco Vigil y

P. C. 82, p. 1.

Moises P Martinez, rmgl

Moises P. Martinez, rmgl

P. C. 82, p. 2.

::

34. Martinez, Adam L. wife Elisa B.

P. C. 28, p. 1.

~~Perfecto Lugarda wife Lugarda V. pt~~

~~Frank Babcock wife Adela. present owners~~

Jose Leandro Martinez wife Genoviva pt.

Martinez, Adam L. wife Elisa B.

P. C. 28, p. 2.

35. Martinez, Agapito wife Merced
P. C. 71, p. 1.

Martinez, Agapito wife Merced
P. C. 71, p. 2.

Martinez, Agapito wife Merced
P. C. 71, p. 3.

Martinez, Agapito wife Merced
P. C. 71, p. 4.

36. Martinez, Aron, wife Josefa R.

P. C. 64, p. 1.

Martinez, Aaron wife Josefa R.

P. C. 64, p. 2.

37. Martinez, Cruz

P. C. 91, p. 1.

38. Martinez, Guadalupe (minor) Rosa Louisa.

P. C. 65, p 1.

P. C. 65, p.2.

Benito M. Virgil Rosa Rufina

39. Martinez, Israel, husband of Lugarda

P. C. 25, p. 1.

Lugarda N. Martinez, widow
Juan Naranjo, Indian

Lugarda N. Martinez, widow.
P. C. 25, p. 2.

Romualdo Rodriguez, own part
wife Lugarda.

Lugarda N. Martinez, widow.
P. C. 25, p. 3.

40. Martinez, Jose Leandro,

P. C. 12, p. 1.

P. C. 12, p. 2.

Teofilo Lopez & Raquel (wife) ppt.

Martinez Jose Leandro & wife Genoveva

P. C. 12, p. 3. owner, Juan A. Quintana & wife Elvira pt

Martinez Jose Leandro & wife Genoveva

Martinez Jose Leandro & wife Genoveva

P. C. 12, p. 4.

::

$L. Martinez, Manuel D. ~~major~~ single

P. C. 83, p. 1.

Martinez Manuel D. single

P. C. 83, p. 2.

::

42. Manuel M. Martinez, Aron Martinez wife Josefa R. owners
P. C. 62, p. 1 .

Victor Romero, wife Refugia R,
P. C. 62, p. 2.:

43. McBride, S. S.

P. C. 41, p. 1. dr Jones

44. Montoya, Lorenzo, widower pt

P. C. 51, p. 1.

Aren. Martinez wife Josefa R. pt

School -

Lorenzo Montoya, widower - pt

P. C. 51, p. 2.

Jose Martinez wife alfonsa. - pt.

Lorenzo Montoya, widower

P. C. 51, p. 3.

45. Naranjo, Alejandrino + wife Delfina
P. C. 78, p 1.

46, Naranjo, Benedicto, husband of Josefita
P. C. 74, p. 1.
Josefita B. Naranjo, widow

P. C. 74, p. 2.
Josefita B. Naranjo, widow

Severo Gonzales,
P. C. 74, p. 3.

47. Naranjo, Clara Indian

P. C. 59, p 1.

Nannie Naranjo, Trustee

48. Mohl, Louis F. Mrs. (pt) address c/o Grand Hotel, Gallup.

P. C. 58, p. 1.

B. F. Morris Jr. wife Jessie (pt.)

P. C. 58, p. 2.

49. Redman, Mrs. Eva Curry,

P. C. 19, p. 1.

Mrs. Mary A. Evans et vir W. L.

50. Rodriguez, Francisco Vigil y

P. C. 9, p. 2.

Josefita Vigil, smgl
Adelaida Vigil, smgl } present owners
Maria Vigil, smgl

51. Rodriguez, Filogonio vouf Emilia M.

P. C. 72, p. 1.

Rodriguez Filogonio vouf. Emilia M.

P. C. 72, p. 2.

P. C. 72, p. 3. soet Agapito Martinez

52. Rodriguez, Manuelita A. ft owner Donaciano Rodriguez wife Candelaria

P. C. 4, p 2.

Toribio Rodriguez own part wife Elena
Jose Leandro Martinez wife Genoveva

53. Rodriguez, Romualdo A.

P. C. 73, p. 1.

Lugarda N. Martinez, widow part
Rumaldo Rodriguez wife Juana part

53. Roybal Benigno. & wife Refugio

P. C. 22, p. 1.

(correct spelling) says for.

Roybal, Benigno & wife Refugio

P. C. 22, p. 2.

Roybal Benigno & wife Refugio

P. C. 22, p. 3.

Narciso Martinez wife Carmelita
P. C. 22, p. 4.

Benigno Roybal wife Refugio
P. C. 22, p. 5.

Roybal, Benigno wife Refugio
P. C. 22, p. 6.

Roybal Benigno wife Refugio
P. C. 22, p. 7

Roybal Benigno vrivs. Refugio

P. C. 22, p. 8

::

54. Salazar, Diego.

P. C. 47, p. 1.

::

55. Salazar, Onorata V.

P. C. 84, p. 1. abstract 80

::

56. Sanchez, Bartolome, widower pt
P. C. 85, p. 1.

Alejandrino Salazar wife Rosa D pt

Sanchez, Bartolome
P. C. 85, p. 2. widower

Sanchez, Bartolome, widower - pt
P. C. 85, p. 3.

Ubaldo Sanchez wife Socorro - pt

57. Schnepple, William C.

P. C. 36, p. 1.

Española Abstr Bank - owner.

58. School District (Public) No. 45.

P. C. 50, p 1.

Miguel Sandoval, widower, owner.

P. C. 50, p. 2. wife file at S. Fe.

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59. School Grounds, Santa Clara Pueblo.

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60. Serna, Fidel,

P. C. 38, p. 1.

7 R. Frankenberger
Juan Naranjo

::

61. Stafford, Geo. J.

P. C. 56, p. 1.

B. 7 Morris Jr. wife Jessie

::

62. ~~Stafford~~, Mary E.

P. C. 55, p. 1.

(Deeds in possession of Bank in S. Fe.)

Dr. J. Espinoza + wife?

63. True, ~~Clara~~ D.

P. C. 130, p. 6.

Jose P. Vigil wife Cecilia

Deeds covering this tract filed with claims in San Ildefonso

64. Vigil, Abel wife Dulcinea
P. C. 29, p. 1.

65. Vigil, Amarante, wife Rita M.
P. C. 87, p. 2.

66. Vigil, Antonio single

P. C. 16, p. 1.

Vigil, Antonio single

P. C. 16, p. 2.

67. Vigil, Apolonio,

P. C. 61, p. 1.

Expirdcion Vigil vvif Margarita A- vvoners

68. Vigil, Cleofas V.

P. C. 30, p. 1.

Ramon Vigil ~~vuifa~~ Juanita

Ramon Vigil ~~vuifa~~ Juanita

P. C. 30, p. 2.

69. Vigil, Epimenio

P. C. 13, p. 1.

~~Anita Rodriguez de~~ ~~Efren~~ ~~etc~~

Donaciano Vigil ~~vuifa~~ Ioaa

Jesus Maria Rodriguez, ~~vuifa~~ Amada V.

Efren Salazar ~~vuifa~~ Anita

70. Vigil, Felisita, , single
P. C. 17, p. 1.

71. Vigil, Fidel wife Elisa M.
P. C. 75, p. 1.

Vigil, Fidel wife Elisa
P. C. 75, p. 2.

::

72. Vigil, Jose C.

P. C. 86, p. 1.

Damian Gomez vrifs Luz V.

::

73. Vigil, Jose Mauricio

P. C. 66, p. 1

Bonifacio Vigil, single owns part

Agapito Martinez vrifs Merced part

::::::::::::::::::::

P. C. 66, p. 2

Bonifacio Vigil, single, owns all of this claim

::

74. Vigil, Jose T.

P. C. 138, p. 1.

Papers covering whole tract filed with San Ildefonso claim.

Vigil Jose J. wife Cecilia
P. C. 138, p. 2.

Elfido Martinez wife Beatrice
P. C. 138, p. 3.

Elfido Martinez wife Beatrice
P. C. 138, p. 4.

Vigil Jose J. wife Cecilia
P. C. 138, p. 5.

Vigil Jose T. wife Cecilia
P. C. 138, p. 6.

::

75. Vigil, Juan B., dead

P. C. 15, p. 1.

Abram Vigil y Valdez, wife Ramona S., et al.

::

76. Vigil, Liberato

P. C. 32, p. 1.

Maximiano Vigil wife Gorgonia owners

Liberato Vigil, single - owner

P. C. 32, p. 2.

::

77. Vigil, Manuel RR ratedaeuer

P. C. 63, p. 1.

Maximiliano Vigil & wife Gorgonia

P. C. 63, p. 2.

Eliza Montoya (single)
Maximiliano Vigil & wife Gorgonia

Vigil Manuel R; ratedaeuer

P. C. 63, p. 3.

Jose Vigil, single.

Francisco Vigil, decd:

Francisco Vigil, minor - pt

P. C. 63, p. 4.

Josefa Vigil, minor pt
Ramon Vigil, minor pt
Manuel Vigil, minor pt

Porfirio Vigil, wife Ramona G.
Desiderio Vigil, wife Faustina
Jose Vigil, single.

78. Vigil, Maria Roybal de, widow pt

P. C. 31, p. 1.

Española Bank own small part of this claim pt
Bond & Kohl Co. - pt
Episcopal Church - pt
Adam L. Martinez wife Elisa B. - pt
Ramon P. Vigil wife Regina L. pt
Augustin F. Dominguez wife Magdalena - pt

79. Vigil, M. J.

P. C. 24, p. 1.

Maria Roybal de Vigil, widow

Alfredo R. Vigil wife Jacoba

P. C. 24, p. 2.

Alfredo R. Vigil wife Jacoba

P. C. 24, p. 3.

(M.J.Vigil, P.C. 24, cont'd)

P. C. 24, p. 6.

Maria Roybal de Vigil, widow owner

P. C. 24, p. 7.

Maria Roybal de Vigil, widow, owner

P. C. 24, p. 8 no deeds

80. Vigil, Octotriana ~~to~~ present owner, Juan A. Quintana
P. C. 18, p. 1.
Name of wife Elvira

81. Vigil, Ramon wife Juanita
P. C. 33, p. 1.

Vigil, Ramon wife Juanita
P. C. 33, p. 2

82.C. Vigil, Ramon Placido

P. C. 11, p. 1.

Zacarias Rodriguez wife Rosarita V.- pt

P. C. 11. p. 2.

Ramon Vigil wife Reguita L. — part.

Manuel D. Rodriguez wife Lugarda D.- pt

Zacarias Rodriguez wife Rosarita V

P. C. 11, p. 3.

83. Vigil, Salomon wife Ramoncita

P. C. 23, p. 1.

Vigil, Salamon wife Ramonaita

P. C. 23, p. 2.

Vigil Salamon wife Ramoncita 1/2

P. C. 23, p. 4.

Ramon, Vigil wife Juanita 1/2

Vigil, Salamon wife Ramoncita

P. C. 23, p. 4.

84. Vigil A. Cornelio, ~~dcsd - husband of Carmelita~~

P. C. 70, p. 1.

~~Carmelita Martinez, widow~~

Elfido Vigil wife Marina, claimant

P. C. 70, p. 2.

Agapito Martinez wife Merced — pt

Carmelita Martinez, widow - pt

P. C. 70, p. 3.

Benito M. Vigil wife Rufina - pt.

Carmelita Martinez, widow - pt

Elfido Vigil wife Marina - pt

P. C. 70, p. 4.

Carmelita Martinez, widow

85. White, Mrs. W. C. Bond Mohl Co. owners.
P. C. 48, p. 1.

86 Vigil, Jose Pablo wife Amelia G.
Pc 10 - P1

87 Miguel Sandoval, widower.
Pc 3 - P1 - part
Donaciano Rodriguez, perhaps.

88 Miguel Sandoval, widower
Pc 3 - P3

89 Zacarias Rodriguez wife Rosarita V.
Pc 1 - P1

90 Zacarias Rodriguez wife Rosarita V.
Pc 3 - P1

91 Jesus Jacobo Vigil wife Raquel.
Pc 8 - P1

Knoxville, Tenn., February 3, 1925

Dear Cousin Charles:-

It seems ages since I've heard from you all, and I realize I may be partly to blame. I hold a position with the Southern Railroad and my work is very pleasant.

Uncle Charlie Badgett seems to be holding his own, and Aunt Rebecca Jones is very well. I'm sorry though to say that Aunt Sue is sick, she has been complaining of feeling bad for several weeks, and since the last two weeks she has been confined to her bed. The doctor says she has a very weak heart, and besides her system is full of poison, causing her to feel achy and bad. Her ankles are swollen some too and although she is some better she is very weak. Dr. Long says since taking her several medicines for the last two weeks, that he has gotten her in a place where she can improve, but says she must be very quiet and remain in bed a few weeks longer. She is not so sick but what she can talk!! and unfortunately when a very close friends come in to see her, she talks so much that it is detrimental to her condition.

As you know Marguerite has been staying with Dr Jones, in town for several years, but since Aunt Sue has been sick, she has had to be out home. We have been trying to find someone to come and help with the work, but they have not shown up yet.

Dad is looking so well these days. He has changed his connections from Bean-Warters & Co., to W. L. Warters Printing Company, and likes his new place fine.

We have had a very mild winter in Knoxville, but expect we will have several cold snaps before the winter is over.

How is my dear Cousin Lou and the other cousins. Certainly would love to have a line from some of you sometime. Enclosed is a piece or two, thoughtmaybe Cousin Lou would enjoy.

With much love to you each and all, from Aunt Sue, and myself,

I remain,

Sincerely,

Louise Burdeh

The doctor thinks she will be able to be up and around the house, but says she couldn't expect to feel very well, at her age. He says her weak heart is the cause of her body wearing out sooner than it otherwise would.

650 Brown Ave.,
Knoxville, Tenn.

Mr. Charles Jennings,

Department of Justice,

Washington, D. C.

RE SANTA CLARA PUEBLO

EAST SIDE OF RIO GRANDE

****

MEMBERS

THE SECRETARY OF THE INTERIOR
THE ATTORNEY GENERAL
THE CHAIRMAN (APPOINTED BY THE PRESIDENT)

PUEBLO LANDS BOARD

SANTA FE, NEW MEXICO

ACTING BOARD

LOUIS H. WARNER, CHAIRMAN
H. J. HAGERMAN
REPRESENTING THE SECRETARY OF THE INTERIOR
CHARLES H. JENNINGS
REPRESENTING THE ATTORNEY GENERAL

January 18, 1930

Hon. Charles H. Jennings,
Room 207, Department of Justice,
Washington, D. C.

Dear Mr. Jennings:

At the request of Governor Hagerman, I have prepared the enclosed memoranda, in reference to certain conditions pertaining to the east side of the Rio Grande within the Santa Clara Pueblo area, and am submitting same for your consideration.

Yours very truly,

Louis H. Warner

Chairman,
Pueblo Lands Board.

LHW-S

Private Claim File No. 118.

THE ARROYO SECO TRACT

Hon. Henry W. Atkinson
United States Surveyor General for New Mexico.

Your petitioners, the heirs and legal representatives of Jose Trujillo, deceased, respectfully represent:

That they are the owners and occupants of a certain tract or parcel of landknown as the Arroyo Seco Grant, in the county of Rio Arriba, in this Territory, bounded and described in the original title papers, as follows, on the north a cross on the road to the town of Santa Cruz, on the south by the Cuesta Alta, the high assent from which Pojoaque is seen, on the east by the ceja or hill from which are seen the Nambe Pueblo prairies, and on the west by the land of the same Jose Trujillo, all of which are points well known to the people in the vicinity and which may be identified without difficulty, and the land named as the western boundary being the same land described in the Grant made to the said Jose Trujillo, April 23rd, 1700, on file in your office, andto which Grant reference is hereby made for the purpose of establishing said western boundary.

That the grant for said land was made to the said Jose Trujillo on the 23rd day of May, A.D. 1707, by the Governor and Captain-General of New Mexico, then a dependency of the Spanish Monarchy in the Vice-Royalty of Mexico, that the land so granted was by authority and under direction of said Governor and Captain-General regularly delivered into the possession and enjoyment of said grantee, Trujillo, by the Chief Alcalde and War Captain of the jurisdiction on the 10th day of June, A.D. 1707, and that the title of said grantee to said land was at the same time inspected, ratified and confirmed by the Visitor General of the Province of New Mexico.

That your petitioners herewith file the original grant and act of possession made and executed as aforesaid, and the original certificate of inspection and confirmation of said grant, together with a sworn translation of the same from the Spanish into the English language.

That your petitioners, estimate the size and extent of said tract of land as being from east to west, about two leagues and from north to south about one league and a half, as shown by the plat of the same herewith filed, which your petitioners present as being approximately correct.

That your petitioners for further and fuller evidence of their title to said land refer to document marked "B", among the papers on file in your office with grant made to said Jose Trujillo, in the year 1700, and hereinbefore referred to, the said document "B", being proceedings had under the last will and testament of said Jose Trujillo, in the matter of the distribution of his estate among his heirs, in which proceedings the land here claimed by your petitioners is referred to and disposed of.

That the said grantee, Jose Trujillo, and his heirs and legal representatives, since the date of said grant have been in the undisturbed possession and enjoyment of said granted premises and are now in the quiet and peacable possession of the same.

Your petitioners pray that your honor, investigate their title to the land, and that the same be approved and confirmed to them, under the treaty of Guadalupe Hidalgo of 1848, between the republic of the United States and Mexico and under the law of the Congress of the United States establishing your office, and providing for the investigation and confirmation of Spanish and Mexican grants to land in New Mexico.

SILVESTRE GOMEZ
for himself and the
other claimants

By Sam'l Ellison
Their Att'y.

File 118
Claimant's Petition. Filed Sept. 28/77
Approved Dec. 13, 1878
H. M. ATKINSON
Surveyor General.

This document is duly recorded on pp. 73, 74 & 75, in Vol. 6 of Land Claim Records in the office of Surveyor General.

authorities to make partition of said land to the heirs of her said deceased husband according to his last will and testament therein mentioned and the act of distribution executed by the Chief Alcalde and War Captain of the jurisdiction, which document bears date and was made and executed in the year 1735 and which is herewith presented as further evidence of the title of your petitioners in and to the land aforesaid.

That the grantee, Jose Trujillo, and his heirs and legal representatives have been since the date of said grant to him and now are in the quiet and undisputed ownership and occupation of said land.

Your petitioners pray that your honor set a day for the investigation of their title to said premises and that you approve their title to the same, as heirs and legal representatives of said grantee Jose Trujillo under the treaty of Guadalupe Hidalgo with the republic of Mexico and the law of Congress of the United States establishing your office and providing for the investigation of land claims emanating from former governments in Mexico.

SILVESTER GOMEZ
for himself and
other claimants

By
Sam'l Ellison
Their attorney.

File 117
Claimant's petition to Surveyor General
Recorded on pp. 52 & 53, Vol. 6,
Land Claim Records, in the office
of the Surveyor General.

Approved Dec. 13, 1878
H. M. Atkinson
Surveyor General.

Private Land Claim File No. 117.

THE MESILLA TRACT

Hon.Henry W. Atkinson,
United States Surveyor General for New Mexico.

Your petitioners, the heirs and legal representatives of Jose Trujillo, deceased, respectfully represent that they are the owners of a certain tract of land, lying and being situate in the county of Rio Arriba, in the Territory of New Mexico, known as the Mesilla Grant, bounded and described as follows, according to the original grant for said land, to-wit: on the south, the small mesa or table land known as the Mesilla de San Ildefonso; on the north, by the road leading from the Pueblo of Pojoaque to the Pueblo of Santa Clara; on the east, the hills, and on the west, the Rio del Norte, the said tract being about 5750 varas from north to south and about 6250 varas from east to west.

That the said land was granted by the Governor and Captain General of New Mexico to said Jose Trujillo, on the 23rd day of April 1700, and the same was given to him in possession by the Chief Alcalde of the jurisdiction on the 22nd day of May of the same year by the authority and under the instructions of said Governor and Captain General, and the title to said land, was afterwards, to-wit, on the 15th day of July, 1709, formally inspected and confirmed to said grantee, Trujillo, by the Visitor General of the Province of New Mexico.

That your petitioners filed with this their petition the original grant marked "A" to said Jose Trujillo for the said tract of land in the Spanish language, together with a sworn translation of the same into English, marked "C", and also a plat of the land claimed thereunder.

That your petitioners filed herewith an original document marked "B" and translation, marked "D", the same being a petition of Antonia Lopez de Trujillo, widow and executrix of said Jose Trujillo, praying the

(Endorsed)

File 117 JOSE TRUJILLO FILE 118

MESILLA and ARROYO SECO TRACTS

OPINION
of the
UNITED STATES SURVEYOR GENERAL

December 13, 1878.

This document is duly recorded on pages 89-90-91 & 92 in Vol. 6 of Land Claim Records in the office of Surveyor General.

Reported No. 112.

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grant to have been made to Trujillo, and after making the distribution of the cultivated lands, the Alcalde refers to the tract granted Trujillo for pasture of livestock as held by the heirs in common. This recognition of the right of the heirs of Trujillo to the lands granted respectively 35 and 28 years previous, tends strongly to support the conclusion that the two grants to Jose Trujillo were valid and that the conditions of settlement and occupancy required by the Spanish law in force at that time, had been fully complied with in each case.

The signatures of the various officials, to the grants, acts of possession, and other documents, in these two cases, on comparison, with the signatures of the same officers upon other documents on file in this office, are found to agree therewith, and are believed to be genuine.

The testimony of Mr. Miller, the chief clerk and translator of the office is positive upon that point.

The evidence of Jose de Aguero and Lucas Archuleta shows occupancy of the tracts by the heirs of the grantee, since the witnesses could remember, and that some of the heirs still reside thereon.

The two grants made in 1700 and 1707 to Jose Trujillo, are approved to the heirs and legal representatives of the grantee and their assigns, with the boundaries designated in the respective acts of possession. The boundaries set forth in the petitions and grants are incomplete and ambiguous and as the acts of possession were both approved by the Inspector General and Visiting Justice who was acting under the authority of the Governor, the boundaries therein set forth are accepted and approved as the governing ones on account of the incompleteness of the boundary calls in the grants proper. Triplicate copies of all the papers in both cases, duly authenticated, will be transmitted for the action of Congress on the premises.

HENRY M. ATKINSON
Surveyor General.

Surveyor General's Office
Santa Fe, New Mexico
December 13, 1878.

No. 112. OPINION.

GRANTS, file Nos. 117 & 118

MESILLA, and ARROYO SECO tracts, respectively.

These claimants came before me for action under the treaty of Guadalupe Hidalgo and the 8th Section of the Act of Congress approved July 22nd, 1854, establishing this office.

The grant of the Mesilla tract was made April 23rd, 1700, by the Governor and Captain General of the Province of New Mexico, to Jose Trujillo, upon his petition therefore, for the purpose of agriculture. On the 22nd day of May, 1700, Field Marshal Roque Madrid, Chief Alcalde and War Captain of the Village of Santa Cruz, in compliance with the order of the Governor placed Trujillo in possession of the tract, granted, and July 15, 1709, Juan de Urabarri, Visiting Justice, inspected and approved the grant and act of possession to Trujillo. In 1707, Jose Trujillo petitioned the Governor and Captain General for a grant to a tract of land adjoining his other land, setting forth that he desired it for the purpose of pasturing his livestock thereon, and on the 23d day of May, 1707, the Governor granted the land as petitioned for, and in pursuance of the Governor's order, Roque Madrid, Chief Alcalde and War Captain of the Village of Santa Maria de Grado, placed the grantee in possession, June 16th following the date of the grant. On the same day in which possession was given, General Inspector and Visiting Justice Juan de Urabarri approved the grant and act of possession. Both of these tracts so granted are situate in Rio Arriba County, Territory of New Mexico, and are contiguous to each other.

In 1735 Antonia Lopez, widow of Jose Trujillo, the grantee, and executrix of his last will and testament, petitioned the Chief Alcalde and War Captain of Santa Cruz to partition off the lands of her husband's estate, among the heirs as required by the will of Trujillo, executed December 5, 1732, andin pursuance thereof the Alcalde complied with the prayer of the petition and made the distribution, and in his official report of his action in making the partition, he recites, that he knows the

Territory properly included within and rightly belonging to the Republic of Texas may be erected into a new State to be called the State of Texas, ***** on an equal footing with the existing states, as soon as the terms and conditions of such admission and possession of remaining Texan territory to the United States shall be agreed upon by the governments of Texas and the United States.

Vol. 9, U.S. Statutes at Large, p. 108, joint resolution for the admission of the State of Texas into the Union, provides: That the state of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states in all respects whatever.

This resolution was approved December 29, 1845.

United States Statutes at Large, Vol. 9, p. 929, Article 8, of the Treaty of Guadalupe Hidalgo provides:

Mexicans now established in territories previously belonging to Mexico and which remain for the future within the limits of the United States as defined by the present treaty, shall be free to continue where they now reside***** those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens or acquire those of the United States, but they shall be under obligation to make their election within one year from the date of the exchange of ratifications of this treaty. *****
In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

This treaty was dated Feb. 2, 1848.

In Vol. 10, U.S. Statutes at Large, p. 1031, the treaty is amended and an article 5 there appears.

"All the provisions of the 8th***** article of the treaty of Guadalupe Hidalgo shall apply to the territory ceded by the Mexican Republic in the first articles of the present treaty and to all the rights of persons and property**** within the same, as fully and as effectually as if the said articles were herein again recited and set forth."

Article 6. No grants**** will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

This amended treaty was dated December 30, 1853.

Vol. 5, U.S. Statutes at Large, p. 312, chapter 2. Act of Jan. 11, 1839, is an act entitled: "An Act to Provide to Carry into Effect the Convention between the United States of America and the Republic of Texas, for marking the boundary between them. In the same volume a joint resulution of March 1, 1845, at page 797, provides, for annexing Texas to the United States. "That Congress doth consent that the

if this Act had not been passed; but the proceedings, decrees and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such land.

Sixth: No confirmation of or decree concerning any claim under this Act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as is in this act provided.

Sec. 16. That in township surveys hereafter to be made in the Territory of New Mexico**** if it shall be made to appear to the satisfaction of the deputy surveyor making such survey that any person has, through himself or his ancestors, grantors, or other lawful successors in title or possession, been in the continuous adverse actual bona fide possession, residing thereon as his home, of any tract of land, or in connection therewith of other lands, altogether not exceeding 160 acres in such township, for twenty years next preceding the time of making such survey, the deputy surveyor shall recognize and establish the lines of such possession and make the subdivision of the adjoining lands in accordance therewith.

in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect to any such lands, shall be in any manner affected thereby.

In Section 10. "When any survey is finally approved by the court, it shall be returned to the Commissioner of the General Land Office, who shall, as soon as may be, cause a patent to be issued thereon to the confirmee."

Sec. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States was bound, upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

Second: No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

Fourth: No claim shall be allowed to any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.

Fifth: No proceeding, decree or act under this Act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as

The Court of Private Land Claims was established by Act of March 3, 1891. This is Chapter 539, Vol. 26, U. S. Statutes at Large, p. 854, and is entitled: "An Act to Establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories." Extracts from various sections of the Act, in brief, are as follows:

Sec. 7. The validity of the title and the boundaries of the grant or claim presented for adjudication (shall be settled) according to the law of Nations. The stipulations of the treaty concluded by the United States and the Republic of Mexico at the city of Guadalupe Hidalgo on the 2nd day of February, in the year of Our Lord 1848, or the treaty concluded between the same powers at the City of Mexico, on the 30th day of December, in the year of Our Lord 1853, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and xx the United States, which decree shall in all cases refer to the treaty, law or ordinance under which such claims is confirmed or rejected.

Sec. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this Act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein (shall have the right but shall not be bound) to apply to said court.

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interest, rights or claims held or claimed adversely to the holder of any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles

his
(Signed) PASCUAL, x Governor.
mark

his
JOSE MARIA, x Lieut. Govenor.
mark

his
JOSE PABLO, x Chief.
mark

Sworn and subscribed to before me, this 16th day of June, 1856.

WM. PELHAM,
Surveyor General of New Mexico.

Surveyor General's Office
Santa Fe, N.M., Sept. 30, 1856.

The foregoing is a true copy of the original testimony on file in this office.

WM. PELHAM,
Surveyor General of New Mexico.

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The Act of December 22, 1858, 35th Congress, Second Session, Chapter 5, entitled: "An Act to Confirm the Lands Claimed at certain pueblos and towns in the Territory of New Mexico," item K, Pueblo of Santa Clara, in the County of Rio Arriba, provides at the end:

"This confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist."

P. 374, Vol. 11, U.S. Statutes at Large.

Messages and Documents, 1856 to 1857. Part I, pp. 514-5.

The entire report of the Surveyor General, William Pelham, made upon the Pueblo of Santa Clara, which was a basis for the confirmation of the Grant and the subsequent patent, was as follows:

SANTA CLARA.

"Pascual, governor, Jose Maria, lieutenant-Governor, Jose Pablo, chief of the pueblo of Santa Clara, were duly sworn by the surveyor general, in his office, at Santa Fe, in the presence of General A. G. Mayers, Indian agent; whereupon they answered the interrogatories propounded to them in the following manner, viz:

Question. Did the pueblo of Santa Clara receive a grant from the government of Spain, and was it understood by tradition in the pueblo that such a grant was ever in their possession?

Answer: The old men of the pueblo say that they had a grant from the King; but, as we are young men, we never saw it, the document having been lost before we arrived at years of discretion.

Question: Are the lands of the pueblo considered to extend on league from the church to the four cardinal points of the compass?

Answer: The grants made to all the pueblos called for the same amount of land, and we claim the same amount that the other pueblos contain.

Question: Have you any tradition in your pueblo of the length of time it has been in existence, and was the oldest man among you born in the pueblo?

Answer: We do not know how long the pueblo has been in existence. The oldest man was born in the pueblo. We do not know the number of generations that have passed since the pueblo was occupied.

Question: Do you raise corn, wheat, fruit, and stock in the pueblo, and do you subsist entirely by agricultural pursuits?

Answer: We do raise corn and wheat and a little fruit, and a few head of stock. Our support is derived entirely from the products of the soil. When our crops are not good we suffer for the necessities of life.

249 U.S. 110
Lane vs. Santa Rosa

Under the laws of Spain and Mexico it had, when that region was acquired by the United States, and under the provisions of the treaty it now has, a complete and perfect title to the lands in question. We have assumed in what has been said that the plaintiff's claim was valid in its entirety under Spanish and Mexican laws.

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271 U.S. 432
U.S. vs. Candelaria.

This case involved the Pueblo of Laguna. There was a suit brought by the Special Attorney for the Pueblos in a Territorial court. It was heard in full and decided against the Pueblo on its merits.

Another suit was brought in 1916 in the Federal Court, and it was decreed that it should be dismissed on the ground of res adjudicata. In this case the United States claimed they were not a party nor bound by the action of the Pueblo Attorney. Such Pueblo Attorney had been authorized in 1898, in 30 Stat.at Large, 594, p. 545, and it was here held that if the decree was rendered and a suit begun and prosecuted by the Special Attorney so employed and paid, that the United States is as effectually concluded as if it were a party to the suit.

(Cases cited).

production of the original title papers solely from the custody and possession of the grantee were circumstances so suspicious as to create a presumption against the genuineness of the grant, calling for the production by the grantee of more than slight evidence to overthrow the presumption.

(Note: Here are a great many cases cited, reviewing the history of grant litigation.)

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44 L.Ed. 690
U.S. vs. Eldodt

Under the Act of 1891 creating the Court of Private Land~~x~~ Claims, it is essential that the claimants establish by a preponderance of the evidence the validity of their asserted title.

(Note: Many cases cited here)

They pertain particularly to the necessity of record evidence before proceedings may ripen into a grant.

(Here also appears a clause as to the ~~xxx~~ solemnity of juridical possession, where it is connected with the investiture of a private person with a complete and perfect title, and there are many cases cited.)

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231 U.S. 88
U. S. vs. Sandoval

The lands are public lands of Pueblos, and so the situation is essentially the same as it was with the five civilized tribes whose lands, although owned in fee under patent from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over these tribes and their affairs.

(Several cases cited).

United States to any of said lands and shall not affect any adverse valid rights should such exist.

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44 L. Ed. 76
Dolores del Oro vs. U.S.

The Court of Private Land Claims had no jurisdiction over a claim for lands which was within the limits of a grant confirmed by Congress.

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44 L.Ed. 78
Ainsa vs. New Mexico & Ariz. R.R.

With change of sovereignty, private rights are entitled to protection whether they are complete and absolute titles or merely equitable interests, needing some further act of the Government to perfect the title. Congress may discharge that duty under the treaty or delegate it to strictly judicial tribunal.
(Cases cited.)
(Note: Here is a good resume of the history of cession and the nature of grants.)

No rights of private parties as between themselves can be determined by proceedings before the court of Private Land Claims under the Act of 1891. An owner of a complete and perfect ~~xxxx~~ grant before the cession need not present it to the Court of Private Land Claims, nor shall such claim be invalid if he does not do so.

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44 L.Ed. 531
U. S. vs. Ortiz

The functions of the Surveyor General are purely advisory. It was often decided that the burden of proof to sustain a Spanish Grant rests upon the claimant and that the failure to show that the official archives contained evidence that the grant had been made and the fact of the

A remedial statute ought not to be so construed as to defeat xxx in part the very purpose of its enactment. In U.S. vs. Stone, 17 L.Ed. 525, it was held that a patent is but evidence of a grant. The court recognized the right of an individual in possession of land and who was entitled to a preemption right thereunder, to convey that right to another.

13 Law 877.

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43 Law Ed. 142
Ely vs. U.S.

In the investigation of a Mexican land title, the Court of Private Land Claims is not limited to the dry technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the Government of Mexico. The mere fact that it is narrower than the limits of the out boundaries does not prevent the Court of Private Land Claims from determining what did equitably pass under the grant. Rights and titles that were good before the cession should be enforcible after. We are not to presume that because certain persons made a grant, therefore it was the act of the Mexican Government and to be sustained. The cession did not increase rights. That which was beyond challenge before remained so after; that which was subject to challenge before, did not become a vested right after.

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44 L. Ed. 72
U.S. vs. Conway.

The Court of Private Land Claims could not confirm a patent on a patent already granted. The United States had divested itself of the title it had and it is not incumbent upon the Court of Private Land Claims to determine the priority as between parties. This confirmation shall only be construed as a relinquishment of all title and claim of the

under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty and might have been located under a former government, and is correctly located nowso as to embrace the premises as they are surveyed and described. As against the Government, so long as it is unvacated it is conclusive, and it is equally conclusive against parties claiming under the Government by subsequent title.

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4 2 L.Ed. 436
Zia Pueblo vs. U.S.

Here a license could not be construed into a grant in fee as against a subsequent grant, accompanied by the placing of the grantee in legal possession. It seems quite unreasonable to suppose that if this area in controversy had been granted as an estate in fee to land, the same granting authority would have deliberately granted a portion of the same land to a third party only twelve years after the former grant.

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42 Law Ed. 438
Crespin vs. U.S.

The fact that similar grants have been confirmed by Congress or received the approval of the Mexican authorites is not decisive in recognizing the validity of the Mexican grant. It would seem under the decree of the King of Spain of July 16, 1819, nothing less than the possession of 40 years could be deemed or respected as creating a title by adverse possession.

2 White's Recapalacion, 562.

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42 L.Ed. 776
Beloy vs. Naphtaly

right of property, perfect or imperfect, held by the inhabitants previous to the acquisition of the country should be secured to them. Pueblos in that respect stood in the same position as private individuals.

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40 L. E. 215.

In the case of the Cubero Grant, the Court held that the loss of the original grant from Mexico might be justified by secondary evidence, in view of the fact that it was known that this grant had been given and had been occupied for nearly sixty years, the claimants in the meantime being in undisturbed possession and enjoyment of the tract. This in spite of the opposition of the Government counsel that the Court of Private Land Claims had no power to presume the grant upon proof of long continued exclusive possession.

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41 L. Ed. 175
Burfening vs. C. etc., R.R.

The Land Department cannot override the express will of Congress (8th Sec. of Guadalupe Hidalgo treaty) and convey away public lands in disregard or defiance thereof.

(Cases cited)

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42 L. Ed. 430
Chavez vs. U.S.

Deals with settlements and the right to sell after four years.

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42 L. Ed. 346
DeGuyer vs. Banning.

The record of the patent declares that it is valid

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35 Law Edition, 282.
In re MAXWELL GRANT

By the treaty of Guadalupe Hidalgo Congress had the authority and it engaged itself by that treaty to confirm valid Mexican grants.

35 L. E. 975

The United States are bound to protect all rights of property emanating from the Mexican Government previous to the treaty of Guadalupe Hidalgo.

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35 L. Ed. 974
Knight vs. United Land Association.

The United States are bound to protect all rights of property in California emanating from the Mexican Government previous to the treaty of Guadalupe Hidalgo. The patent of the Pueblo lands of San Francisco, derived from Mexico, is conclusive evidence of the title of the city under Mexican laws as against the Government and all parties except those who have title from Mexico anterior in date to that confirmed by decree of confirmation of the Circuit Court. It is settled law of this court that a patent is void at law if the grantor state had no title to the premises embraced in it. The inhabitants were entitled by the law of Nations to protection from the new Government in all rights of property then possessed by them, and by the term "property" as applied to land, all titles are included, legal and equitable, perfect or imperfect. It comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed.

Sulard vs. U. S.
9 Law Ed. 361.

By the treaty of Guadalupe Hidalgo, the United States also stipulated for such protection, and that implies the

30 Law Ed. 801
Gonzales vs. Ross

By the rules of law, possession will be presumed to accompany ownership until the contrary is proved, and constructive possession consequent upon legal ownership is sufficient as against mere trespassers; that is, against those who do not show some right of possession.

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30 L. Ed. 955
In re MAXWELL GRANT.

The Surveyor General had before him not only the original grant, but he had the record of the juridical possession delivered to the original grantee according to the law of Mexico upon that subject.

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32 L. Ed. 51
More vs. Steinbach.

The patent issued after the claim was surveyed and located is conclusive both as to the validity of the title and the extent or boundaries of the claim as against all parties not claiming by superior title such as would enable them to contest the action of the Government respecting the property. In order that a perfect title to land might vest under a grant from the Mexican Government, a delivery of possession to its officers was necessary. The proceeding was termed a juridical delivery of possession. Political jurisdiction and sovereignty over the territory and public property alone passed to the United States.

Beard vs. Federy
18 Law Edition 92.

Until a formal transfer of the property to the grantee by the officers of the Government by juridical delivery of possession, the grant was imperfect. See U.S. vs. Fossatt 16 L.E. 186-7; U.S. vs. Workman, 17 Law Ed. 705.

to the boundaries and the extent of the grant. A Pueblo once formed and officially recognized becomes entitled under the law of Mexico to the use of certain lands, and the lands were assigned to it by the Government. No other evidence of title than such assignment was required, nor was any other given. It bound the former government and is equally binding on the officers of our government.

Graham vs. U.S., 18 L. Ed. 334 is here cited.

In that case the survey made by the Surveyor General of the grant confirmed did not conform to the measurements of the land as shown by the record of juridical possession, and the District Court for that reason set the survey aside and ordered a new survey, which would conform with the measurements, holding that the action of the former government upon the delivery of possession furnished insuperable objections to any other course. In other words, the case decided that the juridical possession was conclusive as to the boundaries and extent of the land granted.

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18 Law Ed. 185
Roland vs. U. S.

Here the laws and usages of the Mexican Government in granting land before the conquest of California are to govern according to the principles of equity. The archives papers here fail to make out the title.

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25 L. Ed. 215
Airhart vs. Massieu.

The Spanish law as modified by the local laws of Mexico and of the State of Coahuila and Texas was the general law of Texas. The division of an empire works no forfeiture of a right of property previously acquired.

U. S. vs. Perchman
7 Peters 87.

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property it may have held in any lands under the former government. It provides for the protection of the rights of the inhabitants and of the town of the ceded country to their property. The subsequent legislation of Congress has treated the claim of such town to the same protection as the claim of individuals. By the laws of Mexico in force at the date of the acquisition of the country, Pueblos or towns were entitled to the use of lands constituting their sites and of adjoining lands within certain prescribed limits. This right appears to have been common to the cities and towns of Spain from an early period in her history, and was recognized in the laws and ordinances for the settlement and government of her colonies on this continent. These laws and ordinances provided for the assignment to the Pueblos or towns, where once established, and officially recognized, for their use and the use of their inhabitants, of four square leagues of land.

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18 L. E. 557

The treaty of Guadalupe Hidalgo does not purport to divest any rights of property or to alter the character of of the interests it may have held in any lands under the former government. It provides for the protection of the rights of the inhabitants of the ceded territory to their property. The subsequent legislation of Congress does not favor any such supposition.

The confirmation under act of March 3, 1851, only innures to the benefit of the confirmee so far as the legal title is concerned. It establishes the legal title in him, but it does not determine the equitable relation between him and third parties. By the laws of Mexico, in force at the date of acquisition of the country, towns were entitled to the use of lands constituting the site and of adjoining lands within certain prescribed limits.

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18 L. Ed. 695
U. S. vs. Pico.

Where there is any doubt of the intention of the Mexican Government to cede all the lands contained within the boundaries designated by him, the juridical possession is conclusive as

17 L. Ed. 595.
U. S. vs. Aguirre.

The grant mentions no quantity and reserves no surplus, but leaves it to the magistrate giving possession to advise the Government of the amount the tract may contain.

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17 L. Ed. 627.
Romero vs. U. S.

In Mexican land claims, where there is no record evidence either of the existence or the authenticity of the grant, the case is in that class where a confirmation has uniformly been refused for want of record evidence.

(Note: Many cases cited.)

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18 L. Ed. 334.
Graham vs. U. S.

As we have had occasion heretofore to observe in Malarin vs. U. S., 1 Wall 289, the Mexican law, as well as the common law, made the formal delivery of possession or livery of seisin of the property essential after the execution of the grant, for the investiture of the title. This proceeding was usually taken by the Magistrate of the vicinage, with the assisting witnesses, in the presence of the adjoining land proprietors who were summoned for the occasion. As preliminary to the actual delivery of possession, the land had to be measured, and its boundaries established, when there was any uncertainty in the description of the premises. The record of the proceedings must necessarily control the action of the officers of the United States in surveying land claimed under a confirmed Mexican grant.

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18 L. Ed, 469
Higura vs. U. S.

The treaty of Guadalupe Hidalgo does not divest the Pueblo or town existing at the site of San Francisco of any rights of

the faith of witnesses whose testimony this court has hitherto declared could not be received to contradict or supply record evidence; the claim is rejected.

The court refers to the fact that the claim of Castro in the case of U.S. vs. Castro, referred to above, was rejected for the same reason, - that there was not the evidence to prove it genuine.

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17 L. Ed. 360
Castillero vs. U. S.

A claim by virtue of any right or title derived from the Spanish or Mexican governments, shall be governed by the treaty under which the lands were acquired, The law of nations, the law of usage and customs of the Government ceding the same, the principles of equity, and the decisions of this court, as far as applicable. There are three principle questions involved, the first of which is whether the claim is shown by documentary and other evidence to be a valid one. N.G. The other reasons are not pertinent, but a very long and meaty opinion covering the general history is to be found here.

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17 L. Ed. 449.
U.S. vs. Galbraith.

Of the documentary evidence of the title under the Mexican laws, the approval of the Departmental Assembly is next in importance to the grant itself. Where there has been no possession or occupation deserving of notice and the grant was made, according to the date, only 25 days before the United States took possession of the country, the presumption is against authenticity. Here the grant was confirmed by the Board of Commissioners, affirmed by the Federal District court, and reversed by the Supreme Court. It went back again over the same course and was again rejected by the Supreme Court on the ground of unsatisfactory proof of any possession or occupation of the tract.

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17 L. Ed. 76
U.S. vs. Knight.

The burden is upon the claimant to show the grant was issued. He must first show its existence and loss before he can be allowed to give secondary evidence of its contents. Where there is no record evidence that the grant was ever issued, the claim cannot be confirmed. This rule is founded upon Mexican law and has been so repeatedly announced by this court that it seems unnecessary to adduce any arguments in its support.

To maintain a title by secondary evidence, say the Court in U. S. vs. Castro, 24 Howard 350, the claimant must show that the grant was obtained and made in a manner required by law, at some former time, and that it was recorded in the proper public office. Similar views have been expressed by this court on so many occasions that it would be the work of supererogation to do more than to refer to the decided cases.

(Note: Several cases cited.)

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17 L. Ed. 143
U. S. vs. Vallejo.

This claim is founded upon a grant from Governor Alvarado, dated July 13, 1840. The original grant was not produced and is supposed to have been lost during the war between the United States and Mexico, in which the grantee was killed. The expediente is numbered by Jimeno and noted in his index. It exists complete among the archives. The journal of the departmental assembly shows that this grant was approved Oct. 8, 1845. Pina, the grantee, occupied the land for several years. The error in date in the conveyance from Pina to Vallejo cannot raise a suspicion against the regularity of the grant.

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17 L. Ed. 144.
U. S. vs. Neleigh.

In a claim for a Mexican grant where there is no record evidence and it rests entirely upon presumption to be made on

inoperative and imposed no obligation upon the United States to confirm title.

(Note: Many cases cited.)

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16 L. Ed, 659.
U. S. vs. Castro.

As the loss or destruction of public documents may in some instances have occurred, upon proof of this fact, secondary evidence to a certain extent may be received, but in order to maintain a title by secondary evidence, the claimant must show first, that the grant was made in the manner the law required and recorded in the proper public office; second, that the papers in that office, or some of them, have been lost or destroyed; third, that within a reasonable time after the grant was made there was a judicial survey of the land and actual possession by him by acts of ownership exercised over it. The survey and possession are open and public acts and would support the parol evidence of former existence and destruction or loss of the grant, and would show the knowledge of the officers of the Government of the title claimed and their acquiescance in the justice and legality of the claim. But without the survey and possession, the authenticity of the grant would have nothing to support it but parol evidence resting only in the knowledge of individual witnesses.

There is nothing in the history of the Mexican jurisprudence or Mexican grants which would justify this court in supporting a Mexican title made out by such testimony only, or by secondary evidence of any kind, short of that above stated. The authenticity of the grant must first be established before any question can arise upon the conditions annexed by law to such grants, or concerning the certainty or uncertainty of the boundaries specified in it. It will be found, upon referring to the various cases which have been before us from California, that none have been confirmed unless the grant was established according to the rules of evidence above stated.

(Note: Several leading cases cited.)

Reference was made to Fremont vs. U.S., cited previously, that the title papers from the petition down to the grant were found in perfectly regular form in the Mexican archives.

15 L. Ed. 241
Fremont vs. U. S.

The Act of March 3, 1851, California Commission, required documentary evidence upon which the claimant should rely. Under the Spanish law, if one failed to take possession and establish himself, he had no claim to title. Where the grantee never had actual possession under his cession, the court held that he could not set up any claim to the land. We take it to be undoubtedly true that if no actual possession was taken under a gratuitous cession, no equity was imposed on our Government to give any consideration or effect to such cession.

The case of Glenn vs. U. S. 13 How. 259, herein cited, holds similarly, and one of the Judges expressed the opinion that it is impossible to exempt this claim from the settled doctrine that occupation is indispensable to its validity. The grant must have been severed from the general domain by the King, that gave it locality in its terms.

(Note: There is a long line of decisions with this case, reviewing the previous cases of similar nature)

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15 L. Ed. 291.
U. S. vs. Reading.

This case was considered in 1855, and it was held that the law had been established in Louisiana for near 40 years, that where the Spanish authorities have granted the same land twice and the younger grantee had taken possession and performed the conditions of inhabitation and cultivation, he is entitled to hold the land, and this was held in contests between the first and second grantees.

(Note: There are many cases cited here.)

The correctness of these decisions I have never doubted, and which have been substantially followed by this court where it held, as it has often done, that a cession or first decree for land over which no ownership was exercised or possession taken during the existence of the Spanish government, was

BRIEF SUMMARY
OF LEADING CASES IN THE SUPREME
COURT, UPON WHICH DECISIONS HAVE
BEEN RENDERED IN SOME RESPECTS
ANALAGOUS TO THIS PRESENT SITUATION.

First, I think one ought to start out with this premise, as was clearly shown in the instructions to the Surveyor General when the question of investigation of all these grants was taken up in 1854, and that is that the wording is practically the same in the Acts passed after the cession of Louisiana by France, and Florida by Spain, and therefore the rules laid down generally in those instances are made applicable so far as possible to the present situation. Then, also, there was created, in 1851, a Board to pass on California claims growing out of similar situations, and the advantages of the conclusions arrived at in some of those view points are available.

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9 Law Edition, p. 109
New Orleans vs. D. Armas et al.

The patent granted to the claimants of land did not profess to destroy any previous existing title; nor could it so operate. It is a principle applicable to every grant that it cannot affect pre-existing titles.

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10 L. E. p. 658
Mitchell vs. U. S.

The grant is good so far as it interferes with no prior rights of others. There were cited in this case:

Danford vs. Wear, 9 Whet. 673.
Patterson vs. Jenk, 2 Peters 216.
See also: 9 Peters 711; 6 Howard 40; 21 Howard 449.

obtained the lands east of the Rio Grande from a source differing from that shown. It is quite possible but, even so, the actual source was as shown on the map. The Rio Grande was the west boundary of the Republic of Texas, established when Texas, in a bitter war, won her independence from Mexico. A few years later when Texas asked admission into the United States as a new sovereign State of the Union the Rio Grande was still her western boundary through this region, later created into the territory of New Mexico, and still later the State of New Mexico.

The State papers relating to annexation of Texas, etc., make this matter plain.

Very truly yours,

(Signed) FRANK BOND
Chairman.

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON FEB 16 1929

Mr. Louis H. Warner,
Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

My dear Mr. Warner:

In response to your inquiry of February 9, as to the basis in the later maps of the United States of showing all of New Mexico east of the Rio Grande to have been included in the annexation of Texas, I have to advise you that after the war between the Mexicans and the Americans in Texas the Republic of Texas was proclaimed and its boundaries by act of congress of the Republic were fixed on the north and east as settled in the treaty between the United States and Spain, 1819; on the south and west from the mouth of the Sabine River along the Gulf of Mexico; thence three leagues from shore to the mouth of and up the Rio Grande to its source, and thence due north to the forty-second degree of north latitude. Upon the admission of Texas into the Union, December 29, 1845, these boundaries became the boundary of the State.

Very truly yours,

(Signed) E. P. FINNEY
First Assistant Secretary.

UNITED STATES GEOGRAPHIC BOARD
WASHINGTON February 14, 1929.

Mr. Louis H. Warner, Chairman,
Pueblo Lands Board,
Santa Fe, New Mexico.

My dear Mr. Warner:

Your letter of February 9, 1929.

I am unable at the moment to say whether or not other maps of the United States than that published by the General Land Office showed that the State of New Mexico

session, House Report No. 1253, states that "at the date of her independence, the Republic of Texas claimed all territory east of the Rio Grande from its mouth to its source, and at this time New Mexico was bounded upon the east by this same stream, and all of her territory was west of the river."

"The Surveyor Generals of New Mexico for the past thirty years have been sending for confirmation by Congress a long list of Spanish and Mexican grants that were not located in the territory of New Mexico 'before its cession to the United States' but were and are located in territory that was ceded by the state of Texas.

U.S. vs. Joseph
24 L.Ed 298

With the purpose of carrying into effect the provisions of that treaty (Guadalupe Hidalgo), Congress directed the Surveyor General of New Mexico to make an inquiry into all grants of the Spanish and Mexican governments and to report to that body on their validity.

This same view was held in U.S. vs. Juan Santistevan.

McKinney vs. Saviego
15 L. Ed. 368.

The last question remaining for consideration arises on the 8th section of the treaty with the Republic of Mexico on the 2nd day of Feb. 1848, called the treaty of Guadalupe Hidalgo. The first clause of that article provides for the Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States. The second clause provides for those who shall prefer to remain in the territories and they are authorized to retain the title of Mexican citizens or acquire the rights of citizens of the United States. The third clause prescribes that in the said territories property of every kind now belonging to Mexicans now established there shall be inviolably respected.***** To what territories did the high contracting parties refer to in this article? We think it clear that they did not refer to any portion of the acknowledged limits of Texas.

This view was also held in 32 L. Ed. 420, Bass vs. Brownsville, and at 32 L. Ed. 927, Botiller vs. Domingas.

It was held: "If an Act of Congress is in conflict with the treaty with Mexico, the court is bound to follow the statutory enactments of our own government instead of the treaty." (Several cases cited). "The protocol to the Guadalupe Hidalgo treaty stated: 'Legitimate titles**** are those which were legitimate titles in Texas up to the 2nd of March 1836." A Congressional report, 52 Congress, 1st

as did most of the civilized countries of the world. In 1845, Texas was annexed to the United States, and it seems reasonable to assume that by annexation we acquired all that she claimed and all that we had previously recognized.

In 1850, Texas ceded to the United States, for the sum of $10,000,000, all of her former claim lying within the present state of New Mexico, and it was then established as the Territory of New Mexico. That this Government considered that Texas was the possessor of all New Mexico east of the Rio Grande is evidenced by the fact that Congress itself, by the Act of June 6, 1878, 20 U.S. Stat. 537, confirmed a grant of a piece of land in that area which had been granted by the State of Texas, August 16, 1847, and it was directed that the "Commissioner of the General Land Office, upon receipt of the proper plat and survey, shall cause a patent to be issued to said Benjamin E. Edwards, his heirs, assigns, or legal representatives for the lands hereby confirmed."

It will be noted that the maps as prepared by the General Land Office under the supervision of the Secretary of the Interior, show that all the land east of the Rio Grande in New Mexico came into the United States by cession from Texas and not from Mexico. In this connection I am appending two letters, one from Assistant Secretary E. C. Finney, of the Department of the Interior, dated Feb. 16, 1929, and the other from Frank Bond, Chairman of the United States Geographic Board, dated Feb. 14, 1929.

VI.

SANTA CRUZ GRANT.

An action was brought before the Court of Private Lands Claims in behalf of the Santa Cruz Grant. This action was joined by the inclusion of Helen M. Smith, who had title from the Indians under their deed of 1891. The court after a very exhaustive hearing, involving the sending of one of the Judges and the two attorneys to Mexico to take depositions as to certain archives, referred to, held that because of the limitation placed upon its jurisdiction by Section 13 of the Act of March 3, 1891, it could not express any opinion as to the conflict with the Santa Clara Pueblo. It did, however, in every instance approve grants similarly located that were outside this patented area. The facts in both cases seemed alike.

VII.

THE POSSIBLE EFFECT OF TEXAS ANNEXATION.

Under Section 8 of Chapter 103, 1854, found in 10 U.S. Statutes at Large, p. 309, creating the office of Surveyor General of New Mexico, it is provided: "He shall make a full report of all such claims as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hidalgo of 1848, denoting the various grades of title, with his decision as to the validity or invalidity of the same under the laws, usages and customs of the country before its cession to the United States."

I am not prepared to say just what effect this situation has upon the problem before us, but it is interesting and may have some value. Texas declared its independence in 1836. It asserted its right to all the area to the east bank of the Rio Grande river by virtue of the cession of Louisiana territory by France in 1803. Subsequently this Government recognized the Republic of Texas,

The district was authorized by the Committee of Certification, a State Board, to issue bonds to the amount of $475,000. These bonds are practically all disposed of. The dam cost nearly twice as much as it was supposed it would, and all this bond issue was devoted to erection of the dam and its immediate appurtenances, no part of the money under the certification could be spent for ditch or other purposes, so that today the district finds itself in this situation: Part of its interest on the bonds due last June is unpaid; all the interest due in December is unpaid, and the bond holders are making inquiry of the individual delinquencies with a view of taking some action. It has been said that it is none of our business what becomes of the district, but our proceedings are along equitable lines and I think that we should look at situations broadly; at least I think we should know the facts and the possible effects in each instance.

Assuming that we reject a thousand or more of the approximate 3600 acres of the irrigation district and turn it back to the Indians, in my opinion it will hasten, and perhaps be the cause of the complete default in payments due the district, which naturally would lead to some action in the nature of a foreclosure. Then this situation will arise: In among the other tracts, with no especial continuity, will be innumerable Indian grants. The Indians will not keep up the assessments due on these pieces for a period of nearly 20 years. If such is the case, the larger burden falls on the adjoining non-Indian, who is just about ready now to throw up his claim anyway, and that, in my opinion, surely will force the district to the point of liquidation.

Assuming that I am correct and that those Indian lands are recognized, the claim is then going to be made by the District as such, in my opinion, that the Government take over the Indian interests and make the future payments. So there will arise a situation which is bound to be embarrassing all around. If it is correct--and I am inclined to think it is--that the deed of the Indians releasing all their claimed area east of the river cannot be successfully reopened, then if we force the large portion of the people, at present struggling under what seems to them an unfair burden, to defend such action in a suit to quiet title, and leave for a period of two years or more before the case can be determined the uncertainty incident thereto, it is bound to produce a very disastrous result, with no ultimate advantage to the Indians. Of course this is on the supposition (and it is a supposition that arises from their own acts) that this land cannot be gotten back for them through court procedure.

the opinion that because of the neglect in bringing the action until 10 years after the deed was made, the Government had been neglectful of its wards and that the Board would be justified in assessing damages against the Government for its long neglect.

The point here is that the Judge held that fraud could not be maintained in an action 10 years subsequent to its consummation.

This case differs from the Laguna situation in which the Board assumed the right to sustain an original survey and reversed the State Court decree, because it was clear to all of us after repeated visits on the ground that the State Court decree was uncertain and utterly incapable of enforcement according to the surveys which had been made and accepted at intervals over a 50 year period. The point being that the Court had assumed to place a monument--the Gabilan Mesa--at a fixed point, when in reality it was not there at all. In this case the State Court, voluntarily entered into by the duly appointed Pueblo Attorney, has about it no such ambiguity, because the land involved comprises all within the Pueblo patent which lies east of the Rio Grande river and can be easily determined.

V.

THE SANTA CRUZ IRRIGATION DISTRICT.

Lulled into security by the dismissal of these suits referred to in the last heading and by the fact that the land was not surveyed into individual pieces as in that portion of the Pueblo west of the river, it was natural to suppose that the people believed--and I think they honestly did believe up to the time that our Board came along to take up the area--that the claim of the Indians to lands east of the river had been stopped and that they could go on with a project to organize within this area, and a bit in the San Juan area outside of this grant, the Santa Cruz Irrigation district. This district was organized under the authority of the State law by the Commissioners of Rio Arriba County and comprised the greater portion of the cultivable area within the disputed territory east of the Rio Grande.

to Hobart, and under which mortgage Hobart obtained title by a judicial foreclosure. The case was not successful and was finally dismissed just before I came into office in 1909. I filed a new case trying to get into court to set aside the transaction, but failed, and under order from the Secretary of the Interior, I did not appeal the case as it seemed hopeless.

As I remember the matter, all the land East of the Rio Grande was lost to the Indians by this sale, but it comes off the Santa Clara Pueblo Grant. I would suggest that you omit the East side of the Rio Grande until we have time to look into the matter a little further, especially in the light of litigation which is now going on in the Federal Court.

Yours very truly,

(Signed) Francis C. Wilson.

Subsequent to that, on attempts to revive the case, at least three Federal District Attorneys (Mr W. W. Llewellyn, M. B. Childers, and a third man whose name, I think, was Lynch, who lived in Albuquerque) had the matter referred to them for comment, and in all three cases they reported that the matter should not be pursued further. The ultimate result was that the case was dismissed in 1923; but before that final action, it had been dismissed by motion as to the more important defendants named. I think the effect of this has been that the people on the east side of the Rio Grande generally have assumed that the case was over and that the title was in the present occupants. They have all manifested surprise that the title was in question. But of course, as the outside boundary of the grant had been surveyed and as the grant under those conditions had been confirmed by Congress and patented, it became necessary to complete the work which Joy had been directed not to do, and to have the interior claims surveyed so that they might be treated as any others.

In talking with Mr. Wilson recently, he still is of the opinion, as he was at the time he wrote the letter 16 years ago, that there is no possible way by any proceeding to open up those old cases and set aside that deed. He express further

were to abide the action of a particular one, and that one having been dismissed, the other cases are dismissed upon the same terms and conditions.

It appears from the records and from a letter of the succeeding Pueblo attorney (a copy of which will immediately follow) that this case was heard in full and disposed of. Francis C. Wilson, who became Special Attorney for the Pueblo Indians after this dismissal, brought another action which seems to have been passed on by the same Judge as in the previous case, and then passed on again by another Judge, who sat in his stead. The latter, Judge Mechem, held that the second suit could not be maintained on the ground of res adjudicata, for the first suit had been tried on its merits and the matter could not be gone into further. The effect of that was that Francis C. Wilson, Special Attorney referred to above, wrote to Francis E. Joy, United States Surveyor, the following letter:

COPY

(For original of this letter
see original copy of field notes
of suvdivision and meander lines
of a portion of T.20 N., R. 8 E.,
San Ildefonso Pueblo Grant, Santa
Clara Pueblo Grant and Indian Res'n)

DEPARTMENT OF THE INTERIOR

United States Indian Service,

Santa Fe, New Mexico, August 27, 1914.

Mr. Francis E. Joy,
U. S. Surveyor,
Espanola, New Mexico.

Dear Mr. Joy:

I have your favor of the 25th inst. with reference to the loss of the tract of land on the east side of the Santa Clara Grant. The United States brought a case in 1902 to set aside the transaction, by virtue of which the Indians deeded to a man who afterwards mortgaged the land

The present Governor of Santa Clara, and the previous Governor, have both told me that at ~~no~~ time have the Santa Clara Indians cultivated the area east of the Rio Grande.

In the case brought to confirm the Santa Cruz Grant in the Court of Private Land Claims, and in other actions growing out of the same conflict in the State courts, I have found a good deal of reference to the fact that Santa Clara as of that time had never asked for or claimed any interest in this area, but that the act of the Surveyor General and the subsequent confirmation by Congress was entirely voluntary. I express no opinion as to the credence of that, nor do I know upon whose authority such data was left in the files.

IV.

THE SMITH DEED AND THE QUESTION OF RES ADJUDICATA.

In 1891, all the adult members of the Pueblo of Santa Clara joined in a deed to Helen M. Smith of all the area possessed by them east of the Rio Grande. I have no doubt in my mind that this transaction was questionable. In fact I think the Indians did not know the purport of their act. Today those of them who are now living and who joined in that deed say that they were of the opinion that their act merely conveyed some grazing privileges and did not carry with it the title. However, Smith mortgaged the property to one E. F. Hobart, who eventually foreclosed.

In 1901, the then Special Attorney for the Pueblo Indians, I assume on authority of the Interior Department, brought suit to set aside this deed on the ground of fraud. This case dragged along until 1907 before it was heard at all, and was disposed of in 1909. At the time this Pueblo attorney had brought three suits; one for an overlap into the San Ildefonso area; one against Hobart; and one against Hobart and others. Under date of June 25, 1909, these cases were all dismissed, the decree showing that by agreement of counsel all causes

So that as the situation stands with reference to the Trujillo grants, the heirs and assigns of the original grantee are in possession of these lands, a possession which the Surveyor General of 1878 (acting under the same authority as the Surveyor General who reported the confirmation of the Indian Grant over the same territory) having, according to the record, gone into the situation with much more detail and care, reports that the Trujillo Grant area within the confirmed and patented Indian area, is entitled to recognition by Congress and confirmation as well.

III.

SANTA CLARA PUEBLO CLAIM.

Santa Clara Pueblo's claim to one league either side of the Church seems not to have been based upon an existing law, or any law of the period when the Trujillo Grant was made, possession given, confirmation had and petition granted as related above. It seems as though the proper answer to this situation was that given by the Court of Private Land Claims in the Laguna case referred to above, in which the court held, in sustaining the contention of the Government, that the Indians were given by the Spanish a definite area according to their needs, which might be extended as conditions warranted, but that they thought in view of the attitude of the late Spanish Governor Maynes, taken in 1815, in which he said that the Indians were entitled to one league, established justification for their giving to the Lagunas a league of land because in their opinion the size of the Pueblo and the aridness of the lands which they had about their immediate homes warranted such an area. Personally, I think that is about where the Santa Clara Pueblo got the idea of a league of land, because in their answers to Surveyor General Pelham they stated that they wanted a league the same as the others were entitled to. So we are confronted with definitely granted, lawfully possessed and duly recorded grants in the Trujillos, made in every respect according to Spanish law and custom, as against a claimed area confirmed by Congress and patented which, according to the records, is based upon nothing of documentary nature whatever, has no archives behind it, and is probably the growth of a custom rather than that of a statute.

In a later year claims were brought before the Court of Private Claims for the confirmation by that court of both the Arroyo Seco and Mesilla tracts. These were rejected by the Court of Private Land Claims, as they say, because they were not sustained by satisfactory proof and that said grants or cessions so claimed are of no validity and are not such ones as the United States are bound to recognize and confirm by virtue of the cession by Mexico to the United States, either by the law of Nations or by the laws or ordinances of Spain. The answer to that decision, which makes it absolutely a nullity, is the case in the Supreme Court of the United States, found in 46 Law Edition at p. 733, entitled: The United States vs. Margarito Baca, where the Court of Private Land Claims had there assumed to express an opinion, in which the Court said:

> "When it (the Court of Private Land Claims) has no jurisdiction to confirm or reject, it has no authority to inquire into or pass upon the case beyond the decision of the question of jurisdiction. The peremptory declaration of Congress that 'No claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress,' necessarily prohibits the court from passing upon the merits of any such claim."
>
> Citing U. S. vs. Conway, 45 L.Ed. 72; and
>
> Los Animas Grant Company vs. U. S., 45 L.Ed. 153, the Court says:
>
> "Confusion rather than certainty would result from allowing expression of opinion to stand, which could not be made the basis of an effectual judgment."

> "The Court of Private Lands Claims having discovered that by the express prohibition of Congress it was without jurisdiction to decree and confirm the land to the petitioner, the merits of the case cannot be decided either by that court or by this court on appeal; and the decree below, which undertook to pass upon the merits, must therefore be reversed, and the case remanded, with direction to dismiss the petition for want of jurisdiction, without prejudice to the rights of the petitioner to assert his title in any court of competent authority."
>
> Citing U.S. vs. Roselius, 14 L. Ed. 590.

basis for all claims, and referring in detail to any possible conflicts in grants. None of these books, copies of which were supposed to be deposited at the General Land Office at Washington and in the Cadastral Engineer's office here, as far as I know, have ever been made up or filed. I was told at the Office at Washington that there was no such data available, and I have been told the same thing here at the office of the Cadastral Engineer, so that it seems that in the making of the report to Congress, the Surveyor General could not have given any thought to the conflict of these grants as a basis for titles east of the river. Of course the original grantees had died, but the property had remained in the heirs by divisions that came along naturally with time and were sold as parts of the original grants, according to present available records, in 1850, '52 and '53. This official recognition by the Alcalde in partitioning the lands referred to establishes the claims as correct according to Spanish law for a period of some 50 years after the so called 1689 grant was made. And it was evident that the conditions of settlement and occupancy required by Spanish law then in force had been fully complied with in each case. Contrast this situation, with every act of record properly authenticated, with no documentary evidence whatever in the case of the Indian claim to the full league.

For some reason, in 1878 a petition was brought before the United States Surveyor General, based on Section 8 of the Treaty of Guadalupe Hidalgo, in which request was made for the confirmation of these two grants. The then Surveyor General went into the case in detail, calling upon witnesses and receiving the testimony of experts on signatures and grants who had been in the office from the time of its establishment in 1854 to 1878. The conclusion was, acting under authority of the Act creating the office, he recommended to Congress the confirmation of both the Trujillo grants. Apparently Congress took no action. The Surfeyor General recognizes the grants, refers to the archives to which I have made reference, and in a general way reviews the whole situation, coming to the ultimate conclusion that, as against anyone, the heirs and descendants of the original grantee are entitled to a confirmation.

to partition, and that he had quietly and pacifically possessed them under the provisions of the royal laws. No intimation is made of any conflict in any way at any time between him and his holdings during his lifetime and the Indians of the Pueblo of Santa Clara, who are said to base their claim on a grant of 1689. In his partition he recognizes the Trujillo claim as running from the Rio Grande river east to the hills, and from the Black Mesa, or San Ildefonso boundary on the south, to the Arroyo Seco on the north. A strange thing in connection with this is that he summoned the representatives of the San Ildefonso Pueblo to the south to attend him when he was making this partition. No notice whatever was paid of the Santa Clara Indians. This of itself is significant.

He proceeded to examine the lands, with witnesses, and measured out, with a cordel of 50 varas, the various strips that ran from the river to the hills. He started to measure from near the slope of the Black Mesa, and speaks of the bottom lands as well as the up lands, In his final conclusion, the heirs having all agreed to abide by his decision, he states that he proceeds to measure by dimensions given the various strips from the river to the hills, which takes up all the area comprised in the Mesilla Grant. It does not seem to me to be necessary to go into these figures but they are available if one desires them. He seems to have designated certain lands, particularly in the Arroyo Seco, as common lands, to be used by the heirs jointly. It is not easy to determine just where the lines of these common lands started but they apparently were generally within the Arroyo Seco Grant.

It does not appear from the records which I have been able to observe, either here or in the General Land Office in Washington, that the Surveyor General who reported upon these various areas in any way followed out his instructions, except in a very minor degree. There is in the Santa Fe office of the Cadastral Engineer a book containing the original instructions given to the Surveyor General by the Secretary of the Interior. It might be well to refer to some of the requirements of those instructions and apply them to this present situation. They cover pages written in long hand and required the Surveyor General to keep a schedule of all claims, make a docket of his action, keep a journal of his proceedings, and do other things in connection with his work, particularly giving all data as a

claim which the Indians might present to that area might best be met by giving them lieu lands on the west side of the river north and west of their present Pueblo. Those claims of that period seem to have been made by a group of half breeds who had broken away from the Pueblo of Santa Clara and asked Spain to recognize them as citizens. As nearly as can be ascertained, it is likely that they were eventually the founders of the Mexican village of Guachupangue, which is a short distance to the north of the present Pueblo.

II.

THE TRUJILLO CLAIMS.

I have referred briefly to the Trujillo grants, one generally called the "Mesilla Grant," and the other the "Arroyo Seco Grant." I referred but briefly to their boundaries. These two grants ran from the Rio Grande east. In the case of the first one--the Mesilla--the grant was made by Governor Cubero, April 23, 1700. And on the 22nd day of May, 1700, he was put in possession by the Field Marshal Chief Alcalde and War Captain of the village of Santa Cruz, in compliance with the order of the Governor thereof. This grant was verified, inspected and approved, and Trujillo again put in possession in 1709 by a Visiting Justice, whose certificate to the same is of record.

The second grant, made in 1707, commonly known as the Arroyo Seco Grant, was dated May 23rd of that year. Trujillo was put in possession by the same official above mentioned and the possession was approved in all formality by the inspecting officer referred to above on the same date.

In 1732, Trujillo died. Later, his widow petitioned the Chief Alcalde to partition off the lands of her husband's estate, and in 1735 he did so. In his official act of partition--which is made a matter of record and is attested to in all proper form--he said that he knew Jose Trujillo had enjoyed the possession and seigniorage of the areas which he proceeded

this settlement believing it is better for the two races,- Spanish and Indian,- to be kept apart and definitely established so that they may live as neighbors in harmony and good will. It is not conceivable that all of this should have been done if the 1689 grant was in existence, and if it was in existence it surely would have been recognized. His successor followed him in the same course, and proceeded to give many individual grants, but particularly two large grants which take up a good portion of the east side of this disputed territory. The first one was in 1700, from the Rio Grande east to the hills, and from the Black Mesa north to the Arroyo Seco, to Jose Trujillo, for agricultural purposes. And he was put into proper possession, as will appear later in a direct reference to the Trujillo claims. Further than that, in 1707, he gave to Trujillo another grant similarly recorded, upon which he was put into proper possession by the Alcalde designated for that purpose. This second grant ran from the Arroyo Seco north and east and to some extent went out of the disputed area.

From that period on one might cite from the preserved archives at least 100 instances of real estate transactions conducted by the Spanish in the disputed area, under the supervision and with the approval of the proper government authorities. So far as I have ever been able to find out, there was never any intimation in any of these papers of any conflict with an Indian claim, nor was there any reference ever made to the Indian grant being of precise dimensions. In fact until the question was raised by a Spanish Governor in 1815, in a Taos situation, that seems not to have been the case.

There are interesting things in connection with this period after De Vargas, to which reference should be made. In 1738, apparently there had never any survey been made of the league area that was claimed. In fact no survey made of the Indians' possible holdings east of the river. This led to various conflicts of one kind or another until eventually, in 1763, the then Governor of the Province referred the whole question of the east side titles to a specially appointed Commissioner in Chihuahua. This Commissioner, after some study, made a report to the Governor, in which he held that in his opinion the titles of the settlers on the east side of the river were so well authenticated that any

I.

EARLY HISTORY.

It is known that Santa Cruz, a village within this area, was established by the Spaniards prior to 1680. This was the year of the Pueblo uprising, and the then inhabitants either fled or were killed. If they survived, they joined the other Spaniards at Santa Fe and eventually evacuated the entire area for a period of 12 years.

When De Vargas reconquered New Mexico in 1692-3, he found the Lazaro Pueblo in possession of the land in and around Santa Cruz. This of itself would seem to indicate that there was not then existing any accepted grant of 1689 to the Santa Clara Pueblo. In 1695 he started colonization and established the new city of Santa Cruz upon the site of the old, upon which he bestowed the rank of the Second City of the Province. The setting up of this new city involved the expulsion of the Lazaro pueblo people and was attended by great solemnity. It would not seem reasonable that the Governor-General of the territory should establish with all that formality the second largest city upon an existing pueblo grant, considering the scrupulous care with which the leading government officials regarded such transactions. He did more than this. He assigned to them, individually and collectively, innumerable pieces of land by separate grants, in and around Santa Cruz, as appears of record in the archives. And in every instance, not only made a record of the grant, but put them into juridical possession, as it was called, which was a ceremony attended with great dignity. Further than that, he allowed them pasturage, water rights, and innumerable other things that went to the making up of a substantial colony of that period. As a further precaution, and before doing any of these things, he had sent a Lieutenant to make a survey of the whole area now claimed by Santa Clara east of the river, with a view of determining how much land was available and how many people could be successfully settled upon it. That report is in full on the records and gives in detail the occupants of the lands east of the Rio Grande, all the way from the San Juan area to the San Ildefonso grant on the south, and involves the entire east side area as now claimed by Santa Clara. He goes on further to say that he is making

Twitchell in some of his writings, and was told to friends of Tipton, who have told it to me, in repeated instances. In fact, the 1689 grant set up by Laguna was attacked by the Government itself, and the Court of Private Land Claims sustained the contention, throwing the grant out because it was plainly made to cover a period 10 years prior to the formation of the Pueblo. We ourselves ignored the 1689 grant in the case of San Juan, when we held that the Trujillo grant at Chamita, in 1724, was preferable to the Indian grant of 1689, the Trujillo grant being included in the Indian grant and both having been confirmed by Congress.

The claim in this case that the Santa Clara patent is based on the 1689 grant is supported by no documentary evidence whatever, by no record, by no statement that was ever seen by anybody and by a very flimsy testimony of tradition. So far as I have been able to find, there was no record upon which the Surveyor General based his recommendation for the confirmation to Congress, and no further record before Congress which justified its confirmation, and no additional data before the Surveyor General that justified its being surveyed as it was other than the four questions asked by the Surveyor General, referred to by him in his official report, and given in its entirety elsewhere.

In this connection it is interesting, and to me a bit suspicious, that all the 1689 grants were issued during the time the Spanish were out of control of the territory, at practically the same date, and signed at El Paso del Norte. These grants, so called, were based solely on a wounded Zia chief who had been captured and proceeded to say that the other Pueblos, if given grants, would not rebel in the future, a thing which is, to my mind, very weak, particularly so because the Zia leader was not one of the principal leaders of the revolt, but rather a sub-chief and probably spoke with no authority for the other Pueblos. Certain subsequent acts bore that theory out, because no sooner had De Vargas arrived than other Pueblos--particularly Santa Clara--rebelled strongly against his reoccupation of the territory. And it has been said both by Read in his history of New Mexico, and Bandroft, in his history, that the Santa Clara Indians were transferred to San Ildefonso about 1701, for what purpose does not appear.

GENERAL STATEMENT.

The Act of June 7, 1924, is admittedly an act of Grace. It should therefore be administered under the particular rules and principles of equity rather than the more narrow and technical rules of law. Possession by the claimants to lands east of the Rio Grande, within the Pueblo of Santa Clara area, except in a few instances, has been easily proven before our Board. The tax situation is ever with us. Both Judges agree that taxes must be paid when lawfully assessed and levied for every year, but they differ as to the time of payment. Judge Phillips (who has lately been elevated to the Circuit Court of Appeals) lays down the rule, admittedly arbitrary but one which he thought fair, that taxes assessed for one particular year must be paid within four years therefrom; while Judge Neblett (who will be the sole trial judge from now on), holds that if the tax is paid at any time before the suit to quiet title based on the Board's report has been filed, the conditions of our law have been met. To both of these theories an appeal has now been taken to the Circuit Court of Appeals in one of the Taos Pueblo cases, brought by Mr. Fraser, and I understand will be heard by the Circuit Court of Appeals about the middle of February.

Our problem east of the Rio Grande is an outgrowth of this complex tax situation, and naturally divides itself into seven phases, which will be treated separately.

Most of the Pueblos based their claims upon alleged grants of 1689. These seem to have been generally used as the basis for the recommendation for confirmation, the subsequent Act of Congress, and the patent which eventually followed. However, there is no uniformity in area. Santa Clara was confirmed for a league each side of the Church, while Cochiti, near it, was confirmed for about 6,000 acres additional, making a grant longer one way than the other. Why that was done has not ever appeared. In other cases, similar discrepancies have arisen, so that it cannot be safely said that a league either side of the central point is a fixed basis of granting. In that connection it is interesting that Will M. Tipton (who probably knew more about Spanish archives than any other man, because he had them in charge for many years), expressed the doubt as to the authenticity of these grants. That was found in testimony which he gave in court cases, is referred to by

Miscellaneous Correspondence

xxxxxxxxxxxxxx Washington, D.C.

November 1, 1929.

Mr. E. C. Iden,

Albuquerque, New Mexico.

Dear Mr. Iden:

I have your letter of October 24, 1929, with reference to that part of the Board's report on the Pueblo of Laguna, wherein it was recommended that the Sata Fe Railway Company obtain new deeds from the Indians covering a pipe line, R. p. 146,1/2, and a telephone line, R. p.151.

Pipe Line Right of Way.

While the deed of August 19,1885 would be color of title, the Board did not have before it sufficient evidence to show that the railroad and railway companies had been in continuous adverse possession of the land described. And there was some doubt as to the exact location of the right of way as there was no map or plat filed with the deed. The Board understood, as stated in its report, that the pipe line was and is at present on the old right of way of the Atlantic & Pacific Railroad, which was abandoned in 1910. These were the main reasons for recommending that a new deed be obtained. If you can show by competent evidence that the pipe line right of way is not on the old railroad right of way and that you and your predecessors in title have been in actual adverse possession of the land covered by said deed since 1885, then I should think that it would not be necessary to obtain a new deed.

TELEGRAM

Washington, D. C.,

Superintendent of Prisons
Department of Justice
Washington, D. C.

Confirmation

The easier way out of the difficulty would, I think, be to follow the recommendation of the Board.

Telephone Line.

The deed of July 7, 1913, referred to, is, as you know, not sufficient color upon which to base title by adverse possession. While it was recommended that a new deed be obtained, I think approval by the Secretary of the original document will meet all requirements. This in view of the fact that the $100. paid the Indians is probably a fair and just compensation. I do not believe that the Secretary will refuse to approve if the matter is properly presented.

You will understand that the Board does not wish to cast upon your Company unnecessary burdens, but desires to, at all times, assist you in every possible way to remove troublesome questions.

Am very busy here getting my papers on the Santa Clara claims in order. So far none of the testimony taken has been sent to me. As there are over 800 claims you can imagine what a delightful time I am going to have reading testimony and reaching conclusions.

With kindest regards,

I am sincerely yours,

TELEGRAM

Superintendent of Prisons
Department of Justice
Washington, D. C.

The Atchison, Topeka and Santa Fe Railway Company

WILLIAM C. REID,
Solicitor for New Mexico
J. M. HERVEY,
Attorney
E. C. IDEN,
Attorney

LAW DEPARTMENT

Albuquerque, New Mexico,

Oct. 24, 1929.

Mr. Charles H. Jennings,
Pueblo Lands Board,
Dept, of Justice,
Washington, D. C.

Re Pueblo of Laguna.

My dear Mr. Jennings:

Mr. Cochran and I just discussed the matter of approval of some of the old deeds obtained by the Santa Fe through Laguna Pueblo which, according to the record and the board's report, have not been approved by the Sec. of Interior, and the board makes the recommendation in most cases that the original deeds be obtained and sent to the Secretary for approval. Gov. Hagerman and you suggested that, as soon as I got these original deeds, and before sending them to the Pueblo Lands Board for transmittal to Washington, I take the matter up with Mr. Cochran to get his approval first.

I procured these original deeds and we checked them in connection with the board's report on this pueblo.

There are two instances in which we do not understand the reasoning or theory of the board, and we have decided to write you about it before handling the matter in any other way.

The first is as to Ry. Co's Secretary's #1565, being our Exhibit #83 to the Ry. Co's claim, which is an instrument dated Aug. 19, 1895, and is covered at page 146½ of the board's report, covering a right of way for pipe lines. We understand the situation to be that the board has decided that the Ry. Co. had color of title to the old Laguna pipe line by the 1885 Grant, and the pipe line was constructed and maintained on this old right of way; that, in view of the fact that the Ry. Co., in about 1910,"abandoned this old right of way" and constructed the new line at Laguna at the new location, the company has been held to have abandoned all rights it might have

acquired under this instrument, and for that reason, the board has recommended that the Ry. Co. obtain a new deed from the Indians covering this right of way for the water pipe line. Is this correct, and is this why the board recommends that a new deed be procured? You will recall that we contended that, even though we abandoned the right of way for railroad purposes, we still claim the right of way at the old location for the water pipe line.

Another instance is, in view of the formal agreement dated July 7, 1913, under which the Ry. Co., for a consideration of $100, acquired the right to construct a telephone line, as shown by Exhibit "C" to the board's report. I have not the page number of said report, but it is somewhere after page 151. However, Exhibit "C" will give you a ready reference to it. The board recommends that a new agreement be obtained from the Indians for a fair consideration, etc. We do not understand why it is necessary in this instance to secure a new contract, but feel that probably the old document, if and when approved by the Sec. of Interior, will be sufficient. We make this statement in view of the fact that there are several other documents, dated about the same time, and which seem to us similar, in which it is recommended that the original document be procured and sent to the Secretary for approval, and we see no distinction between those agreements and the one now mentioned. This is our exhibit #24 to our claim, being Ry. Co's Secretary's #5044.

After I hear from you, I shall take the matter up further with Mr. Cochran and try to close it.

Yours truly,

I

E. C. Iden

MEMBERS

THE SECRETARY OF THE INTERIOR
THE ATTORNEY GENERAL
THE CHAIRMAN (APPOINTED BY THE PRESIDENT)

PUEBLO LANDS BOARD

SANTA FE, NEW MEXICO

ACTING BOARD

LOUIS H. WARNER, CHAIRMAN
H. J. HAGERMAN
REPRESENTING THE SECRETARY OF THE INTERIOR
CHARLES H. JENNINGS
REPRESENTING THE ATTORNEY GENERAL

Tues. Oct 9

Dear Mr Jennings

I am going East tomorrow afternoon. If there is anything you want to bring To my attention will be here all wednesday Joe tells me you have set that as a day when they must file their deeds. If so, and I don't see you before leaving, then will be my advice

Yours sincerely

Louis H Warner

June 24, 1929

Mrs. Ione Jones,

Thorn Road,

Oakland, Calif.

Dear Mrs. Jones:

I have your letter of the 21st inst. in reply to my letter to you of May 23d with reference to your holdings in the Indian Pueblo of Santa Clara. It is unfortunate that you burned any old deeds covering these lands, if they were burned as you seem to be in doubt about. The three deeds you mention going back to 1904, in the absence of older deeds, would not give you color of title to your holdings, as color of title must extend from January 7, 1902 to June 7, 1924. In the absence of color you will necessarily have to rely upon adverse possession going back to March 16, 1889, and you will have to show payment of taxes from March 16, 1889 down to June 7, 1924. In a recent decision by the Federal Court, claimants whose property has not been lawfully assessed or, in other words, is not shown upon the tax rolls, would go scott free; if the property had been lawfully assessed and any one year had remained delinquent the claimant was held not to have met the requirements of the statute.

It is possible that it will not be necessary for

you to come to the hearings if you will authorize Mr. Frankenburger or some lawyer to represent you. It will only be a question of showing possession by you and your predecessors back to 1889, as stated. I don't think that you could accomplish anything by taking up the matter with Dr. Hubert Work as he knows nothing about these titles and could not, as I see it, in anyway help you. You either have a good title or you haven't, and that will be ascertained after examining your papers and hearing the testimony and finding out whether or not you have come within the decision of the court with reference to the payment of taxes.

I do not know just when the hearings will be held on the Santa Clara claims, possibly not before the first of September, or later. Please send the three deeds that you refer to to the Pueblo Lands Board or to myself, and you will be given a receipt for them. We have a fire-proof safe and after the deeds have served their purpose they will be returned to you.

The map referred to by you was prepared by the Land Office here and not by the Santa Cruz Irrigation District; as I understand it the survey covers the lands at one time claimed by Mr. White. Of course if this survey

does not cover all of your lands that will be brought out at the hearing if you are here and raise the question, or if you instruct your representative to raise the question. Evidently the lines of the holdings of Mr. White were pointed out to the surveyors and they simply surveyed it as pointed out, and if he claimed other lands they were not told about it.

Very sincerely yours,

Chas. H. Jennings,
Member Pueblo Lands Board.

CHJ:J

May 23, 1929

Mrs. L. F. Noel,

Gallup, New Mexico.

Dear Madam:

There have been recently surveyed in your name two tracts of land aggregating 63.333 acres, lying within the exterior boundaries of the Santa Clara Pueblo Indian Grant, and numbered 698 and 700. Evidently these lands were acquired as one tract but the surveyor, for some reason, divided the land into separate tracts. These lands are bounded on the South by a large tract claimed by Mr. L. T. Hardy.

The Pueblo Lands Board (created by Act of Congress dated June 7, 1924) will in the late fall hold hearings on all claims lying within the Santa Clara Indian Grant. In the meantime it is necessary for the Board to have all deeds pertaining to these lands so that they can be translated and abstracted before the hearings commence. If you have any deeds or other documentary evidences of title to the lands claimed by you please send them to the Board at the earliest practicable date. Receipts will be sent to you for any papers turned over.

You will be advised of the date when the Board

will commence the hearings so that you or your attorney can be present when your case is called.

Respectfully,

PUEBLO LANDS BOARD

By_____
Member.

CHJ:J

May 23, 1929

-2-

Mrs. Ione Jones,(Real Estate Broker)

585 Thorn Road,

Oakland, California.

Dear Mrs. Jones.

When you were in Santa Fe I promised to write and tell you when the Pueblo Lands Board would take up for consideration the unsurveyed private claims lying on the east side of the Rio Grande in the Santa Clara Indian Grant.

The recent survey made by the Land Office shows over six hundred claims not surveyed by Mr. Joy in 1915. Among the number are two tracts, P C 741 and P C 801, aggregating 52.133 acres, surveyed in the name of _____ White. Mr. Cook of Bond & Nohl Company, informs me that the White lands are those claimed by you. I am enclosing a drawing of the two tracts showing claimants of lands bounding these tracts on the North and South. Please advise the Board whether or not these are the tracts claimed by you. The Board would be glad if you would send to it at the earliest practicable date, all deeds and documents showing your chain of title to these tracts, or to the lands you are claiming.

IJ - 2
5-23-'29

At present the Board is engaged on claims in San Ildefonso, and will very soon go to Laguna and Acoma. It now appears that we can not possibly hold hearings on the Santa Clara claims until late fall. You will be notified when hearings commence so that you may appear in person if you so desire.

I am sorry to say that Judge Abbott, whom you know very well, is very low and in all probability will pass away in the next two or three days.

Sincerely yours,

Chas. H. Jennings,
Member Pueblo Lands Board.

CHJ:J

April 16, 1929.

Mr. Walter C. Cochrane,
Special Attorney for the Pueblo Indians,
724, First National Bank Bldg.,
Albuquerque, N.M.

My dear Mr. Cochrane:

I have your letter of the 15th inst. regarding the proposed purchase by the San Felipe Pueblo Indians, for a consideration of $535.57, of the following described lands lying within the exterior boundaries of the San Felipe Pueblo Indian Grant, to-wit:

EXCEPTION NO. 8
Private Claim 1, Parcel 1
JOSE ARCHIBEQUE

A tract or parcel of land situated in Sec. 2, T. 13 N., R. 4 E., N.M.P.M., more particularly described in survey made by General Land Office as follows:

Beginning at corner 1 of this tract, which is a 1" iron post; thence N. .18 chains along west boundary of San Felipe Pueblo Grant to corner 2 of this tract, which is a 1" iron post; from this corner the ½ mile corner on the west boundary of San Felipe Grant bears N. 14.27 chains; thence N. 28° 30' E., 2.49 chains to corner 3 of this tract, which is a 1" iron post; thence N. 40° 25' E., 2.11 chains to corner 4 of this tract, which is a 1" iron post; thence N. 69° 40' E., .59 chains to corner 5 of this tract, which is a 1" iron post; thence S. 55° 30' E., 18.02 chains to corner 6 of this tract, which is a 1" iron post; thence S. 62° 25' W., 4.93 chains to corner 7 of this tract, which is a 1" iron post; thence N. 55° 30' W., 9.05 chains to corner 8 of this tract, which is a 1" iron post; thence N. 62° 40' W., 6.93 chains to corner 1 and point of beginning; contains 7.836 acres.

EXCEPTION NO. 9
Private Claim 2, Parcel 1.
GREGORIO MARQUEZ

A tract or parcel of land situated in Sec. 2, T. 13 N., R. 4 E., N.M.P.M., more particularly described in survey made by General Land Office as follows:

Beginning at corner 1 of this tract, which is a 1" iron post; from this corner, corner 1 of P.C. 3 P. 1, bears N. 25° 06' E., 2.04 chains; thence N. 39° 08' E., 3.09 chains to corner 2 of this tract, which is a 1" iron post; thence N. 62° 11' E., 3.44 chains to corner 3 of this tract, which is a 1" iron post; thence N. 35° 05' E., 1.00 chain to corner 4 of this tract, which is a 1" iron post; thence N. 55° E., 14.18 chains to corner 5 of this tract, which is a 1" iron post; thence N. 35° 05' W., 3.09 chains to corner 6 of this tract, which is a 1" iron post; thence N. 55° 12' W., 18.77 chains to corner 1 and point of beginning; contains 5.894 acres.

EXCEPTION NO. 10
Private Claim 3, Parcel 1
PANFILO LOVATO
ABENICIO LOVATO

A tract or parcel of land situated in Sec. 2, T. 13 N., R. 4 E., N.M.P.M., more particularly described in survey made by General Land Office as follows:

Beginning at corner 1 of this tract, which is a 1" iron post; from this corner, corner 1 of P.C. 2 P. 1, bears S. 25° 06' W., 2.04 chains; thence N. 51° 55' W., 2.74 chains to corner 2 of this tract, which is a 1" iron post; thence N. 30° 07' E., 2.89 chains to corner 3 of this tract, which

is a 1" iron post; thence N. 56° 05' W., 1.48 chains to corner 4 of this tract, which is a 1" iron post; from this corner the ¼ section corner between Secs. 2 and 35 on the north boundary of the township bears N. 55° 38' W., 5.56 chains; thence N. 35° 11' E., 6.21 chains to corner 5 of this tract, which is a 1" iron post; thence N. 51° 52' E., 3.77 chains to corner 6 of this tract, which is a 1" iron post; thence N. 32° 37' W., 9.02 chains to corner 1 and point of beginning; contains 3.159 acres.

The Board, after considering all documentary evidence of title to these tracts, submitted by claimant, oral testimony as to possession offered and payment of taxes, was unanimously of the opinion that the title of the Indians to said lands had become extinguished and so reported May 14, 1928. A copy of said report is on file in the Department of Justice, to which reference is made.

At the time of the filing of the report, the extinguishment of the Indian title was made subject to the right of the Indians to institute original, independent suits within two years from the filing of the Board's report to recover title lost, as provided in Sections 4 and 13 of the Act of June 7, 1924 (43 Stat. 636).

In view of the foregoing, and if no changes in the title to these parcels have occurred since the filing of said report, I am of the opinion that the acceptance of warranty deeds, properly executed by the parties named, joined by their wives, and payment of the agreed consideration, will vest in the Pueblo of San Felipe a good and sufficient possessory title to said lands.

The consummation of the proposed purchase by the Indians would, of course, render the provision for the institution of original suits inoperative.

Sincerely yours,

CHJ-S

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.

DEPARTMENT
OF JUSTICE

January 16, 1929

210663-

Hon. Luis H. Warner,
Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Sir:

Referring to the conference held in my office the early part of December, respecting the construction of subdivisions a and b of Section 4 of the Act of June 7, 1924, requiring payment of taxes to the extent required by the statute of limitation or adverse possession of the Territory or of the State, I am transmitting, for such assistance as it may afford you, a memorandum by the Solicitor General dated December 6, 1928, a memorandum prepared by Mr. Foster, of this Department, under date of January 12, 1929, and the Solicitor General's final memorandum of January 16, 1929.

Respectfully,

Jno. G. Sargent
Attorney General.

Enclosures

January 8, 1929.

J. Edgar Hoover,

Director Bureau of Investigations,
Department of Justice,

Washington, D. C.

My dear Mr. Hoover:

I left Washington on my return to Santa Fe, December 29th, and your letter of the 2nd inst. addressed to me at the Department, advising me of the appointment of Mr. Rosser L. Nalls as Special Agent of your Bureau, was forwarded and was handed to me upon my arrival this morning.

I greatly appreciate the appointment and trust that Mr. Nalls will in every sense of the word measure up to all requirements.

Sincerely yours,

CHJ:J

claimants, and save a lot of time and money and work, if they would always place before the Board every bit of evidence, documentary or otherwise, which they have, as no doubt if they did the Board's findings might sometimes be different. There is this to be borne in mind too, that the law stipulates that "the Board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished." We have had some disagreements--always very amicable--but when there have been such disagreements the Board must, because of that provision of the law, find for the Indians. To that extent the law favors the Indians. I do not mean to say by any means that the Court leans towards the non-Indians when these cases go on appeal to him, but in addition to new evidence (and this is often dug up, no doubt, out of old stockings and dark cellers after the Board's hearings), the Court can and does effect compromises and adjustments which the Board, perhaps, cannot properly do under the law. In some cases the Judge has revised the Board upon a payment of additional consideration by the claimants. This is all right, I guess, but it is doubtful if the Board has such could do it. However, I, as your representative, have in certain instances, particularly in Sandia, encouraged settlement as between the Indians and some of the claimants whose claims were rejected by the Board when negotiations were initiated for such settlements by the payment of additional consideration before the suits to quiet title were inaugurated.

The Board is trying very hard to get all possible data as to tax payments in the county records. This would not be very difficult in a well ordered community where the records were properly kept, but in some of our counties--especially the Mexican counties--many of these records are in rotten shape,- and in one of them destroyed entirely. Mr. Jennings has done a vast amount of work on these records--most nerve racking and killing work at that--and even when he gets the data it is almost impossible to connect the memoranda so obtained with the various parcels of land as now held. The Court has ruled quite strictly in principle as to the meaning of the tax provisions of the law, but so far, I think, has not had to apply these rulings to specific instances. Yesterday, in the Nambe cases, while I was in court, Judge Phillips asked Mr. Fraser and the attorneys for the claimants to agree if they could as to the status of the tax payments on the tracts which were under consideration. It will be pretty hard for them to do so I imagine without some further ruling by the Court as to how his general ruling as to taxes should be applied. Mr. Jennings wants to bring this tax situation up before you and Mr. Sargent in the hope that we may get some more light on it for our guidance. There is too the question of who are to be the

beneficiaries in the cases of Pojoaque and Pecos, where there are no Indians left, in case the Board, after going into these Pueblos find some of the lands not extinguished.

I believe if that matter could be gotten before the Solicitor General he might help us a little, and thereby possibly avoid a great deal of work.

There is also a puzzling question as to that part of the Santa Clara Pueblo east of the Rio Grande which was never surveyed by the Joy survey. I wrote about this in some detail to Commissioner Burke and he can explain it to you. When you were here with Assistant Secretary Finney, you instructed the Cadastral Engineer to survey these claims in this area, and this is now being done. You also advised Mr. Warner that the Board should pass upon the claims when so surveyed. The point is that back in 1909 or '10, the then Secretary of the Interior appears to have ordered the abandonment of the area as far as the Indians are concerned, after various attempts had been made to set aside a deed whereby for a grossly inadequate consideration the Indians sold the land to a speculator. If that is true, it would seem as though the Board's only course there would be to find who are the present various non-Indian claimants of the area so that patent can issue to them under Section 13 of the Lands Board Act. If it is not true, we should like to know it. For your information, I enclose the photostat of a letter from Francis C. Wilson, written in 1914 to Mr. Joy, advising him not to survey this area, and making reference to the order of the then Secretary. Mr. Wilson was then Special Attorney for the Pueblo Indians. He was just now in my office and I asked him about it. He did not remember all the details but said that he is leaving for Washington tomorrow and while there would call on Commissioner Burke and would try to dig up all the details and facts of the situation for our benefit. Mr. Warner knows much more about this situation than I and can give you more details. At any rate, Mr. Jennings hopes that it can be brought before the Board in Washington.

Mr. Wilson tells me he is going to Washington mainly because of the Boulder Dam legislation; that he goes not only at the behest of Governor Dillon, of New Mexico, but as representative as well of the other upper basin States. These seem to be all in accord now, except, perhaps, Utah, and Utah, he thinks, will come in line with the other three after a formal protest. He will no doubt see you soon after his arrival.

Hon. Roy O. West--4.

I was glad to hear from Mr. Warner that the prospect is good for the signing up in the near future of the contract with the Middle Rio Grande Conservancy District. This will help here a lot. I hope the contract as signed can be published out here as soon as possible.

I will try to hold things down here until Mr. Warner gets back. There is plenty to do.

Respectfully yours,

(Sgd.) H. J. HAGERMAN.

Member, Pueblo Lands Board.

HJH-S
Enc.

July 16, 1928.

H. L. Gilbert, Attorney,
Department of Justice,
Washington, D. C.

My dear Mr. Gilbert:-

Your letter of the 6th regarding condemnation of 1.34 acres of land in Isleta Pueblo was received here in due course, and forwarded to me on location in the Indian Pueblo of Picuris, fifty miles north of Santa Fe. As I had no data there, I deferred answering your queries until I returned.

I am rather inclined to believe that service upon the Governor is sufficient, although there is no precedent to follow, so far as known to me, except service made in the suit of United States against the Pueblo of Tesuque, filed here in Federal Court July 7, 1923, by Col. R. E. Twitchell, to condemn 2.50 acres of land in the Pueblo for school purposes. In that suit the defendants named were "Julio Abeyta, Governor of said Pueblo, and the individuals of said Pueblo."

Notice was served by C. J. Crandall, Superintendent, upon Julio Abeyta, Governor, and the Principales assembled in council, at the Tesuque Pueblo and the return shows that

the notice was interpreted to the Governor and all Principales in council assembled. As a matter of fact, all papers served on Indians are interpreted to them in council assembled whether returns or notices show it or not.

The Pueblos in 1847 were created and constituted bodies politic and corporate, with power to sue and to be sued by the Legislative Assembly and the Act is carried in New Mexico Code of 1915, as Sec. 1847.

It is a fact that the Indians own the land in fee but the Secretary of the Interior has asked for condemnation and the United States as Guardian has instituted suit to condemn this small fraction of land solely in the interest of the Indians and the only question is, were the Indians properly before the Court when the decree was entered. I think they were, although it might have been well to have followed the procedure in the Tesuque case, which I assume was favorably passed upon by the Department after final decree was entered. There are no adverse claims involving the 1.34 acre tract, condemned.

If you wrote Fraser regarding this matter, I assume you have his answer. He is at Taos and I can not consult him.

JLGilbert
(3)

I am afraid you are correct as to Smith carrying New Mexico, we all like our liquor out here. If Rush L. should become Attorney General, as you suggest, good night to yours truly. One of his first acts would be to give the Honorable C.H. a swift kick. You know he never forgave me for staying on the Board.

Mrs. J., although improving, can not return to Santa Fe, on account of the extremely high altitude. She is now engaged in building a cottage on a lot she owns across the Potomac, in Lee Heights, and proposes to make a F. F. V. out of me when I return. I may not get back to Washington before the end of the year, unless something unlooked for happens. My kindest regards to Stickley and other friends in the Department.

By the way, what has become of Don C. Fees? I saw a notice in the Post that he was in trouble.

Faithfully yours,

CHJ:CP

Member, Pueblo Lands Board.

July 20, 1928.

Pueblo Lands Board,
Catron Bldg.,
Santa Fe, N.M.

Gentlemen:

I am herewith enclosing my report taken from the assessment roles in the office of the County Treasurer of Taos County, Taos, New Mexico, showing the payment of taxes lawfully assessed and levied upon the adverse claims lying within the exterior boundaries of the Picuris Pueblo land grant. It will be observed that for the years 1902 to 1913 inclusive I am giving you a complete transcript of the assessment roll as it applies to these lands; from 1914 to 1924 inclusive I am giving you simply an abstract of such entries for those years as became delinquent.

It will be seen that the tax rolls for the early years were very small, as shown by the fact that there are only 52 names upon the record for 1902, although we know from the testimony taken on the ground that practically all of the 700 more or less claims were in the possession of adverse owners at that time. The rolls increased slightly for the years 1910, 1911 and 1912, but no real effort to tax everybody seems to have been made until 1913, when the rolls became quite complete and too voluminous to include in my report in toto. The reason for the increase in 1913 is two-fold: First, that was the first year after statehood, and the action of coming into the Union as a state seems to have caused a re-birth or an awakening on the part of the County officials, resulting in more stringent enforcement of the tax laws. Secondly, and perhaps flowing from the first, the basis of valuation of land was increased from $17.50 an acre for good cultivated land which had existed in the prior years, to $45.00 an acre for 1913 on. Thus it can be seen that unless a single owner possessed a tract in excess of 12 acres prior to 1913, he would not have an assessed valuation in excess of his exemption of $200.00, and that action alone is adequate explanation for a large increase in the assessment rolls.

Not as a part of this report, but for the Board's convenience if it desires to make further investigation, I am enclosing under separate cover a complete transcript of the assessment rolles for 1914 and 1915.

There have been two theories considered as to the method of enforcing the tax requirements contained in the Pueblo Lands Act. These theories may be informally expressed as follows:

1. That the Act being a statute of grace it requires a positive showing of tax payment, unless the claimant was exempted or entitled to be exempted, and from this view, the tax rolls for the years 1902 to 1912 inclusive would be more interesting because of the claimants absent therefrom, than because of the few that are included. In other words, following this view, we should take the rolls for 1902, for instance, and, taking the testimony which we received on the ground, ascertain what claimants possessed tracts of land in excess of 12 acres that year, check this against the tax roll, and if we find that he made no payment of taxes in that year, he has not complied with the tax provision. This would not be too difficult a task, and I am sure would result in very substantial recoveries for the Indians.

2. The second view is that announced by the opinion given concurrently by Judges Neblett and Phillips in cause No. 1720 in Equity, entitled "The United States of America as Guardian of the Pueblo of Nambe vs. David Herrera et al." The major part of this opinion is devoted to a consideration of what statutes of limitation are to be applied, and only considers the tax feature very briefly. This opinion uses the following language:

> "In view of the foregoing, we have reached the conclusion that the reference to the payment of taxes is to Section 3365, and the requirement is that the claimant shall have: 'Paid all the taxes, state county and municipal * * * levied upon the land or interest claimed, whether assessed in his name or that of another.'
>
> Counsel for defendants contend that if the claimants had no title to the lands, they had no property subject to taxation, and that no taxes could be lawfully assessed or levied. This contention followed to its logical conclusion would eliminate all requirement as to payment of taxes, and clearly such was not the intention of Congress. It is true the

legal title to the lands was in the Indians, but the settlers made a claim of title thereto. It was the custom and practice to return this claim of title for taxation, and the statute is satisfied if the claimant pays the taxes upon either the lands or the interest claimed.

A further question arises with reference to the payment of taxes, namely, what is the result if, during the periods fixed in sub-sections A and B of Section 4, during a certain year or years, neither the land itself nor the interest claimed was returned for taxation, and consequently no taxes were assessed or levied for such year or years. The act of Congress uses the language 'Taxes assessed and levied'. Section 3365 uses the language 'Taxes levied'. We are of the opinion that the requirement only applies to years in which taxes were lawfully assessed and levied (citing cases)".

Should this view be followed by the Board, it would have to ignore the flagrant avoidance and evasion of taxes in the early years and look only to delinquencies that appear upon the face of the assessment rolls.

There are certain inequities and inequalities that would result from following the latter view, which my investigation of the tax records has brought strongly to my attention. For instance, take such a claimant as Desiderio Mascarenas, who testified before the Board that he has owned his present tract of land, comprising in excess of 20 acres, for a continuous period of 60 years. Checking his name against the tax rolls, we find that it does not appear at all for the years 1902, 1903, 1904, 1905 and 1906. In 1907, he apparently was not on such good terms with the assessor, and he was assessed and a tax levied, but Mr. Mascarenas had the tax cancelled by order of the court in the 1908 session. Again, in 1908, Mr. Desiderio Mascarenas was placed upon the tax rolls and a tax levied, but he had this cancelled by order of the County Commissioners. Apparently discouraged by Mr. Mascarenas' dexterity in avoiding taxes, he was not even assessed for the following years until

1913, when a tax was levied and paid, which must have been greatly to the surprise of the County officials. Thereafter, Mr. Mascarenas does not appear upon the rolls regularly, and I believe that it can be said that during the whole period from 1902 to 1924 he did not pay for more than four or five years. This, as can be seen, is a very flagrant and unusually successful example of tax dodging. However, under the rule No. 2 announced above, and supported by the opinion of the two judges, Mr. Desiderio Mascarenas is quite safe on the question of taxes. For the years that he does not appear upon the rolls, there is nothing against him. So far as the tax records are concerned, Mr. Mascarenas or his land did not exist for those years. For the years 1907 and 1908, although he was assessed and a tax levied, it was cancelled by the proper authorities. For the few years that he did not succeed in evading the issue, he paid the tax, and there is nothing against him

At the same time, we have cases of a man owning a small piece of land, who apparently has been trying to meet his state and county obligations since 1902, and has appeared upon the rolls for every year until the present time. Such a man is Manuel Barela, who has the most westerly tract of land at Vadito. This is not a large piece of land, nor has Mr. Barela had the means and resources at the disposal of Desiderio Mascarenas during the past years, yet he has been assessed and levied every year, and during the period from 1902 to 1924 has paid substantial sums of taxes on this land. However, during some of the years he has allowed his land to be sold to the county for taxes and in other ways been delinquent upon the assessment rolls. Under the view taken above, he has not complied with the federal act. Thus, we have the successful rogue escaping entirely, and the yoke falling upon the man who has attempted in good faith to make his tax payments.

It will be necessary for the Board to decide before making an application of my report to the cases involved, whether they are going to enforce the first rule or the second one. If the first rule is accepted, it would not mean that all the claimants who had not appeared upon the tax records in the early years would be decided against, because a great many of them would not have the requisite 12 acres to bring their assessed valuation above the legal exemption. It would result, however, in the recovery of a considerable area of land, which is badly needed by the Picuris Indians. If the second

view is adopted, we are led inexorably to the extreme and stringent enforcement of the wording of the act. The Judges state that the tax requirements only apply to years in which taxes were lawfully assessed and levied. They further state: "We have reached the conclusion that the reference to the payment of taxes is to Section 3365". In this section, the language is as follows with reference to the tax feature:

> "Unless the party claiming adverse possession, his predecessors or grantors, have for the period mentioned in this section continuously paid all the taxes, state, county and municipal, which during that period have been levied upon the land or interest claimed, whether assessed in his name or that of another."

Obviously, this means they should have paid the taxes year by year as they were legally assessed and levied, and any failure to do so appearing upon the face of the assessment rolls brings them within the statute. As the Assistant Attorney General has so excellently stated in his brief to the court in the Nambe case:

> "Of course, the strongest point of all is the unmistakable purpose of Congress to require the payment of taxes as a condition of the establishment of a claim, emphasized by the fixing of two definite dates between which the tax payments must be made."

and in order to give effect and meaning to this unmistakable purpose of Congress, it is necessary to adopt the strictest rule possible as to delinquencies upon the face of the record. In other words, if all of the claimants who have avoided getting upon the rolls are excused by adopting the view taken by the two Judges, in order to give the language of Congress any meaning or effect whatever, it becomes necessary to take the position that one delinquency for one year appearing upon the face of the record is enough to bring the claimant within the statute and defeat his title. This may seem an extreme view, and indeed it will work hardship upon individual claimants who may lose a valuable piece of land for a few dollars' taxes

which they have allowed to go unpaid, but it is the only way that this tax provision can be given any life.

The delinquencies which I have abstracted from the record in the Treasurer's office and herewith deliver to you, can be divided into a number of classes:

1. Delinquent taxes still unpaid at the time of search. There can be no doubt whatsoever as to this class of delinquencies. The tax has been assessed and levied as shown by the record in the assessment roll; it has not been paid, and is still unpaid, as also shown by the tax records. Even though this is true for only one year out of the twenty-two years required by the statute, we feel that the claimant has failed to comply with the requirement set up by the federal act and the land should be returned to the Indians.

2. Cases where the land has been sold to the county for taxes and not redeemed at the time of search. This class is just as strong as the class above, and can raise no doubt whatsoever.

3. Land sold to the county for taxes and redeemed afterwards by a third party. As to this group of delinquencies, there can likewise be no doubt that the claimant has failed to comply with the terms of the act. In the first place, he has not paid his taxes continuously as required by Section 3365, as shown by the fact that it was sold to the County. This alone would be enough for him to lose out. In the second place, the chain of adverse possession has been broken by the advent of a third party buying the land for taxes, and I imagine no-one would say that one who steps in and buys property for delinquent taxes can tack his possession on to that of the man who allowed the taxes to become delinquent.

4. Land sold to the county for taxes and afterwards redeemed by the owner. The basis for my position that this group of delinquencies creates just as serious a cloud upon the claimant's title as those which have preceded, is that he has not <u>continuously</u> paid his taxes. The taxes were assessed and levied; they became due and the owner failed to pay them. Under the laws of the State of New Mexico, the county authorities subsequently sold the property to the County for the delinquent taxes, and the fact that the owner stepped in in 1926 when most of these back taxes were paid up under the

spur of the Land Board hearings in Taos, or whether he paid them up at any earlier time, makes no difference, to my view of the question. He has not paid his taxes continuously, he has not complied with the act, and the land should go back to the Indians.

5. Taxes that have been delinquent but were paid up before the search. This group is in exactly the same position with respect to complying with the act as the group in the last paragraph above, with the exception that as to this group the county authorities have simply failed to take the steps required by law and sell the property to the county for taxes. The county treasurers have frequently been very lax in all of their methods, and one of the most usual forms that their laxity has taken has been in this very respect. Instead of selling the land to the county for taxes, they have simply carried them on the rolls as unpaid year after year. It cannot be that this failure of the county officials to carry out their functions should place the claimant in any better position than his neighbors whose lands were sold to the county by a more energetic county treasurer. It has not been my policy to include in my report all taxes that were not paid exactly on the date when they were due, because during the years there were hundreds of claimants who might be a month or six months late in making their payments and thus incurred a small penalty for the delay. This sort of a delinquency can happen with anyone. The last half of the taxes for any year is due in May or June of the following year (depending upon the law in force at that time), and I have not included delinquencies unless they were delinquent into the following year, and even then I did not include them if they were paid in January or February of that year. For example, the last half of the 1920 taxes were due June 1, 1921, and I did not include them as delinquent unless they were unpaid as late as 1922. Thus I feel that all claimants marked in red in my report from 1902 to 1913 inclusive, and all the claimants without any exceptions in the abstracts from 1914 to 1924 have failed to comply with the statute, and their lands should be returned to the Indians.

In doing this work, I have been impressed with the importance of a similar record being made directly from the tax rolls for all the future pueblos which are to be considered. It is my opinion that the collection of the tax receipts is

absolutely worthless, and forms no basis from which the Board can act, either in extinguishing or confirming the titles. For instance, if tax receipts are presented for all the years except two or three, the Board cannot tell whether the missing receipts have simply been lost or whether the taxes are actually delinquent for those years. I would, therefore, offer as an humble suggestion that when San Juan is taken up, the Board should employ a stenographer or other person, with proper instructions regarding the tax records, to make such a record as those from the tax rolls which are situated in Tierra Amarilla, the County seat of Rio Arriba County.

Very truly yours,

DC:IB

TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

The Bureau of Internal Revenue is pleased to inform you that your income tax return for the year 1927 has been examined and is considered to be correct as submitted.

I am sure you will appreciate that should subsequent information be received which would materially change the amount reported, the Bureau is obliged under existing laws to redetermine your tax liability.

Respectfully,

D. H. Blair

Commissioner.

897A (1927)
TREASURY DEPARTMENT
INTERNAL REVENUE BUREAU

U. S. GOVERNMENT PRINTING OFFICE: 1928

(OPEN ON THIS FOLD)

TREASURY DEPARTMENT
OFFICE OF COMMISSIONER OF INTERNAL REVENUE
WASHINGTON, D. C.

OFFICIAL BUSINESS

WASHINGTON, D.C. JUN 5 1:30 PM 1928

LET'S GO! CITIZENS MILITARY TRAINING -CAMPS-

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE $300

Hampton Os
&
Chas H. Jennings
1646 Irving St. N. W.
Wash, D.C.

January 23, 1928.

J. W. Gardner, Esq.,
General Agent, Department of Justice,
Washington, D.C.

My dear Mr. Gardner:-

Thank you very much for the copy of printed hearings on the Department appropriation bill for fiscal year 1929, and for the information contained in your letter of the 5th instant.

I think we will be able to function with the amount allowed.

On December 3rd, I wrote a letter, addressed to the Attorney General, requesting that there be submitted to the Bureau of the Budget for inclusion in a deficiency bill an estimate for the purchase of a Dodge Sedan automobile to take the place of the present car in use, which is rapidly deteriorating. We were offered at the time $450.00 for the old car, which would leave a balance of $647.00 to be appropriated, for the purchase of a new Dodge car.

It is believed that the car now in use can not possibly last more than another year, and if it lasts that long it will have to be overhauled at great expense.

As a matter of economy, the Budget should allow the exchange and the $647.00 required to effect the purchase of the new car.

It is absolutely necessary to have a good, serviceable car to carry on this work. Two cars could be used to great advantage, but we will be satisfied with one good one.

As an alternative, if the Bureau of the Budget is unwilling to allow an additional appropriation of $647.00, it might be willing to approve the exchange and provide that the cash payment of $647.00 to effect the exchange be made from the current appropriation, as I am sure there will be a saving far beyond this amount.

Do what you can for us in this matter, and get it through in the next deficiency bill, if possible, for if we contime to use the old car much longer, we will not be able to get anything like $450.00 for it.

With kindest regards, I am

Sincerely yours,

CHJ:CP

ACTING CHAIRMAN.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON

December 4, 1928.

Hon. Charles H. Jennings,
240 Barton Ave.,
Cherrydale, Va.

Dear Mr. Jennings:

I have arranged for a meeting of the board in the office of the Attorney General on Thursday, December 6, at 10 o'clock.

Sincerely,

Louis H. Warner

Chairman, Pueblo Lands Board.

LAW OFFICES
HANNA & WILSON
805-8 FIRST NATIONAL BANK BUILDING
ALBUQUERQUE, NEW MEXICO

RICHARD H. HANNA
FRED E. WILSON
DUDLEY CORNELL

November 14, 1927.

Mr. Chas. H. Jennings,
Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Mr. Jennings:

Responding to your request for our views concerning suggested methods for expediting the work of the Pueblo Lands Board, and particularly in connection with the suggestion that the work be divided between the three members of the Board so that hearings can be conducted in three Pueblos simultaneously, we beg to advise that in our opinion the suggestion would not be feasible or in any sense meet with the objects of the Act of Congress. In other words, we do not believe that any member of the Board could intelligently pass upon the matters under investigation in any one Pueblo without being present when the hearings were had. It would be, in effect, a delegation of the authority of the Board to one member. Undoubtedly the change in procedure would also add very materially to the expense of the matter, as additional law clerks or attorneys would have to be employed, as there is considerable preparation of evidence required before a hearing, and because of the fact that Mr. Fraser could not keep up with the Board in connection with his duties as attorney, charged with the responsibility of bringing the suits which result from the report and findings of the Board.

Speaking from our angle as private counsel for the Pueblo Indians, we would also find it difficult to be in attendance on three hearings being conducted simultaneously. Possibly we would be able to get additional help, which of course we would endeavor to do, but we believe that efficiency would be sacrificed, and that in the hurried manner of conducting the work, sufficient errors would creep in, calling for judicial inquiry later to overcome any advantage that might be gained through the hurried method of procedure suggested.

As to the other suggestion, that law clerks be employed to go out and take the evidence and hold the hearings, I think the fatal objection to this procedure is that it would take a year or two to school these men in the matters coming before them. Otherwise, their inefficiency would stand out, and the work would not be expedited particularly through such suggested change in procedure.

We would all like to see the work expedited as much as possible, but feel that the work is now progressing as fast as it can under the circumstances that prevail. The suggestions made evidently emanate from someone not fully familiar with conditions in New Mexico, and we would also judge that the person making the suggestions is not fully informed concerning the evidence required by the terms of the Act itself and the difficulty of getting this evidence from the adverse claimants. We have been inclined to feel that you have accomplished almost the impossible in connection with some of the Pueblos in this respect and have on numerous occasions given serious thought to possible changes in procedure, without being able to hit upon a better plan than the one you are now following.

With personal regards, we are

Sincerely yours,

HANNA & WILSON,

by R.H. Hanna

RHH:IB

Copy to Mr. John Collier
" " Mr. Chas. de Y. Elkus

November 8, 1927.

Miss Jessie Johnson,

Monterey, Cal.

Dear Miss Johnson:

Your letter of the 4th to Governor Hagerman has been forwarded to me. The Governor writes me that he has advised you that a civil service examination is not required, and that you could enter upon your duties January first next, if you could not come sooner.

The entrance salary will be $150.00 per month, together with your expenses when away from Headquarters on official business. You will be expected to go into the field with the Board and report and write up testimony submitted at its hearings; also to do such work in the office as may be assigned to you. I assume that you have had some experience as a court reporter.

Please advise me whether the entrance salary is satisfactory and whether we may expect you to report for duty on January 1, 1928. I think it would be better if you could arrange to come at an earlier date.

Very respectfully,

Acting Chairman.

October 24, 1927.

Professor Ray A. Brown,
University of Wisconsin Law School,
Madison, Wisconsin.

My dear Professor:-

I regret very much that I have been unable to give you at an earlier date the information you asked for when I was at your office in Washington. Since my return to Santa Fe, I have been overwhelmed with work caused by trying to investigate three pueblos at one and the same time. This in the interest of progress which to my way of thinking is a bad procedure. The Powers in Washington however think the work of the Board should be completed within the next 12 or 18 months. My estimate is that it will require from this date three and one half to four years and longer if the personnel of the Board is changed which doubtless will happen when a new President is elected and takes office. As you are familiar with the duties of the Board as provided by the Act of 1924, I shall confine myself at this time to facts and figures, which may be of some interest to you, even if too late to use in your report.

While the act was passed June 7, 1924, the Board could not and did not function until after July 1, 1925, as no funds were available until that date. During the fiscal year 1925, the

Board's efficiency was only about 50% as time was required for organization, fitting up of offices, the adoption of a workable procedure and getting acquainted with the situation. It is not necessary for me to speak of the Board's handicaps, the personnel, etc., as I think you learned all about that when here.

During fiscal year 1927 we advanced to 75% in efficiency, as we were becoming more experienced, and I think by the close of the current fiscal year we shall have advanced to 100%, if such a thing is possible.

Up to date the Board has investigaed and reported upon the following pueblos and purchases in the order named:

1. Tesuque Indian Pueblo:
   Area 17,471.12 acres
   Claims passed upon 20

2. Jemez Indian Pueblo:
   Area 17,510.45 acres
   Claims passed upon 4

3. Nambe Indian Pueblo
   Area 13,568.33 acres
   Claims passed upon 240

4. Taos Indian Pueblo
   Area 17,380.55 acres
   Claims passed upon 503

5. Purchase by Taos Indians
   Area 5,695.92 acres
   Claims passed upon 38

6. Zia Indian Pueblo
   Area 17,514.65 acres
   Claims passed upon--no claims in grant

7. Santa Ana Indian Pueblo
   Area 17,360.56 acres
   No claims in grant.

8.	Purchase by Santa Ana Indians:		
	Area		4,945.24 acres
	Claims passed upon	22	
Total claims passed upon to date		827	

The Pueblos yet to be reported upon are as follows:

1.	Sandia Indian Pueblo:		
	Area		24,187.29 acres
	Claims to be passed upon	310	
2.	Santo Domingo Indian Pueblo		
	Area		74,743.11 acres
	Claims to be passed upon	43	
3.	Picuris Indian Pueblo		
	Area		17,460.69 acres
	Claims to be passed upon	655	
4.	San Juan Indian Pueblo		
	Area		17,544.77 acres
	Claims to be passed upon	700	
5.	Santa Clara Indian Pueblo		
	Area		17,368.32 acres
	Claims to be passed upon, approximately	250	
6.	San Ildefonso Indian Pueblo		
	Area		17,292.64 acres
	Claims to be passed upon	285	
7.	Pojoaque Indian Pueblo		
	Area		13,520.35 acres
	Unsurveyed claims to be passed upon, approximately	300	
8.	Cochiti Indian Pueblo		
	Area		24,256.50 acres
	Claims to be passed upon, approximately	200	
9.	San Felipe Indian Pueblo		
	Area		34,766.86 acres
	Claims to be passed upon	208	
10.	Isleta Indian Pueblo		
	Area		110,080.31 acres
	Claims to be passed upon surveyed	46	

11. Two purchases made by the Isleta Indians:
Area, approximately, 70,000.00 acres
claims to be surveyed and passed upon, approximately 200

12. Laguna Indian Pueblo
Area 17,378.91 acres
No claims surveyed.
San Juan Rancho
Gigante Rancho
El Rito, covered by patent
Area 25,233.18 acres
No claims surveyed

Paguate Purchase
Area 75,406.27 acres
claims to be passed upon 75

13. Acoma Indian Pueblo
Area 95,790.66 acres
No survey of claims and number unknown.

14. Pecos Indian Pueblo
Area 18,763.33 acres
No survey of claims.

Note: It is understood that this whole acreage is now claimed by a man by the name of Tex Austin, who has made of it a horse and cattle ranch.

Total number of surveyed and located claims yet to be heard 3,272

Even with a Board consisting of three active members and an enlarged office force, I am convinced that the work if done well, can not be completed under three and one half to four years, the opinion of certain outsiders (uplifters) and ill-advised officials in Washington, to the contrary notwithstanding.

I will add that all data in Sandia has been collected and hearings completed; data in San Domingo has been collected and

hearings will commence on claims at Pena Blanca, November 1st. It is believed that the Board will be able to file its reports on these two pueblos by the time Congress convenes.

Some three thousand deeds covering the 655 claims in Picuris have been collected, translated and abstracted. Hearings can not be had on these claims until sometime next summer. Soon after the first of the year, I shall go to San Felipe and collect deeds on the 208 adverse claims there recently surveyed; and it is hoped that hearings can be had and report filed in this pueblo by Spring. Thus you will see that the Board has not been idle.

In our conversation you suggested that in all probability an effort would be made at the coming session to amend the Act. While it is true that some of its provisions should be clarified I think this can be done through a test case raising all questions of law involved, which is now being prepared by Mr. Fraser and Messrs. Renehan & Gilbert, with a view of having an early decision by the Supreme Court. Should the bars be let down, the chances are that amendments would creep in which would result in disaster and possibly defeat the purposes of the bill as it now stands and under which the findings of the Board have been satisfactory both to the settlers and the Indians, except in cases where the meddlers (uplifters, pretended friends of the Indians) and over zealous attorneys representing settlers, have interfered.

Should you desire further data regarding the operations of

the Board, please let me know.

With kindest regards, I am

Sincerely yours,

CHJ:CP

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

BALTIMORE, MD.

OFFICE OF THE COLLECTOR
DISTRICT OF MARYLAND

R-221
Account No. 609461

July 28, 1927

Charles H. Jennings,
1646 Irving Street, N.W.,
Washington, D.C.

Dear Sir:

On your income tax return for the calendar year 1926 you report income from rents in the amount of $1125.00.

Kindly furnish this office a fully itemized statement showing the gross rent received and all items of deduction therefrom.

Respectfully,

GALEN L. TAIT,
Collector.

By A. J. Tragesser
Chief of Section.

ALC

Information requested must be received within FIFTEEN DAYS from date; otherwise items mentioned may be disallowed.

June 21, 1927.

Honorable F. K. Foster,
Department of Justice,
Washington, D. C.

Dear Mr. Foster:

I am advised that you are planning to come to Santa Fe this summer or in the early fall and will remain here several weeks. I trust that I have been correctly informed and that you can arrange to come early in next month.

Arrangements are now being made to commence hearings on the remaining cases on the Pueblo of Sandia (some 250) July 1st. These cases, it is believed, can be disposed of during July and the early part of August. The chances are that no further hearings can be had in any other Pueblo during your stay. From experience, I am convinced that you can, by attending some of these hearings, get a broader view of the situation than in any other way. Further, I should like for you to learn at first hand, how and in what manner the Board obtains documentary evidence from claimants holding lands adverse to the Indians. We can go to the Pueblo of Picuris, which lies up in the mountains about fiftymmiles north of Santa Fe, where there are, as shown by the survey, some 700 adverse claimants. The papers relating to these claims must be obtained during the summer months, as the roads are almost impassable during the winter. In all probability there are some thousands of deeds held by these claimants, and no doubt a majority of them will be unwilling to turn over their papers to the Board, as has been the case in other Pueblos. I have so far given my personal attention to these details, and by being diplomatic, have been able to obtain papers in practically all cases. A week or ten days spent there will throw further light on the difficulties confronting the Board. You will also be benefitted by the trip from a health standpoint, and when you grow weary of the daily grind, you can go fishing for mountain trout.

So far I have made reference to Board matters only. Of course, in your official capacity in the Department, you also must deal with the suits instituted by Mr. Fraser to quiet the Indian title, and conferences here

with him and members of the Board, and the information gleaned in other ways regarding legal questions involved will no doubt be of great benefit to you. On July 15th Judge Phillips of the District Court, will commence hearings on 66 contested cases in the Pueblo of Nambe. Mr. Fraser has expressed a wish that you be present during the trial of at least some of these cases so that you may know what he is up against in his efforts to uphold the report of the Board.

Since I returned to Santa Fe in January, 1926, I have been constantly on the go, as practically all details have rested upon my shoulders. So far I have been able to keep up under the strain, but I think it advisable to take a vacation some time during the summer or early fall as all other government employes and officials have done and are doing.

An early reply regarding your plans will be appreciated.

Sincerely yours,

CHJ:C

May 27, 1927.

Hon. John W. Wilson,
United States Attorney,
Albuquerque, N. M.

Dear Mr. Wilson:

In compliance with your request, I am enclosing herewith copy of the Act of 1924 creating the Pueblo Lands Board. Your attention is particularly invited to sections 2, 4, 6, 7, 8, 15 and 17 of the Act. The greatest difficulty confronting the Board is in construing Section 4, which relates to the statutes of limitation. There is a difference of opinion among lawyers as to just what that section means. Some hold that it means that a claimant may plead both under the territorial and federal statutes; while others maintain that the federal ~~positions~~ provisions (a) and (b) alone apply. Attorneys for the Indians take the position that under color of title payment of taxes must be made from and including January 6, 1902 down to the year 1924, or to the passage of the Act. Under Section 3364 of the New Mexico Code, payment of taxes is not required where claimant has color of title, and under Section 3365 color of title is required only from March 16, 1899, and payment of taxes for ten years. Under Section (b) of the federal Act, no color of title is required, but payment of taxes is required from March 16, 1899 to the passage of the Act. As you very well know, it is very difficult, and in many cases impossible, for the claimant to produce satisfactory evidence showing continuous payment of taxes in view of the manner in which tax matters have been handled in this State. Both in Sections (a) and (b) this language is used: "and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or of adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to the date of the passage of the Act." As already stated, no taxes are required under the territorial or state law where one shows color of title. In a large percent of cases, however, the claimant has been able to show color back of 1902 and possession without color back of March 16, 1889. If the question of payment of taxes gets before

the United States Supreme Court, and it undoubtedly will, and the court holds that sections (a) and (b) of the Act of 1924 are the sole guide and that the words "to the extent required by the statutes of limitation or of adverse possession of the Territory or of the State of New Mexico," mean nothing, then I see no hope for the claimant.

After you have studied the Act, which is clearly a bill of equity, I shall be glad to have your views on the troublesome questions involved.

Sincerely yours,

CHJ-S
Enc.

Acting Chairman.

March 25, 1927.

The Most Reverend Albert T. Daeger, O.F.M.,
Santa Fe, New Mexico.

Reverend Sir:

In my investigation of claims lying within El Ranchito, claimed by the Santa Ana Indians, I find that 7.75 acres of land have been donated to or purchased by your Church. This land, I am informed, lies close to the Indian village on said purchase. The Board will appreciate it if you will call at our offices at your convenience and give us such information as you have regarding the matter.

Very sincerely yours,

CHJ-S

Acting Chairman.

March 25, 1927.

Messrs. Reid, Hervey & Iden,
First National Bank Bldg.,
Albuquerque, N. M.

Attention of Mr. Iden.

Gentlemen:

Upon my return to Santa Fe, I found from an examination of the Joy Survey that the Santa Fe Railway crosses El Ranchito (Santa Ana) purchase. It will therefore be necessary to have plats and documentary evidence covering this right of way.

I saw Mr. Murphy, manager of the Western Union, yesterday, and he seemed to think that the interest of the Telegraph Company was so closely allied with that of the Railroad Company that it would not be necessary for him to furnish any documentary evidence. I requested him to confer with you on the subject, as you understood just what the Board required.

Very respectfully,

CHJ-S

Acting Chairman.

January 15, 1927.

MEMORANDUM FOR MR. ASSISTANT ATTORNEY
GENERAL MARSHALL

Attached is a letter dated December 15, 1926, from Mrs. Ethel F. Stevenson, an employe in this office, requesting an increase in salary. At the date of her appointment she was the only capable court reporter in Santa Fe not regularly employed. She claimed that she was making annually on piece work not less than $2500. The Board, however, felt that it could not pay more than $2,000 per annum, and she finally consented to accept an appointment for one year at that salary.

The reporting of testimony here is quite different from what it is in the east or other parts of the country. Ninety-five percent of the witnesses appearing before the Board speak Spanish, which, of course, must be interpreted. Mrs. Stevenson has had several years' experience in taking this kind of testimony and her services are regarded as invaluable. In addition to her court reporting she performs other duties of a high order which the ordinary stenographer is incapable of performing. She has expressed a wish to resign. Should she leave us we feel it will be difficult, if not impossible, to replace her. The Board's personnel is not top heavy by any means, and with the present experienced force it has been making satisfactory progress. It cannot, therefore, afford to lose such an experienced employe on the question of salary.

It is therefore recommended that her salary be increased from $2,000 to $2,200 per annum, to take effect February 1, 1927.

Respectfully,

PUEBLO LANDS BOARD

CHJ-EFS

Acting Chairman.

December 15, 1926.

Hon. C. H. Jennings, Acting Chairman,
Pueblo Lands Board,
Santa Fe, N. Mex.

My dear Mr. Jennings:

I was employed in October, 1925, by the Pueblo Lands Board, as reporter and stenographer. During my 14 months' employment with you the reporting work has necessitated trips for as long as a month into Indian Pueblos, or places near them, where accommodations are poor (especially so for my 3 year old baby), and the per diem insufficient to meet expenses. Abstracting is also one of my duties which is entirely outside of the scope of stenography. Inasmuch as you have lived in the east and have lived here for over two years, I believe you know that living expenses are much higher here than in Washington.

In view of the above facts, I would appreciate, and believe I am entitled, to an increase of salary.

Very truly yours,

January 14, 1927.

Hon. H. P. Owen,
District Judge,
Los Lunas, N. Mex.

Dear Judge:

The Pueblo Lands Board in making investigations of adverse claims in the Pueblo of Isleta, and in certain purchases made by the Indians of lands known as the Sedillo & Gutierrez Grant and Lo de Padilla Grant, has discovered that about 1912 a suit was instituted in the district court of Valencia County by Federico Sanchez, et al, v. the Pueblo of Isleta, and that a decree was passed in favor of complainants for about 15,000 acres of the Lo de Padilla Grant.

I recently went to Los Lunas for the purpose of obtaining the file of papers so that the Board would have the necessary data before it regarding the loss to the Indians of this particular land, but I was informed by the clerk that all court papers and records were at Socorro. I called at your home but found no one there and was advised that you had gone to Albuquerque. I attempted to get in touch with you when I returned to Albuquerque but was advised over the 'phone by Mrs. Owen that you had gone back to Los Lunas.

I am enclosing letters of introduction from Judge Reed Holloman and Mr. George S. Downer, which I hope you will consider favorably although not presented to you in person, and that you will give me an Order on the clerk at Socorro for the withdrawal of the papers in said case, if on file, for 30 days, or for such period as you are willing to grant. Upon receipt of such order I will go to Socorro and receipt for the papers in person, or, if they are not there, will obtain a certified copy of the decree in the case. An early reply will be greatly appreciated by the Board.

I am enclosing return envelope which requires no stamp, as the correspondence is purely official.

Very respectfully,

CHJ-EFS

Acting Chairman.

December 20, 1926.

Arnold G. Graf, Adjuster,
704-720 Gas & Electric Bldg.,
Denver, Colorado.

Dear Sir:

In compliance with request contained in your letter of December 18, 1926 (B-1057707), I am enclosing herewith signed statement as to the cause of the accident reported and resultant responsibility; also statement of Mr. Frank Quintana, who saw the position of the cars in Water Street immediately after the accident occurred.

Very respectfully,

Enc.

STATEMENT.

Santa Fe, N. M., Dec. 20, 1926.

I was driving my car north on Don Gaspar Avenue, Monday evening, November 29th. I was driving about 8 or 10 miles an hour, and as I turned to the right into Water Street, I saw an automobile parked at the southeast corner. In order to avoid this car, I had to turn out quite a bit into Water street, and ran into Mr. Gonzales, who was driving west on Water Street, and whom I did not see until it was too late to avoid the accident.

Mr. Gonzales claims I was at fault and insists that I pay for the damages. The car has been repaired by Closson & Closson, at a cost of $31.65, and the amount has been charged to me, as shown by the bill sent you with my report. Soon after the accident occurred I consulted my attorney, and he advised me that upon the facts stated Mr. Gonzales would undoubtedly obtain judgment against me for the damages sustained, as I had no witness or witnesses to testify in my behalf. In view of the circumstances, I do not feel justified in contesting the claim in a court proceeding, and will, of course, pay the bill, against which I am insured in your Company.

I will add, that soon after the accident occurred, the matter was reported to the police and an officer of the Police Department came to my home and demanded that I pay the damages to the amount of $38.00. This I refused to do, and the car was taken by Mr. Gonzales and repaired at a cost of $31.65, as above stated.

The Travelers

The Travelers Insurance Company
The Travelers Indemnity Company
The Travelers Fire Insurance Company

L. F. Butler, President

Hartford, Connecticut

CLAIM DEPARTMENT
ARNOLD G. GRAF, ADJUSTER

PHONE MAIN 833

BRANCH OFFICE
704-720 GAS AND ELECTRIC BUILDING
DENVER, COLO.

December
18th
1926

B-1057707

Mrs. Louise M. Jennings
229 Palace Ave.
Santa Fe, New Mexico

Re: P.D.-David Gonzales

Dear Madam:

In the first report of accident you state that the owners of the damaged car and the witness maintain that your circling too far into the street caused this accident. Will you kindly let me have your opinion on this phase of the case and if possible furnish me with a statement from the witness, Frank Quintana?

In the event the repairs to the claimant's car have been completed will you kindly furnish me with the name of the party who paid the bill?

Very truly yours,

Arnold G. Graf

Arnold G. Graf,
Adjuster.

AGG:HP

STATEMENT.

Santa Fe, N.M., Dec. 10, 1926.

On November 29, 1926, at night I was driving west on Water Street toward Don Gaspar Avenue. At the intersection of Water Street and Don Gaspar there was a parked car on the left and on the right a delivery truck. Water Street at that point is narrow and very dark. A Willys-Knight car was turning from Don Gaspar into Water Street and apparently in order to avoid the parked car circled too far out in the street and struck the rear end of my car smashing the fender, denting the body, breaking the bumpers in three places. The Willys-Knight car was driven by Mrs. C. H. Jennings. I was driving about 15 miles an hour when struck. Mr. Frank Quintana, of Santa Fe, saw the accident and will furnish an affidavit if required.

The estimate for repairing the damages to my car was $38.00.

Witness:

Jas. J. Gentchay

David Gonzales

December 15, 1926.

C. B. Thompson, Special Collector
of Delinquent Taxes,
Los Lunas, New Mexico.

Dear Mr. Thompson:

Referring to our conversation at Bernalillo, regarding the assessment of taxes against Indian property, I enclose herewith, for your information, an extract from the Act passed by Congress March 3, 1905, and reported in 33 Statute at Large at page 1069:

> "That the lands now held by the various villages, or pueblos, of Pueblo Indians, or by individual members thereof, within Pueblo reservations, or lands in the territory of New Mexico, and all personal property furnished said Indians by the United States or used in cultivating said lands, and any cattle and sheep now possessed or that may hereafter be acquired by said Indians, shall be free and exempt from taxation of any sort whatsoever, including taxes heretofore levied, if any, until Congress shall otherwise provide."

Yours very truly,

CHJ-S

REGULAR MEETING
1ST MONDAY IN EACH MONTH

Montezuma Lodge No. 1

A. F. & A. M.

Santa Fe, New Mexico

September 8,1926.

Mr.Charles H.Jennings,
Santa Fe,N.M.

Dear Sir & Brother:-

I have the pleasure to inform you that on August 9th. you were duly elected a member of Santa Fe Chapter No.1,and on September 6th. a member of Montezuma Lodge No.1, by affiliation.

The fee in the Chapter is $4.00 and in the Blue Lodge $9.00

Your petition in the Commandery will come up on the 19th.

Fraternally yours,

William E. Griffin
Secretary

Sept. 3, 1926.

Dr. Thos. P. Martin,

Taos, N. M.

My dear Doctor:

I have yours of the 31st ultimo, with reference to quarters at the home of Miss Schurich. I assume that the rental stated covers a room for Mrs. Jennings and myself.

We expect to leave here for Taos on the 15th, and will commence operations on the 16th. In the meantime, I am going to send you a few notices to post in the post office, at the Court-house door, and in other conspicuous places. If you see Mr. Giddings, tell him I will in a day or so send notices to be inserted in his paper.

With kindest regards to Mrs. Martin,

I am,

Sincerely yours,

DR. T. P. MARTIN,
TAOS, NEW MEXICO

Aug 31

Dear Judge

I saw Miss Lena Schmick and she says she will let you have a good room for $20.00 per month — she will furnish the linen but will not take care of room.

Yours

T. P. Martin

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SOLICITOR

WASHINGTON, D. C.

August 23, 1926

Mr. C. H. Jennings
Pueblo Lands Board
Santa Fe, New Mexico

My dear Jennings:

Due to the illness and death of my Father, I have been absent from Washington almost continuously for the past few months. On my return last week I have your letter of July 30th, relative to obtaining map of Blount County, Tennessee, showing the Indian Reservation. I do not happen to have a map showing the different stages of that Reservation, but I think I know where I can get one for you, and will do so, if possible.

You will recall that the boundaries of the Reservation were continually changed from 1796 to 1837, noting the provisions of twelve or fourteen treaties with the Indians. The Whites were continually pressing in on the tribes and just previous to the time of the transportation of the Indians to the West of the Mississippi, the Indian lands were much reduced in area to what they were twenty-five to fifty years earlier, as during that fifty years the White settlers gradually carved out much of the Indian land for their own use.

In the handling of some of the Tennessee titles I obtained from the Indian Office copy of a large map showing an outline of the reduction of land by the many treaties -- I shall endeavor to get your friend a copy of that map.

Because of my absence, I am not able to give you much news relative to the acquisition work, other than to state that it is not progressing as smoothly under the present regime. The idea of the Department of Justice that the law does not recognize prescriptive titles is almost an insurmountable obstacle, with the result that the area purchased or acquired last year was less than any year previous, since the commencement of the work.

I know that you are not without your troubles, that you have plenty of work and are doing all, and a little more, than your position calls for -- that is second nature with you, however, don't permit the work to undermine your health.

I shall advise you later as to the map.

With kindest regards,

Very truly yours,

A H McCarthy

930 F Street N W

July 30, 1926.

Mr. A. H. McConville,
930 F. St., N. W.,
Washington, D. C.

My dear Mac:

May I not ask a favor of you? I have a friend here who is very much interested in the former home place of General Sam Houston, who lived in Blount County, Tennessee, the situs of his habitat being about 10 or 15 miles northeast of Maryville. I have been at Houston's homestead, but it has been so long ago that it is now a mere recollection.

What the party wants is a map of Tennessee or of east Tennessee showing the boundary lines of the old Cherokee lands, which I am almost certain embraces the old Houston property. I assume your surveyors have maps or plats upon which the Indian boundary could easily be shown in red. If you can send me such a map or plat, I shall consider myself indebted to you forever.

Have been exceptionally busy since I last saw you. You know "work" is my middle name and I seem to thrive upon it.

With kindest regards and best wishes, I am

Sincerely yours,

CHJ-EFS

GAASTRA, GLADDING, JOHNSON & SCOVILLE
ARCHITECTS AND ENGINEERS

ALBUQUERQUE, N. M.
SANTA FE, N. M.

T. CHARLES GAASTRA
JAMES N. GLADDING
NEAL W. JOHNSON
C. WILBER SCOVILLE

July 29 26

Charles H Jennings
Santa Fe
N.M.

Dear Brother Jennings

Your petition for affiliation to Montezuma Lodge was referred to me a chairman of investigating Committee.

Will you please get in touch with me so that I can have the committee meets go over this matter!

My office is at the corner of Shelby and the alameda

Fraternally Yours
T Chas Gaastra

ADDRESS REPLY TO
"THE DISBURSING CLERK"

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

HD:VO

July 23, 1926.

Mr. Charles H. Jennings,
Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Sir:

Regarding your check for salary due July 15th, you are advised that by order of the General Accounting Office, all salaries on the 15th of the month will be paid in amounts of even dollars and the check for the last half of the month will cover the balance due.

Respectfully,

H. B. Dallett

Deputy Disbursing Clerk.

July 19, 1926.

Don C. Fees, Esq.,
Disbursing Clerk, Dept. of Justice,
Washington, D.C.

Dear Mr. Fees:

I refer to check No. 219,026, dated July 15, 1926, drawn in my favor for $241.00. The table furnished this office, based on the recent Retirement Act, fixes the deduction per month in my case at $17.50.

It will be noted that for the first 15 days of the month, there has been deducted $9.00, instead of $8.75. I assume you will give proper credit in check covering last half of the month.

Yours very truly,

CHJ-EFS

Hon Jennings.
Commissioner—
In Re Taos Pueblo Grant

In presenting our deeds to the Lands on the East and West Side of Pueblo Ave—
we do so in Compliance with the Act of Congress 1923 Relating to Same—
But without prejudice to our Rights Guaranteed under the Treaty of Feb 1848. Between the United States of America and Mexico— or the Constitution of the U. S. A. in Relation to Same—

The Colonial Bond & Security Co
by A R Manley
Vice President.

Department of Justice

OFFICE OF

The General Agent

Washington

JDH-MMP

June 29, 1926.

Charles H. Jennings, Esq.,
Pueblo Lands Board,
Santa Fe, New Mexico.

My dear Mr. Jennings:

I am in receipt of yours of the 23rd returning unused transportation requests No. 181082 to 181090 inclusive. We have credited you with this book and cancelled it.

With respect to your request for an additional book, I doubt whether it will be possible to issue the same for the reason that your expenses are paid by the disbursing clerk of the Board at Santa Fe, and it is not customary to issue requests to officials who are not paid by the disbursing clerk of the Department proper. I think it will be necessary for you to pay for any railroad fare in connection with official travel and submit your account to the disbursing clerk there for payment. This will not result in any additional charge to the Government as we pay the regular tariff rates on transportation requests just the same as if it were cash fare. The only inconvenience, therefore, would be the necessity for spending money and waiting for reimbursement.

Very truly yours,

J. D. Harris,
General Agent.

Taos, New Mex
June-14-1926

Receipt of C H Jennings check #767 dated June 10-1926, drawn in favor of Adelina Otero Warren for $30.00 in full of services rendered the Pueblo Lands Board to date.

E L Trujillo

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

Santa Fe, N. M.,
June 14, 1926.

Dear Mr. Jennings:

I enclose the draft of letter to the Attorney General in regard to the Corona. If it is not worded to suit you, you have the privilege of re-writing it to your own satisfaction.

We thought you would be here today. Sena arrived O.K. Are you going to be here next week at the time of the sale? Understand the Commissioner will be out to attend it. That may be confidential information I am letting out of the bag, but I hardly think so. We just found out he was coming today.

As to the rubber stamps, I don't think myself that you ever gave the order. Be that as it may, the New Mexican has a list of the stamps desired, their numbers, and the wording of them, in their office, and they must have gotten it from somebody. Goutchey does not recall having taken it over. It seems to be a mystery. It is to be hoped that we can get authority to pay them for the stamps anyway, under the circumstances. Perhaps after the 1st of July it can be arranged.

We have not heard anything in regard to the portable typewriter to date. If we do, will let you know at once.

Will be glad when you send us some work to do. I have had nothing to do the last few days. I cleaned up the desks. Got some Bon Ami and polished the glass on yours and Mr. Goutchey's and Mr. Hagerman's desks; washed the ink bottles; glass paraphanelia, etc., and dusted and straightened up as best I could. These offices are rather dusty in the summer--no sprinkling apparently done on the plaza, or very little at least.

I feel sorry for you reading all that testimony over again, and I suppose your soul cringes every time you run across a typographical, or "typical" error. I got so sick and tired of it writing it up that I didn't care how many errors in typing I made, just so I got it out of the way.

Respectfully,
Mrs. Stone.

GPO

Taos, New Mexico

June 3, 1926.

The Attorney General,
Washington, D. C. (Division of Accounts)

Sir:

The disbursing clerk has forwarded to me here where I am engaged on preliminary work pertaining to the Indian Pueblo of Taos, a copy of exceptions to Item No. 3 in Vouchers 6, 34, 35, 52, 54, 55, 56 and 57 of his account for quarter ending March 31, 1926 and a copy of his reply thereto of the first instant.

I have found it impracticable in most cases to obtain receipts covering expenses on short trips which have been made in connection with our work. I therefore have the honor to request that travel regulations governing expenses of U. S. Marshals and their deputies for trips of over three, six and twelve hours namely; $1.33, $2.67 and $4.00 in lieu of subsistence be made to apply to the members of the Board and the office force while in the field in line of duty. This authorization to cover expenditures made commencing July 1, 1925 and ending June 30, 1926.

Hereafter very few short trips will be made and in such cases receipts covering actual expenses will be obtained if possible.

Respectfully,

Acting Chairman.

ADDRESS REPLY TO
"CHAIRMAN PUEBLO LANDS BOARD"
AND REFER TO NUMBER

ROBERTS WALKER
CHAIRMAN
HERBERT J. HAGERMAN
REPRESENTING
THE SECRETARY OF THE INTERIOR
CHARLES H. JENNINGS
REPRESENTING
THE ATTORNEY GENERAL

PUEBLO LANDS BOARD

SANTA FE, NEW MEXICO

June 1, 1926.

Dear Mr. Jennings:

Enclosed herein you will please find copy of my reply to Department, covering question on March quarterly account. You will note under item #3 that an explanation is requested on trips of less than 24 hours (which will effect us all), as the Department wants to apply actual expenses on such trips.

No doubt you will remember that we talked the matter over and we were under the impression that we would be governed by the same regulations as United States Marshals and their deputies, as Par. 54 of the Regulations does not mention trips of less than 24 hrs., but Par. 61 does. We thought we could take a chance under Par. 54, and if disallowed we could refund. We did not receive the Circular letter putting us under Travel Regulations until some time after the Board started to function.

Of course this is calling for an explanation, and the amounts are not disallowed as yet, but they will be if we do not get it straightened out,- that is if the Dept. will not accept our explanation, or if you do not get special authorization under Par. 54.

Am sending you a copy of Par. 54 and 61, of the Travel Regulations; thought best to do this, as I would suggest that you get special authorization from the Attorney General under Par. 54 for all, for the fiscal year, commencing July 1, 1925, and ending June 30, 1926. I am of the opinion you can obtain this authorization.

We will not have many more short trips and no doubt the Department will consider that.

Am unable to locate any letter on file authorizing the $4.00 per diem in lieu of subsistence from the Department, but there must be such authorization as you appointed Mrs. Stone June 1, 1925, and allowed her the $4 per day in lieu of subsistence.

Sincerely,

Jas. J. Goutchey.

Jas J. Goutchey

PUEBLO LANDS BOARD
SANTA FE NEW MEXICO.
JUNE 1, 1926.

ATTORNEY GENERAL,

WASHINGTON, D. C.

SIR:

Replying to Department questions Form 1, Divn. of Accounts, dated the 24th ulto., AAC & CHS., in re : to my Quarterly Account, for the period ended March 31, 1926, I have the honor to report as follows:

Item. SALARIES & EXPENSES, PUEBLO LANDS BOARD.

1. Vouchers number 6, 7, 34, 55, and 57, the gas and oil were used in privately owned automobile. No charge was made for automobile and no cheaper means of conveyance. The only expense incurred was for gas and oil and all gas and oil were used on official business in connection with the Pueblo Lands Board, on trips to and from Indian Pueblos, and inspection of lands on said Pueblos.

2. V. 51, departed from Santa Fe, New Mexicio, March 30th, at 10:30 a. m., and returned to headquarters March 31, at 5:45 p. m. Absence from headquarters over 24 hours.

3. Vs. 6, 34, 35, 52, 54, 55, 56, and 57; The employes of the Board were commissioned at $4.00 per day in lieu of subsistence, and we were under the impression that they were governed by the same Regulations, as United States Marshals and their deputies- for trips of over three, six, and twelve hours, namely $1.33; $2.67 and $4.00, as we did not receive the travel regulations for some time after the Board, started to function. Would it be permissable under Par.54, of the Travel Regulations, to allow $1.33 and $2.67, for short trips of over three and six hours, providing said trips do not fall within the travel status of 10 hours, between 8 a. m., and six p. m. , which would obviate the taking of receipts and would save considerable time and trouble; or would it be necessary for the Board , to obtain special authorization from the Honorable Attorney General, as outlined in Par.54, of Travel Instructions. I respectfully request information as to proper procedure. Wish to state we do not anticipate many more short trips., and it would help considerable if this authorization could be given for this fiscal year, commencing July 1, 1925.

Respectfully submitted,

Jas. J. Goutchey

My commission expires April 8, 1928.

Special Disbursing Agent,
Pueblo Lands Board.

Subscribed and Sworn to before me this 1st day of June, 1926.

TRAVEL REGULATIONS.

54. Section 13 of the sundry civil act approved August 1, 1914 (38 Stat., 680), provides-

> That the heads of executive departments and other Government establishments are authorized to prescribe per diem rates of allowance not exceeding $4 in lieu of subsistence to persons engaged in field work or traveling on official business outside of the District of Columbia and away from their designated posts of duty when not otherwise fixed by law.

Under the provisions of this act, persons engaged in field work or traveling on official business of the department outside of the District of Columbia and away from their designated posts of duty may be allowed not to exceed $4 per diem in lieu of subsistence, but such allowance must first be specially authorized by the Attorney General in the letter of appointment or amendment thereto.

61. Per diem in lieu of subsistence will not be allowed when the officer or employee is absent from his headquarters less than 24 hours on any trip. In such cases actual expenses only will be allowed within the maximum of $5 per day. Such actual expenses must be itemized as provided in paragraph 44.

(Copy)

Form 1, Divn. of Accts.

DEPARTMENT OF JUSTICE
DIVISION OF ACCOUNTS
WASHINGTON D. C.

MAY 24, 1926.

Jas. J. Goutchey, Esq.,
Spl. Disbursing Agent,
Santa Fe, N. M.

Sir:

EXCEPTIONS:

Explanations are required to the following items in your account for the Quarter ended March 31, 1926. These questions should be given immediate attention and answers should be in DUPLICATE. J. D. HARRIS, GENL ACT.

Item 3. Vouchers number, 6, 34, 35, 52, 54, 55, 56, and 57. These vouchers show that per diem expense in lieu of subsistence has been incurred for periods of less than 24 hours absence from headquarters. Whereas, only the necessary and actual expense should be allowed. Explanation is desired. Please see Order #1656 of July 1, 1925, wherein the Travel Regulations, Department of Justice, are extended and made applicable to the Pueblo Lands Board; also see paragraph 61, then paragraphs 43 to 53 inclusive of same, and comply therewith, furnishing this office full data and receipts, in order that these vouchers may be adjusted accordingly.

C O P Y

EXCEPTIONS IN PART.

BMP:MMS

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

BMP-

221190-71

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

May 20, 1926

Hon. Charles Jennings,

Pueblo Lands Board,

Santa Fe, New Mexico.

Sir:

Yours of May 15th received and contents noted. Special attention is being given to what you say with reference to Mr. Walker and also what Mr. Fraser said in a former letter, and it is to be hoped that some solution of the problem may be shortly worked out.

Respectfully,

For the Attorney General,

B. M. PARMENTER,
Assistant Attorney General.

11-37

May 15, 1926.

B. M. Parmenter, Esq.,
Assistant Attorney General,
Washington, D. C.

Dear Mr. Parmenter:

I am in receipt of your letter of the 10th inst. advising me that nothing can be done to hasten a decision in the Candelaria case. When I sent the telegram I was aware of the Department's helplessness in the matter, but I thought that possibly the Attorney General, being a member of the Board, could, if he deemed it advisable, gently drop a hint to the Chief Justice setting forth the importance of a decision before the summer vacation. If the Court adjourns before handing down a decision, it will be along towards the close of the year before the Board can possibly make its reports on the Pueblo of Nambe.

One of the most serious hindrances now facing the Board is the absence of the third member. As you probably know, Mr. Walker has been seriously ill since the latter part of February. There is, so far as I can learn, no prospect of his early recovery and it may be months before he will be able to resume his duties even in his law office, and we have no assurance when he can come here, or whether he will ever be able to give any serious attention to the Board matters.

Of course I shall not sit in idleness awaiting a decision of the Court or the recovery of Mr. Walker. The hearings of the 211 cases in Nambe have been concluded and I am now getting ready to go to Taos, 72 miles north of Santa Fe, to engage in preliminary work on that Pueblo. As there are 385 adverse claims lying within the Taos boundary, it will require from 4 to 6 weeks to complete the preliminary work alone. Later, the office force will be moved there, and we hope by being practically on the ground to reduce the time at least one-half.

You will remember that I strongly recommended to the Attorney General the appointment of a Mr. Senecal, who was at the time in Mexico, as one of our force. He has never shown up, nor given any excuse for not reporting for duty. I have at last found a young man here in Santa Fe who possesses qualifications quite if not equal to those

possessed by Mr. Senecal. We are testing him out at present and later I shall, if he proves entirely satisfactory, take up with the Department the question of his permanent appointment.

No doubt the Attorney General has wondered why the Board has made no further recommendations regarding the three additional employes so much desired by Mr. Walker. One strong reason is that men possessing qualifications required cannot be easily found, and if found, are not willing to be associated with the Board at the salary offered. Mr. Walker's illness has also prevented further action in that regard.

Mr. Fraser has been with us during nearly all of the hearings and has been of great assistance in developing various cases, many of which were quite complicated.

We are making fairly good progress in view of the circumstances and hope to keep moving, notwithstanding our many handicaps.

Sincerely yours,

CHJ-S

Acting Chairman.

ADDRESS REPLY TO
"CHAIRMAN PUEBLO LANDS BOARD"
AND REFER TO NUMBER

PUEBLO LANDS BOARD

SANTA FE, NEW MEXICO

ROBERTS WALKER
CHAIRMAN
HERBERT J. HAGERMAN
REPRESENTING
THE SECRETARY OF THE INTERIOR
CHARLES H. JENNINGS
REPRESENTING
THE ATTORNEY GENERAL

5/3/26

Hon. Chas. H. Jennings
Santa Fe.

My dear Mr. Jennings:

Having called on several occasions with these papers and never finding you, have decided to leave them on your desk.

The deeds are all O.K. I enclose petitions for each body which please fill out & if you will mail them to me with the deeds I will file them with the Secretary for you.

There is a fee but that can be paid after you are elected. I think it is $6.00 in each case but am not sure.

With best wishes

Sincerely

Nathan Jaffa

April 19, 1926.

My dear Harry:

I am under many obligations to you for sending to me so promptly duplicate copies of dimits from the Blue Lodge and Chapter. I turned them over at once to our good friend Jaffa, who promised to submit them to the Master and High Priest, respectively, for their conclusion as to their acceptability as a basis for affiliation. Up to this moment I have not been advised regarding results.

It seems, however, that either the Colonel or you misunderstood just what I wanted. I had the original dimits and what I really wanted was dimits or certificates of recent date showing that I was square with the home organizations and in good standing. I was fearful that the Lodge here would not want to accept dimits dated in 1916.

I have been waiting to hear from Mr. Jaffa before answering your letter. I shall wait no longer. If perchance the lodge requires a different set of papers, I trust you brethren will assist me as far as you can under Masonic law.

Sincerely and fraternally yours,

Mr. Harry Gump,
Johnson City, Tennessee.

ADDRESS OFFICIAL COMMUNICATIONS TO
THE AMERICAN CONSUL
TAMPICO, MEXICO.

AMERICAN CONSULAR SERVICE

Tampico, Mexico, March 15, 1926.

Pueblo Lands Board,

Santa Fe, New Mexico.

Gentlemen: Attention of Mr. C. H. Jennings.

I have for acknowledgment your letter of March 5, 1926 regarding the case of Mr. A. A. Senecal of Tampico and in which you embody various communications exchanged with Mr. Senecal with regard to a position in your Board which was offered by you and accepted by him.

Immediately upon the receipt of your communication, a letter was addressed to Mr. Senecal inviting him to call at the Consulate. Mr. Senecal presented himself here on Saturday, March 13, 1926, and having shown to him your communication, he informed this office that he would communicate with you at once. He added that there must be a miscarriage of the mail inasmuch as he forwarded you a communication regarding this subject some time ago.

He did not disclose, however, the nature of the reply he intended to make to you.

Assuring you that it is a pleasure to be of service to you, I am, gentlemen,

Very

Very respectfully yours,

Charles A. Bay
American Consul

310-S

cab/v

March 6, 1926.

The Collector of Internal Revenue,

Baltimore, Md.

Dear Sir:

I enclose herewith my return of income tax for calendar year 1925, together with personal check No. 90, dated March 6, 1926, to amount of $12.24, which, according to my calculation, covers total amount due.

Should you for any reason wish to communicate with me, my temporary address is Santa Fe, New Mexico.

Very truly yours,

CHJ-S
Enc.

March 3, 1926.

The American Consul,

Tampico, Mexico.

Dear Sir:

On August 31, 1925, Mr. Arthur A. Senecal of this city, was appointed and entered upon duty as expert stenographer to the Pueblo Lands Board under authority of the Attorney General of the United States. About September 15th, the Huasteca Petroleum Company of Tampico, telegraphed Mr. Senecal, who had formerly been employed by it, offering him an attractive salary together with all expenses. The compensation offered by the Company was much larger than the Board at that time was authorized to pay and Mr. Senecal reluctantly resigned his position with the Board and accepted the offer of the oil company.

Mr. Senecal, in addition to being an excellent stenographer and typist, is also an expert interpreter and translator and his services are very much needed by the Board in connection with its present duties. While in Washington in December, the writer took up with the Attorney General personally the matter of the re-employment of Mr. Senecal, and the pay was fixed at an amount equalling that paid to him by the oil company. On January 18, 1926, the Chief Clerk of the Board, sent the following telegram:

> Mr. Arthur A. Senecal,
> Huasteca Petroleum Co.,
> Apartado #94, Tampico, Mexico.
> Employment authorized three thousand per annum with actual travelling expenses and four dollars per day subsistence when away from headquarters. Report here for duty as soon as possible.
> J. J. Goutchey.

In reply, Mr. Senecal sent the following telegram:

The American Consul (Cont.)

Tampico, Mexico, January 20, 1926.

J. J. Goutchey,
c/o Pueblo Lands Board,
Santa Fe, New Mexico.
Leaving soon as possible. Will wire date departure. Thanks and regards.
Arthur.

Mr. Senecal, failing to report, the undersigned sent the following telegram to Mr. Senecal at the address hereinbefore stated:

Santa Fe, New Mexico, February 1, 1926.

Your telegram January 20. Advise when leaving for Santa Fe.
Charles H. Jennings.

No reply has been received to this telegram. On February 13, 1926, the Chief Clerk wrote Mr. Senecal as follows:

Dear Arthur:
Mr. Jennings wired you February 1st requesting you to advise when you are leaving for Santa Fe. He is unable to understand why you do not answer his wire. You are badly needed here and we are anxious to know when we may expect you. Wire Mr. Jennings at once as we have hearings coming up and business in the field and have to arrange the dates accordingly.

On February 22, 1926, another telegram of similar import was sent to Mr. Senecal, but to date no acknowledgment has been received.

It is not like Mr. Senecal to ignore communications sent by the Board, especially in view of his telegram of January 20th. It is feared that he has been, or is, dangerously ill or that he is being blocked in some unaccountable manner. The Board is very anxious to ascertain, if possible, why the young man has not reported here in person and why he has failed to answer its communications.

The American Consul (Cont.)

Anything you may do in this regard will be greatly appreciated.

Respectfully yours,

PUEBLO LANDS BOARD

By

CHJ-EFS Acting Chairman.

GUMP INVESTMENT COMPANY

AUTOMOBILE FINANCE

JOHNSON CITY, TENNESSEE 3-2-26

Mr C. H. Jennings
Santa Fe N. M.

Dear Chas.

By request of E.C. Reeves I enclose Dimits of Lodges & Chapter.

I heard through Leroy Reeves that you were located in Santa Fe. so wrote to my friend Nathan Jaffa of Santa Fe to look you up & give you some attention he is quite interested in Masonry. if you have not met him look him up. hope you are enjoying the West. with best regards

Yours
Harry D Gump

E. C. REEVES
1205 BUFFALO STREET
JOHNSON CITY, TENNESSEE

Febry 27th 1926.

Dear Charles:- Surely I was glad to get your letter of 18th inst. I have been almost entirely out of commission for several months. Am better now, but not entirely recovered.

My trouble now is, is indigestion. My bladder trouble almost removed. A short stay at Unaka Springs helped me much, but should have remained there longer following the advice of all my children, and expect to return during March.

Saw Harvey Gump this day. It will be a pleasure for him to do for you all you ask. (I do not attend Lodge meetings held after night) Harvey says he will procure a new dimit and send it to you. He did not say, but I presume you should send him your old dimit.

I congratulate you on your appointment, and hope your salary will enable you to support your family comfortably, and have a surplus to run, clear, a good home. I doubt not but that you are the best qualified member of the board for the work devolving on the board

May the blessings of God rest upon and abide with you and yours evermore,

Most Sincerely, E. C. Reeves.

Ed. S. Wolfe died
probably since
you went West.
Aged 80 plus 3 days.

Summers Lyle died
yesterday.

February 18, 1926.

Dear Uncle Eb:

Of course, you know that I am a member of what is known as the Pueblo Lands Board, with headquarters in Santa Fe, New Mexico. I assume that Roy has told you that the Board has an almost endless job on its hands in trying to settle land title disputes between the Pueblo Indians and Mexican and white settlers. There are between 3500 and 4000 cases in New Mexico that must be heard, and most of them are hotly contested. I am Acting Chairman, and the responsibility is largely upon my shoulders as the Chairman, a New York lawyer, is here only a part of the time. I like the work very much but dislike being so far away from the family. I hope later to have Lou spend at least part of the time with me.

I was called to Washington by the Attorney General just before Christmas and did not get away until January 21st as there were many questions of policy and procedure to be settled. I also had to go before the House Appropriations Committee and justify the various items making up the total amount required to run the Board during the fiscal year 1927. Appearing before the Appropriations Committee these days when the question of economy is particularly stressed is not a very pleasant experience. However, I knew my subject well and had no trouble in getting the amount asked for. I would have enjoyed returning by way of Johnson City to get a glimpse of you and other friends, but having been detailed so long in Washington I felt in duty bound to return to Santa Fe by the shortest route, via Chicago. When I go east again I shall arrange to go from here to Memphis and then by the Southern so that I can stop off and see you.

There is a matter I wish you would take up for me and press when you have nothing else to do. In 1916 I asked for, and obtained, a dimit from the Blue Lodge and Chapter. Some of my new friends out here are insisting that I take the Scottish Rite degrees, and I have about decided to do so, provided

the Lodge at Johnson City will allow me to deposit the dimit I now hold and issue me a new without any expense, if that is possible. Suggest you talk with Harry and Martin Gump, and other members who were my associates whem I was giving a large part of my time to the upbuilding of Johnson City Lodge 486. Anything you can do in this regard will be greatly appreciated.

Sincerely yours,

Santa Fe, N. M., Feb. 5, 1926.

P. O. Box 240

Montgomery Ward & Co.,

Kansas City, Mo.

Gentlemen:

I am returning to you, by parcels post, the pair of shoes numbered 24-D 1583, Bluecher, ordered January 29th. My order blank, I think, will show that I called for 9-D; the shoe sent and returned is an "E", and much too large, and is not the shoe wanted. I therefore request that you cancel the order and return to me amount paid.

Yours very truly,

CHJ-S

ADDRESS REPLY TO
"CHAIRMAN PUEBLO LANDS BOARD"
AND REFER TO NUMBER

PUEBLO LANDS BOARD

SANTA FE, NEW MEXICO

ROBERTS WALKER
CHAIRMAN
HERBERT J. HAGERMAN
REPRESENTING
THE SECRETARY OF THE INTERIOR
CHARLES H. JENNINGS
REPRESENTING
THE ATTORNEY GENERAL

C O P Y

Wash ngton, January 29, 1926.

Mr. C. H. Jennings,
Pueblo Lands Board,
Santa Fe, New Mexico.

Sir:

The acco nt of the Western Union Telegraph Company, for the month of December, 1925, Division of Accounts No. 10407 contains a charge for telegram, sub-voucher 2, sent by you as follows:

Santa Fe, N.M. Nov. 12, 1925.

Attorney General,
Washington, D.C.

Check covering last half October salary not received voucher forwarded to Department October twentieth Please advise cause of delay.

C. H. Jennings.

Under decisions of the Comptroller General this telegram is personal and consequently not payable by the Government. You are, therefore, respectfully requested to refund the amount of $.30 charged by the company for said telegram, by check or money order to the order of Don C. Fees, Disbursing Clerk, which should be sent to this Division.

The Decisions of the Comptroller are binding upon this Department and, therefore, you are requested to give this matter your prompt attention to the end that it may not be necessary to withhold payment of amounts due you as directed by Section 1766 of the Revised Statutes.

Respectfully,

J. D. Harris,

General Agent.

7-L

January 29, 1926.

Miss Amelia E. White,
Secretary Eastern Association Indian Affairs,
115 E. 55th St.,
New York, N. Y.

My dear Miss White:

I regret exceedingly that I was unable to take advantage of your kind invitation to be present at the reception and private view of Pueblo Indian paintings, given at the Ferargil Galleries in New York on January 20th. I had arranged to leave for Santa Fe on the same date of the reception, but did not get away until the next day.

When I go East again, I shall possibly visit your city, and if so, I hope to have the pleasure of calling upon you at your office.

Sincerely yours,

CHAIRMAN
ELLWOOD HENDRICK
139 EAST 40th STREET
NEW YORK

TREASURER
PERCY JACKSON
43 CEDAR STREET
NEW YORK

SECRETARY
MISS A. E. WHITE
115 EAST 55th STREET
NEW YORK

EASTERN ASSOCIATION

ON

INDIAN AFFAIRS, INC.

DIRECTORS
MISS MARY BULKLEY, CONNECTICUT
BRIDGHAM CURTIS, NEW YORK
M. D. C. CRAWFORD, NEW YORK
FREDERICK S. DELLENBAUGH, NEW YORK
MISS GERTRUDE ELY, PENNSYLVANIA
MRS. H. K. ESTABROOK, MASSACHUSETTS
DR. PLINY E. GODDARD, NEW YORK
DR. GEORGE BIRD GRINNELL, NEW YORK
FREDERICK W. HODGE, NEW YORK
DR. FREDERICK L. HOFFMAN, MASSACHUSETTS
MRS. PERCY JACKSON, NEW YORK
MRS. LUKE VINCENT LOCKWOOD, NEW YORK
WARREN K. MOOREHEAD, MASSACHUSETTS
MRS. VICTOR MORAWETZ, NEW YORK
MISS MARGARET McKITTRICK, NEW MEXICO
NICHOLAS ROOSEVELT, NEW YORK
DR. HERBERT J. SPINDEN, MASSACHUSETTS
MRS. JOSEPH LINDON SMITH, MASSACHUSETTS
ERNEST H. WANDS, NEW YORK
MISS MARTHA R. WHITE, NEW YORK
CHARLES MORGAN WOOD, ARIZONA

January 14,,1926

Mr. Charles H. Jennings,
1646 Irving St., N. W.,
Washington, D. C.

My dear Mr. Jennings,

The Chairman and Board of Directors of the Eastern Association on Indian Affairs cordially invite you to a reception and private view of Pueblo Indian paintings on Wednesday, January 20th from foru to six at the Ferargil Galleries, 37 East 57th Street, New York.

Leading art critics are deeply interested in this exhibition as it is the expression of our only truly native art. We feel that as the Indians are still wards of the Government this exhibition should have official recognition.

Hoping very much that you will be interested and can arrange to come,

Sincerely yours,

Amelia E. White

Secretary.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

HHS:MM

June 1, 1925.

I was assured it would be mailed today

My dear Mr. Jennings:

Your letter of May 26th, was received this morning. Mr. Fees is away for a few days and, for some reason which I am not able to explain, the check was not mailed on May 15th, as I anticipated it would be when I filed the "white horse" with the Division of Accounts on May 12th. I will look out for your account when it comes in for the month of May, and through Mr. Underwood, who is in charge during Mr. Wells' absence, endeavor to find out if there is any permanent reason why your check should not be forwarded promptly.

I was glad to know that you got an opportunity to see Mr. Wells, and I join with you in regret that he is leaving the Department. It seems that a situation has arisen in Porto Rico which the former Judge was not able to meet and Mr. Wells seems to be called to straighten it out.

The reallocation of Mr. Gilbert was personally gratifying to me and I am glad to have had a vindication of my judgment that the appointment of your successor would be an entering wedge. No other reallocations of interest have taken place.

Everything is progressing satisfactorily around the office, except that I received a jolt a few days ago by advance notice from Mrs. Michael that she is going to resign in the near future. I never did enjoy breaking in a stenographer and am not looking forward to educating one, particularly if the Stenographic Bureau unloads somebody on this end of the building. I have no hesitation in saying that she is the best stenographer I have ever had any experience with and I regret exceedingly that she has decided to leave.

Mr. Stickley is getting along very nicely and I have no doubt that he will measure up to all of the requirements of his position.

We are in the midst of a broiling June day, probably some of the same kind of weather you are now getting down there.

With best wishes to yourself and all of your Indians,

Sincerely yours,

Horace M. Smith

GPO

Santa Fe, New Mexico,
January 12, 1926.

Hon. Roberts Walker, Chairman,
Pueblo Lands Board,
14 Wall St.,
New York City, N.Y.

My dear Mr. Walker:

I am forwarding herewith a Memorandum containing some comment upon the much controverted question involved in Section 4 of the Act of June 7, 1924. It is the merest outline of the idea I have concerning this matter; it might be much elaborated upon, but I thought best to merely sketch the proposition as I saw it. I hesitate to submit such a statement, because so much has already been said upon this subject by men whose opinions deserve the greatest consideration. However, since the interpretation to be given Section 4 is again being raised, I feel that as Special Attorney for the Pueblo Indians I should make some statement of my position relative to this issue.

I realize that the proposition submitted in my short memorandum is subject to attack. It will be said that it is one thing to prove mere "possession" under color of title from January 6, 1902, to January 6, 1912, under Sec. 3364 of the Codification of the Laws of New Mexico of 1915, and that it is quite another and far more difficult thing to prove "open, notorious, actual, exclusive, continuous adverse possession, under color of title, from January 6, 1902" to June 7, 1924, under paragraph (a) of Sec. 4 of the Act. The same thing will be said relative to proving under Sec. 3365 of the Code and paragraph (b) of Sec. 4 of the Act. From a mere reading of the words involved, such a conclusion seems reasonable but from the standpoint of the claimant and the proof to be made, I am of the opinion (in which I may be entirely wrong) that few cases will arise in which the adverse holder could not prove under either the state or federal provisions, providing he held under color of title since January 6, 1912, or prior thereto, or without color of title since March 16, 1889.

Hon. Roberts Walker, (Cont.)

As to these parcels of land within the Pueblos of Tesuque and Jemez, the Indian title to which the Board has found to be extinguished, satisfactory proof was introduced to bring them within the provisions of paragraphs (a) and (b) of Sec. 4 of the Act of June 7th. If and when the Board holds that any ten year period prior to June 7, 1924, under color of title, extinguishes the Indian Title, then, unless I see things quite differently in the meantime, my every energy will be toward a testing of such holding. If the Board holds that no ten year period maturing subsequent to January 6, 1912, can give title to an adverse holder, then the only question will be the amount and kind of proof of adverse possession presented.

The meaning of Section 4 has occupied a great deal of my time and attention since I became connected with the Board's work. I am still open to conviction as to how the provisions of this section are to be construed, and yet recognize the provisions of paragraphs (a) and (b) as we find them in the Act of Congress. The Memorandum submitted merely represents my best judgment to date, and if any new ideas are submitted I will certainly welcome a chance to go over them.

Sincerely yours,

Attorney for Pueblo Indians.

WCC-EFS
CC-C.H.Jennings
G.A.H.Fraser
H.J.Hagerman
Chas. H.Burke

January 12, 1926.

A. B. Renehan, Atty-at-Law,

Santa Fe, N. M.

My dear Mr. Renehan:

We have your letter of January 11th, addressed to the Pueblo Lands Board, in regard to the claimants represented by you on the Nambe Pueblo Land Grant, and I note that the formal petitions in connection with your clients' claims are in course of preparation and will be ready within the next four or five days.

I am sorry you have been laid up, but you are not the only one, as I have too, and a great many others. I am, however, considerably better and expect to go to Washington within a few days.

I believe that Mr. Jennings will be back within a week or so and will want to pitch right into the Nambe business with a view of closing it up as rapidly as possible, and it is very essential that we have these petitions from you, so I hope very much you will be able to have them here within the time that you mention, so that Mr. Goutchey and the office staff here can have the opportunity of looking them over and analysing them and getting them in order for Mr. Jennings by the time he returns here. We will appreciate your hurrying the matter as much as possible.

Sincerely yours,

HJH-S

(Sgd.) H. J. HAGERMAN.

cc C.H.Jennings.

COPY

RENEHAN & GILBERT

(Letter head)

January 11, 1926.

Pueblo Lands Board,
Santa Fe,
New Mexico.

Dear Sirs: RE: Claimants Represented by me on the Nambe Pueblo Land Grant.

I know I have been slow in this matter, but I have not become entirely myself since my confinement to bed with laryngitis. The disease seems to have a hangover. I am feeling quite myself now, almost normal.

In view of this condition, about ten days ago, I sent to your clerk and filed with him a list of the names of the claimants I represent and a general historical statement of deeds under which they claim, thus seeking to give you in a general way, at as early a date as possible, the information which you would have upon your formal prescribed form of petition. At the same time I sent you my deeds, but the clerk returned them because of informality. The informality I recognized, but I only had in mind the desire to give you as much advance knowledge as I could until I could present the formal petitions.

The formal petitions are in process of preparation and I hope can be in your hands within the next four or five days.

I appreciate your indulgence and shall be as prompt from now on as I can well be.

Very truly yours,

ABR:SC

(Sgd.) A. B. RENEHAN.

December 14, 1925.

H. H. Harnn, Esq.,

Albuquerque, N. M.

My dear Sir:

The members of the Board have carefully considered your letter of December 11th to Mr. Jennings.

(1) It seems to us that your requests, taken in the aggregate, are beyond what could reasonably be expected. Without commenting on the inaccuracy, informality and limited scope of the "original authorization to appear for the Pueblo of Nambe" enclosed with your letter, the Board has welcomed you to hearings respecting Pueblos which you have claimed to represent, and it hopes to continue to do so. Thus you can readily obtain the testimony by attending the hearings, observing the witnesses, and making such notes as you desire. The Board, while it handed you a transcript of the Tesuque testimony, must decline in future to supply such transcripts.

(2) Photostat copies of original Spanish deeds, as asked for by you from time to time, will be furnished to you at cost. The best rate that we have thus far been able to obtain is 25 cents per 8"x13" page, or say $1.00 for a four page foolscap-size document. If the rate can be reduced, the lower price will be charged to you. The Board has no photostat machine, and the only one found at Santa Fe is privately owned. The Board will not furnish copies of translations of Spanish deeds.

(3) Not many blue-prints or maps are made showing improvements, but where such exist, they will be supplied at cost. The Board's practice is to view improvements, etc., on the ground.

(4) Copies of appraisals will not be furnished.

(5) A definition of the legal principles adopted and applied by the Board will not be supplied.

Please understand that the Board's attitude is not based upon any spirit of being unaccommodating, but proceeds on the theory that it is under no duty to furnish material to which you have access, while being entirely willing to supply you with photostat copies or blue-prints of items whereof the Board's files contain the only specimens.

Your letter states:

> "We believe, further, that we can assist in disposing of a very large percentage of the cases, if given an opportunity to fully advise the several Pueblos concerning not only the result arrived at, but the reasons therefor."

Unless this language is hereafter shown to us to have been ineptly expressed to indicate some other meaning, it would be proper for the Board to express resentment at the implied threat not to assist in disposing of cases if your somewhat wholesale order should not be complied with.

We assume that by "independent suits" you refer to the last paragraph of Section 4. If so, it does not seem to be wholly clear that the actions of the Board are essential to the bringing of such suits.

Truly yours,

RW-S

Chairman.

Washington D. C.
December 2nd, 1925.

PERSONAL

Mr. Chas. H. Jennings,
Pueblo Lands Board,
Santa Fe, N. Mex.

My dear Mr. Jennings:

Your letter of November 26th, with enclosures, was duly received. I am pounding out my reply on my typewriter at home and the paper is not all that it should be. Perhaps the result will look like the work of a beginner before I am through.

You may have surmised from the letter in answer to your telegram of November 15th that Pueblo land matters are not part of my assignment. Frank Foster, formerly associated with the Attorney General at Ludlow, Vermont, is handling them. I have no information as to the reason why you were not authorized to come on to Washington, or as to what occured between Mr. W and others with whom he conferred. Consequently I am somewhat reluctant to open up the matter in Foster's absence. It appears that W changed front after he reached here. Whether this was influenced by knowledge of your telegram, I cannot even guess. In any event, you were probably justified in concluding that the propesed letter would be presented to the Attorney General , as suggested, although if your information is correct, he was not "grateful for your outspoken expressions," because they were not directed to him.

Knowing your "infinite capacity for taking pains" and giving first hand attention to details, I can understand how you shy at the thought of delegating authority to others, probably for the sole purpose of functioning "by proxy" without the necessity of being on the job. I think your point of view is the correct one, but I am not altogether sure that you can prevail if he is against you. Apparently he was selected for some reason which is not yet clear- certainly not because it was expected that he would devote much time to the job. It may be that the proposed plan has been in his mind all the time, and I have no doubt that he is close enough to the "powers" to secure whatever he wants, even tho you may object. Frankly, I do not think I could create even a ripple against his plan, and I have no reason to suppose that Mr. Parmenter would make any special effort to urge your version of things as against W. He always seems to be able to get what he wants, and if criticism comes because of 95 per cent absenteeism, you will be in the clear. Perhaps it will take a broadside from outside to bring things to a head and simplify things for the Board out there. So far as you are concerned, the record will speak for itself. The best suggestion I can make is that you try and endure his pedantic lectures on organization and progress, and if others raise a row, you will not be blamed. You can point to your telegram as a step towards bringing about correct results. If the point of the telegram was not caught it was not your fault. Perhaps Walker is regarded as an oracle and that may be the reason the personal interview was not sought. If he can persuade the Chief that the Board can function by proxy, you will at least be relieved of some of the drudgery which I am sure you have had to carry to date. Take it easy. Your letter to him and the wire will put him on notice that he is not the whole show, and things will work out better.

It may be unseemly for me to offer a suggestion, but I think something will break during the coming session of Congress, at least when the question of appropriations comes up. It may be his plan to be on hand to tell Congress how much he has done, and then some one may ask embarrassing questions. When Foster returns I will try and find out something of what occurred. I think you had better destroy this when you have read it, as it would not do any good to have it reach other hands than yours.

I suppose you have heard that Mrs. Michael is now the mother of a little daughter. She called Mrs. Smith on the phone a short time ago to acknowledge some flowers and a little package that we had sent out that day. She is quite tickled with her new lot in life, and is doing very nicely. Gilbert and I miss her terribly. The new girl who took her place is too full of Keats- and love, and inexperience, and e v e r y t h i n g to measure up to the standard of her predecessor. Some of the things we get to sign would literally make the angels weep. It is a fortunate thing that G and I both have a sense of humor. Up to date we have caught the errors and avoided a faux paux.

We are in a jam over title opinions. We cannot pass a title supported by 60 years of adverse possession under fence, and now we are requiring the Departments to make returns of all post-opinion transactions before giving the final O.K. On Weeks law condemnations anx opinion will not be given until title has vested. The money cannot be paid into court without an opinion. If Congress does not amend the law, or the policy revert to what it has been since 1911, a lot of funds will go back to the treasury unexpended.

I received the paper with the story about the report on the Tesuque Pueblo. You ought to have a press agent to play up your share of work that is being done.

You may recall the suit started in Porto Rico to cancel the 999 year lease to Virgil Baker. The bill which I prepared was filed last July with only a minor change. A motion to dismiss and to strike about everything but the caption and the prayer was argued early in November. The opinion of the court has just come through. He dismisses the motion on all grounds, and says that if the facts are proved as alleged, the most elementary notions of justice require that the lease should be cancelled. That will not sound well to the gentlemen in the Navy who have taken the view that the action was ill advised and based on prejudice. If they care to make any further similar criticisms now, the opinion of the court should be a satisfactory answer.

Hope you are getting on as well as circumstances will permit.

Sincerely yours,

K.H.L.

November 26, 1925.

My dear Mr. Smith:

I was very much chagrined over a letter received from Mr. Parmenter, a copy of which is inclosed, written in response to my telegram of the 15th, copy inclosed, addressed to the Attorney General and designated as "confidential". Evidently the one who prepared the letter failed to read between the lines of the telegram.

In order that you may clearly understand my reasons for sending the telegram, I am inclosing a copy of a letter dated November 10,1925, sent to me by Mr. Walker, which he advised would be mailed or presented in person to the Attorney General and the Secretary of the Interior. In this letterhe made certain recommendations and observations with which I could not agree. The copy of this letter did not reach me until the 15th, too late to communicate either with Mr. Walker or the Attorney General before Mr. W's interview which I learned was to take place on the 18th. That the Attorney General might not thinkthat Walker's ideas were concurred in by me, I thought it advisable to send the telegram, but expected that it would be treated as confidential. On the contrary, upon Mr. Walker's appearance at the Department he was either shown the telegram or advised of its contents. This , apparently, caused him to withhold his letter and to leave unsaid what he proposed to say to the A. G. Through Governor Hagerman, I learn that he was highly incensed at me for daring to give my views to my Chief while he was not looking. Of course without the letter my telegram was meaningless.

I have often thought of preparing a confidential report of the situation here, but am very glad I have not yielded to temptation.

Mr. Fraser in his report to the Attorney General, dated September 25,1925,reviews the situation somewhat in detail but he only touches on the high points. I suggest that you send for the File and read his report which was prepared by him on his own responsibility and without any suggestions from me.

You will recall theffact that Walker after reaching Santa Fe on the 10th of May, left for New York on the 16th and sailed for Europe June 6th. He returned to New York September 18th and showed up here October 21st, leaving again on the 29th for Denver and thence to New York. In the meantime I was left with the bag to hold, but guided by a kind Providence I worked out a scheme of procedure that so far has pleased all parties concerned. Any departure from it, at this time, would cause all sorts of criticism and trouble. Really he is in no position to make any suggestions.

Son after coming here this last time he commenced to heckle me about the necessity of enlarging the personnel of the office by taking on three law clerks and two additional stenographers. Day after day he kept it up until I became really peeved and lit into him with my big Bertha. This coming from a mere representative of

the Attorney General was, of course, not appreciated by an associate of two cabinet officers. Finally I agreed to the appointment of an expert translator and interpreter, who would really be of service, and so recommended in my telegram of the 15th.

Walker's plan, as represented, is to have three law clerks appointed so that he, Hagerman and I can delegate our duties and thus be relieved of details which up to the present time have devolved upon me. This is not my view of the situation as I clearly indicated to him in my letter of November 18th, a copy of which is inclosed. He knows that he is a member of the Board in name only and that being absent 95 per cent of the time can be of little or no assistance in carrying on the work. He possibly thinks that if we can parcel out the work to subordinates he will escape criticism on account of his absence. He is already being criticised, and it has been hinted by more than one that reference will be made to a "one man board" when congress convenes. Senator Bratton lives in Santa Fe and knows full well what has been going on. No doubt Senator Jones has been thoroughly posted. Both of these gentlemen are democrats and might well avail themselves of the opportunity of taking a fling at the Administration if they so desired. I am sure Hefflin or Carraway would be glad to raise a racket if the facts get to them. This and other matters of vital importance should be presented by me to the Attorney General in person.

I hope you will take up the matter with Mr. Parmenter and convince him that I should go to Washington in an official capacity and lay before the A.G. the serious problems now confronting the Board. I think the matter should be brought to the attention of the Attorney General either by Mr. Parmenter or by you as you are more conversant with Pueblo land matters and with what has passed over the wheel than any one else in the Department. I also have a proposed amendment to the bill which I would like to "daddy" while there. This amendment is purely administrative and would make it much easier for us to function.

Governor Hagerman tells me he is going to Washington After the holidays, or soon after I geturn if I am allowed to go, and of course he will have a story to tell. I think I should be given an opportunity to tell my story as a very active member of the Board.

If my presence in Washington is authorized, I should like to leave here on or before December 20th, as he hold hearings from December 3rd to the 15th.

Please have the matter taken up at once and settled so that I can get the work in proper shape for functioning during my absence.

Very sincerely yours,

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

BMP F.K.F.

210663

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

FKF*HUD

November 19, 1925.

Re: Pueblo Lands Board.

Charles H. Jennings, Esq.,
Acting Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

Sir:

I have your telegram of November 15th, suggesting a personal interview regarding letter you state the Chairman, Roberts Walker, sent us November 10th.

Mr. Walker has submitted no letter to this department containing any recommendations as to enlargement of personnel as you intimate in your letter. Mr. Walker has been here and advised us that he would submit no letter until such time as he had an opportunity to talk over the suggested changes with other members of the Board. Therefore, there is at the present time no necessity for the personal interview suggested in your telegram.

Respectfully,

For the Attorney General,

B. M. PARMENTER,
Assistant Attorney General.

November 10, 1925.

Dear Mr. Smith:

Yours of the 6th with enclosures just received. Many thanks for your kindness. I am enclosing 6 forms, filled in and initialed, which please pass to Mr. Matchet in the usual way. I have not yet received check covering salary for the last half of October. Voucher was mailed October 22nd, and I should have received check here on the 3rd or 4th instant. The change of status should not cause such delay. If I ever get to Washington, I am going to try my darnedest to have salary paid by our disbursing clerk, who pays all expenses incurred, except the salaries of Hagerman and myself.

Yes, I have reason to remember the Schoenfelt case. What is its present status? I assume your 57 page report was made on the Summers case.

Last night I mailed two complete reports of our findings in the Pueblos of Tesuque and Jemez to Mr. Walker for his signature. I suppose he will send to the A. G. the copies due him in due course.

Mr. Fraser is on the job and has been of great assistance to me during the absence of the Chairman. His bills to quiet title will be filed promptly, as soon as the draft he forwarded to the Department has been examined and approved.

We have taken up a third Pueblo (Nambe) but in all probability will not be able to close it out before the middle of next summer, as there are some 221 adverse claims, and many of them are very complicated.

Remember me kindly to all friends and

Mr. Smith (Cont.)

occasionally favor me with some of the departmental gossip.

Sincerely yours,

Hon. Horace H. Smith,
Department of Justice,
Washington, D. C.

November 9, 1925.

Dr. Chas. W. Cuthbertson,
Surgeon-Dentist,
Continental Trust Bldg.,
14th & 8th Sts., N. W.,
Washington, D. C.

My dear Doctor:

At my suggestion, Mrs. Jennings has forwarded to me your bill, amounting to $114.00. I am enclosing herewith check for $50.00, The balance will be forwarded at a later date.

Do not excite Mrs. Jennings by sending her bill at end of month. I am the "goat" from now on, and you and I will fight it out.

Hope you are well.

Sincerely yours,

CHJ-S
Enc.

HHS VO

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

November 6, 1925.

Charles H. Jennings, Esq.,
Care Pueblo Lands Board,
Santa Fe, New Mexico.

My dear Mr. Jennings:

Your note of the 3d instant is received and in accordance with your request I am enclosing you a number of blank "white horses". The supply that you left with me early in the year ran out with the one which I used for your October salary and I am going to have some more fixed up so that I can use them on the 12th of each month hereafter. It has occurred to me that you may have arranged your affairs so that a check once a month will suffice and that this is the reason why you are having the enclosed forms sent to you. Please let me know if you want me to continue to leave a form with Mr. Matchet on or about the 12th of each month.

I was not aware that your title had been changed from "Special Assistant" to "Attorney". I do not think it has any special significance provided that no change is made in the salary. The only difference which I can see is that you will be paid from one fund instead of another.

You may recall that we discussed some of those proposed suits to challenge ancient titles in California which had been stirred up by Schoenfelt and another by Summers. I thought that I was through with the latter when I filed a memorandum last May but ~~when~~ no decision was reached on the course to be pursued prior to the time Judge Wells went to Porto Rico. I had to go into it again. After some time devoted to a study of history recorded during the past seventy years, I have filed a 57 page report which I think ought to influence some kind of a decision which will settle it one way or the other. I received the newspaper you sent me showing the notice of the proposed hearing on the Nambe Pueblo and also on the activities of one of your associates for the relief of the poor indians of San Ildefonso. Of course, you will have no difficulty any more now that the gentlemen from New York is on the job. Everything is going along nicely here and I think that Washington will be the center of attraction during the coming six months with all the fireworks which will result from the various rows which have developed since the last adjournment.

With best wishes,

Sincerely yours,

Horace M. Dawson

Incl.

November 3rd, 1925.

Hon. Horace H. Smith,
Department of Justice,
Washington, D. C.

Dear Mr. Smith:

Will you get from Fees a few of the "white horse" certificates and send me "pronto". Some time ago I wrote him to send them but he chose to ignore my request.

I have just been advised that my title was changed October 1st from "Special Assistant to the Attorney General" to "Attorney," and that my salary would be paid hereafter from "Salaries, Department of Justice," instead of from the appropriation "Special Assistants." What does it all mean anyway?

Sincerely yours,

November 2, 1925.

Mr. S.:

Letter changing my status is dated October 1, 1925, and was received here November 2nd and oath executed same date. The date of entry on duty was, of course, October 1, 1925, as there has been no cessation of my duties since I landed. If this does not satisfy you, you have my permission to make the necessary correction. Why this change anyway? What are you trying to do to me?

Yours,

Santa Fe, New Mexico,
October 28, 1925.

The Pueblo Lands Board,

Santa Fe, New Mexico.

Gentlemen:

Pursuant to the expressed desire of the Board, I have searched the records of Santa Fe County, New Mexico, to discover any transfers of real property outside the exterior boundaries of the Pueblo of Tesuque to the Pueblo as a corporation or community.

Such search reveals that there has been no recorded transfer of real property in Santa Fe County to the Pueblo or community of Tesuque. The only recorded instrument in which the Pueblo of Tesuque is named as grantee is a patent for 17,471.12 acres of land, lying in Townships 18 and 19 North, Range 9 East, issued by the United States of America, dated November 1, 1864, and recorded in Book D, at page 75 of the records of Santa Fe County, New Mexico.

Respectfully submitted,

Walter A Cochrane

Special Attorney for the Pueblo Indians.

October 13, 1925.

Hon. B. M. Parmenter,
Asst. Attorney General,
Washington, D.C.

Sir: RE: United States v. Candelaria, et al.

Mr. Walker of New York, Chairman of the Pueblo Lands Board, has forwarded to me a copy of a memorandum prepared and sent you in response to your request of the 7th instant, and has asked me to write and give you my views regarding the helpfulness of a decision in the above case.

I have not seen the record on appeal, nor the briefs filed below, but I have read with interest a copy of your brief forwarded by Mr. Walker. From the statement of the case, and cases cited, I do not believe that a decision on the two questions certified will be of any great assistance to the Board until the Pueblo of Laguna is reached. This, in view of the principles announced in the recent case of United States v. Waller, 243 U.S. 452.

A decision in the instant case would be helpful, however, were the facts in the record sufficient to warrant the court to render a clean-cut decision to the effect that the status of the Pueblo Indians, prior to the Enabling Act and the Statehood Act, was such that the territorial statute of limitations did, or did not, run against them. This is the one troublesome question now confronting the Board, as it involves the question of vested rights, which, if not recognized, will result in an attack being made upon the constitutionality of the Lands Board Act when the first bill to quiet the Indian title is filed.

Mr. Walker's statement, in which I concur, appears to cover the situation at the moment, and I do not think I can add anything of consequence.

Hon. B. M. Parmenter (Cont.)

I shall be obliged if, when your brief has been printed, you will send me a copy.

Respectfully,

CHJ-EFS

R. H. HANNA F. E. WILSON

HANNA & WILSON
ATTORNEYS AT LAW
ALBUQUERQUE, N. M.

October 1, 1925.

Mr. C. H. Jennings,
Chairman, Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Mr. Jennings:

At my request, Mr. Wilson of our office has just prepared a memorandum covering his views upon the construction of Section 4 of the Act of June 7, 1924. I notice that he has presented a somewhat new and novel view of the matter, and am therefore sending you a copy of same.

I also enclose a recent memorandum prepared by Mr. Bonham, which contains interesting views on the same subject.

Very truly yours,

R. H. Hanna

RHH:IB

Santa Fe, N. M., Sept. 22, 1925.

E. E. Koch, Esq.,
Clerk, U. S. Circuit Court of Appeals,
St. Louis, Mo.

My dear Mr. Koch:-

The case of U. S. v. Ed McMahon, Harrison, et al, was decided March 4, 1925, by the U. S. District Court of Utah, and the Government's bill was dismissed. I understand that it was the purpose of the government to take an appeal, and it occurs to me that if diligence was used the case may possibly have been prepared in time to come before the Circuit Court of Appeals at the present September term in Denver. Will you be so kind as to advise me of its status, since the Pueblo Lands Board will be interested in the final decision.

I am sorry to be unable to give the number of the case in the district court, having no information about it except as above stated.

Please address me in care of the Pueblo Lands Board here.

With kind regards, I am,

Very sincerely yours,

George A. H. Fraser

GAHF-S

Special Assistant to the Attorney General.

cc to Denver.

-COPY-

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

JDH-ML

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

August 20, 1925.

Charles H. Jennings, Esq.,

Acting Chairman, Pueblo Lands Board,

Santa Fe, New Mexico.

Sir:

By direction of Assistant Attorney General Parmenter, there is transmitted herewith a Memorandum of August 14, 1925, relative to the preparation of final and formal estimates for Salaries and Expenses, Pueblo Lands Board for the fiscal year 1927. There is also transmitted for your information and guidance a photostat copy of the tentative estimates which were submitted under this appropriation, together with blank forms for the preparation of the estimate.

If you so desire you may make but one copy, instead of eight copies, and it will be duplicated in the Division of Accounts. Please return, however, any blank forms which are not used.

The regular estimate and expenditure tables on form 3a, will be, as stated in the Memorandum, limited to $39,000, but a supplemental statement, not a formal estimate, may be prepared if you so desire and will be submitted for consideration in connection with said formal estimate of $39,000. The supplemental statement may be prepared in such form as you may desire.

Please note that your own compensation and salary will not appear in the expenditure tables for 1925 and 1926, as it is not paid from the appropriation Salaries and Expenses, Pueblo Lands Board. It should

GPO

be included, however, in the estimate and in the expenditure column for 1927.

Respectfully,

(Signed) J. D. Harris,

Budget Officer
Department of Justice.

Inclosure 27866.

IN REPLY REFER TO
INITIALS AND NUMBER

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Department of Justice,
Washington.

August 3, 1925.

Charles H. Jennings, Esq.,
Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Sir:

On behalf of the Attorney General, I acknowledge receipt of your letter of July 23, in respect to the assignment of Special Assistant Fraser to the Pueblo Lands Board.

It is understood that Mr. Fraser will take over these duties and lend the Pueblo Lands such legal assistance as is necessary.

The matter of Mr. Fraser's salary will be given consideration by the Attorney General.

Respectfully,

John Marshall

JOHN MARSHALL

Assistant Attorney General.

GPO

ADDRESS REPLY TO
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DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

July 14, 1925.

Honorable C. H. Jennings,
Pueblo Lands Board,
Santa Fe, New Mexico.

Dear Mr. Jennings:

Your letter of July 3rd, was duly received and a reply has been delayed because I had no special reason for writing you earlier.

The notices enclosed indicate that you are on your way investigating conditions of title on the Indian Pueblos, and I believe that unscrambling eggs would be easy in comparison with the job you have ahead of you. I do not know just what the absent member conceives to be his duty under the law, but apparently he is going to adopt the conclusions of yourself and Mr. Hagerman and sign on the dotted line.

We are all greatly pleased with the new Assistant Attorney General in charge of this division. Mr. Stickley informed me the other day that ~~the~~ United States Attorney Taylor from Tennessee took a bar examination at the same time as Mr. Parmenter some years ago, and at that time he was the outstanding lawyer among those who took the examination. In later years he is said to have acquired a reputation as the best lawyer in his section of Oklahoma. He is well up in land titles and condemnation procedure, and it is a pleasure to get his reaction on matters of policy about which there may be some doubt.

There have been no changes in this division, except that Brown has taken a position in the field, and I understand that his place is to be filled by a man from Vermont who was formerly associated with the Attorney General. Ridgley has not been officially appointed Assistant Attorney General and while there may be no significance in the postponement, I have a feeling that his chances for permanent appointment are diminished the longer the action is delayed, although I may be wrong.

We received some efficiency ratings early in July and they are as inexplicable as anything else that emanates from the efficiency experts. I am quite ready to agree with the statement which was made to Gilbert that the thing is "very complicated." Apparently it is denied to a

finite mind the ability to <u>understand</u> the underlying theory of Governmental classification and efficiency rating when some unknown person exercises the authority to overrule the head of a department.

With best wishes from the gang,

Sincerely yours,

Horace M. Smith

Your "white horse" for 15 days of July was approved yesterday. I think I have succeeded in having action accelerated on mailing your check. A veiled suggestion about putting it up to the A.G. did the business.

ADDRESS REPLY TO
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DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

June 15, 1925.

Honorable Charles H. Jennings,
Pueblo Lands Board,
Santa Fe, New Mexico.

My dear Mr. Jennings:

Your letter of June 7, 1925, was duly received, and this morning I have your letter of June 11th, with enclosure, relating to Mr. Goutchey. Mr. Wells is here, but the Attorney General is away to receive four degrees from some institutions of learning in New England, and there may be some delay in getting action upon that matter. However, I have talked to Mr. Wells about the delay and from my own investigation of the matter I have no reason to doubt at this time that there will be any unusual delays in mailing your checks to you. I had the "white horse" approved and in the hands of the Disbursing Clerk on the 13th, but as that was a short day I could not secure any promise on Saturday that the check would be mailed before the office closed. So far as I can learn, the cause of the delay has been eliminated and the matter will be attended to with reasonable promptness hereafter.

The funds which were gathered for procuring a remembrance for Mr. Wells were used for the purchase of a suitcase or traveling bag of the finest quality of material and workmanship and contained enough toilet articles to meet all the requirements of a bride. It was presented to Mr. Wells Friday afternoon and Underwood officiated in the presentation. His remarks were interesting, but I am not quite sure whether they represent training in a Methodist prayer meeting or a Masonic lodge.

We have heard nothing further about the selection of Judge Wells' successor, and we all agree with you as to the kind of man he should be.

I am not greatly surprised at your report about the movements of the Chairman of the Board. I do not see how the Board can function as a unit if one-third of it is away most of the time, but apparently he has such great confidence in you and Governor Hagerman that he is willing to o.k. anything you may do.

It is very unfortunate that you are having so much difficulty about procuring office equipment. If this is the way the Bureau of Efficiency works, I am not surprised that there should have developed some sentiment for the abolition of this institution. I assume that even packing boxes are expensive out there. You might get one of these for a typewriter desk, but without the typewriter you would not be able to solve the problem.

Everything is going on about as usual. I am going away for a few days the middle of the week and plan to be back in time to clean up any pending matters before Judge Wells leaves the Department. One of the most difficult jobs ahead of me, as near as I can see, is to find a satisfactory stenographer. Mrs. Michael will not be here very long after the early part of July, but with the new appropriation available we ought not to be embarrassed on account of lack of funds.

With best wishes,

Sincerely yours,

Horace M. Smith

P.S. Since dictating the above I have met Mr. Parmenter, who was introduced as successor to Mr. Wells.

June 9, 1925.

Will P. Scott, Atty-at-Law,

Dawson Springs, Ky.

My dear Mr. Scott:

Your letter, addressed to me at Washington, and forwarded to Santa Fe, has just been received.

My recollection is that the Walter Glover tract contained approximately eighty acres, against which a condemnation suit was instituted. I assume that the fifteen acres described in the enclosed deed is the parcel which was sold off by Glover to Joe Beshear. I assume, although you do not say so, that the proposed deed is to cover this fifteen acres which you wish conveyed to the United States.

If the proposed parties were made defendants in the condemnation suit, I see no reason why this deed should be executed, as the final decree in the case would cover all the lands owned by the government. However, if you wish to execute the deed, I think the enclosed form is sufficient and that all you have to do is to make the party of the second part "The United States of America, its successors and assigns."

As I have been separated from the Department of Justice and am here on special duty which may last for several years, I suggest, in case final decree has been entered in this suit, that you obtain a certified transcript of the record, through Mr. Ball, the District Attorney, and that you forward it, with the deed, which you have proposed to have executed, to the Attorney General for further action. I am suggesting that, in forwarding these papers, you explain all the facts in the case, so that they may clearly be understood by the Department.

Am sorry that the remaining cases could not have been wound up before I left Washington, as I was more familiar with these matters than anyone else in the Department.

Unfortunately, Mr. Ball does not understand that a certified transcript of the record should be forwarded to the Department, although his attention has been called to the requirements more than once. In addition to the transcript, a copy of the abstract should also be forwarded,- the original and a copy thereof having been furnished the District Attorney.

Trusting that you and Mrs. Scott are well and happy, and hoping to hear from you soon again, I am,

Faithfully yours,

CHJ-S
Enc.

WILL P. SCOTT
ATTORNEY AT LAW
DAWSON SPRINGS, KY.

June, 4, 1925.

Mr. C. H. Jennings,
Department of Justice,
Washington, D. C.

Dear Mr. Jennings:-

I have been able to close up a small tract of land which when surveyed was a part of the Walter Golover tract which comes off the Joe Beshear land. I am enclosing a deed from which will you please write a proper deed and return to me so I can close this up. I have not learned the name of Thomas' wife but leave room for her name and I will insert. Also make The First National Bank, of Dawson Springs part of party of first part, also A. V. Jackson and his wife Mrs. L---- Jackson as having them sign the deed covers defects of vendors lien in same. I have carefully gone over this and find that it is clear by this making the above parties sign deed. I have also paid the taxes and the property stands clear. Please write the deed for me as it should be returning the enclosed deed and the new one, and if possible send it by return mail as I want to get this closed up, as I am pushing Ball and the defendants to the suit to make the deeds as I want to do something else. Kind regards to your own good self and to be remembered to your good family, all of whom I hope are enjoying health and prosperity. Sincerely yours,

Will P Scott

M E M O R A N D U M

The puppose of this memorandum is to consider briefly some phases of the controversy concerning the construction to be given Section 4 of the Act of June 7, 1924, creating the Pueblo Lands Board and defining its functions. The language used in the fourth paragraph of Sec. 4 of the Act of June 7th, has received more attention to date than any other portion of the Act, and has raised a question on which lawyers have expressed widely divergent views. Attorneys with much greater experience and learning than the writer have given the Board the benefit of their study of this particular section, but the writer has arrived at certain conclusions relative to section 4 of the Act, and its relation to the State and Territorial statutes of limitation and adverse possession which he desires to submit to the Board for whatever the same may be worth.

The discussion herein is directed rather to the practical results to be obtained by the various constructions of the language of Section 4 than a strictly abstract legal discussion of the language used.

> The first paragraph of Sec. 4 provides as follows:
>
> "That all persons claiming title to or ownership of any lands involved in any such suit or suits may in addition to any other legal or equitable defenses which they may have or have had under the laws of the territory and state of New Mexico plead limitation of action as follows; to-wit:"

Then is set forth in paragraph (a) and (b) statutes of limitation with and without color of title. The question then arises as to whether or not the adverse claimant under the language of the first paragraph of Section 4 can plead the statute of limitation and adverse possession of the territory or state of New Mexico or whether the limitatinns set forth in paragraphs (a) and (b) of Sec. 4 are to be considered as exclusive and the "other legal and equitable defenses" construed to mean other than the statute of limitations as set forth in the Act of June 7th.

The proposition I wish to submit stated in ungarnished terms is that if the Board takes the position that the territorial or state statutes of limitation had no application since statehood

the real grounds of controversy practically disappear. A study of the act of June 7th has driven me to the irresistible conclusion that Congress in using the particular language of paragraphs (a) and (b) of Section4, intended to protect and save any estates which vested under the state and territorial statutes of limitation and adverse possession, prior to statehood on January 6, 1912. In protecting such estates vesting prior to 1912 it seems to me that Congress had in mind that by the terms of the Enabling Act and the Constitution of the State of New Mexico adopted in compliance therewith, that no state or territorial statute of limitations could apply subsequent to statehood on January 6, 1912. This is evidenced it seems to me by the following propositions:

(a) There are two statutes in the laws of New Mexico providing for extinguishment of the title to lands by the running of the statutes of limitation and holding by adverse possession. Sec. 3364 of the Laws of New Mexico, Codification of 1915, (Act. of Feb. 1, 1858; L. 1857-58 p. 64; C.L. 1865 Ch. 73, Par. 1; C. L. 1897, Par. 2937, as amended by L. 1899, Ch. 63, Par. 1) provides in substance that where a person, his heirs or assigns, have had possession for ten years of any lands granted by the governments of Spain, Mexico or the United States,, holding the same by virtue of a deed or other assurance, purporting to convey an estate in fee simple, such person or his heirs so holding, shall have a good and indefeasible title in fee simple to such lands. This statute appears to give a fee simple title to a holder after ten years' possession under color of title. In this connection it will be noted that January 6, 1902, is the latest date which a right under color of title could be initiated in order to become a vested estate, under the state and territorial laws prior to statehood on January 6, 1912. Paragraph (a) of Sec. 4 of the Act of June 7, 1924, which is the limitation of action dealing with holders under color of title, provides in effect that the holding under color of title must have begun not later than January 6, 1902, and continued to the date of the passage of the act of June 7, 1924. If no territory or state statute of limitation or adverse possession could apply after statehood on January 6, 1912, then the only difference between applying the

state statutes and ~~the~~ paragraph (a) of Sec. 4, would be in the character of possession that would be necessary or incumbent on the adverse claimant to prove. The state statutes only require the person claiming the benefit thereof to prove possession or holding for ten years under color of title; the state law does not define the kind of possession required to be proved, whereas the ~~federal~~ Act of June 7th, Sec. 4, paragraph (a), provides that they must have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed under color of title from the 6th day of January, 1902, to the date of passage of the Act of June 7, 1924. This provision in the federal Act is, of course, much more comprehensive than the kind of possession which would necessarily be proved under the state act, and under the state act if a claimant went into possession of a piece of land under color of title on January 6, 1902, his title would become perfected on January 5, 1912; whereas, under the provision of Sec. 4, paragraph (a) he would not only have to prove his adverse possession as defined from 1902 to 1912, but also on down from 1912 to 1924. But I doubt if we will find any considerable number of claims where a person could proveunder the state statute by a possession from 1902 to 1912 and could not prove from 1912 to 1924. Stated in another way, there will be few cases in which a person that occupied land from 1902 to 1912 and then deserted and left the same so that it would revert back to the Indians.

I am leaving out of this discussion the questi n of taxation because as to taxation the provisions of paragraphs (a) and (b) of Sec. 4 so specifically refer to the state statuts of limitation and adverse possession as to the payment of taxes, that I believe all question of doubt is removed thereby. Only such taxes are required to be paid as are required by the state statutes of limitation and adverse possession.

(b) Section 3365 of the laws of N. M., Cod. of 1915 (Act of Feb. 1, 1858, re-enacted C.L. 1865, Ch. 73, Par. 5; amended L. 1899, Ch. 63, Par. 2, adopted in above form Mar. 15, 1905) seems to be a true statute of limitation raising a bar to an action

for recovery of land after ten years of adverse holding against the true owner. Paragraph 2938 of the C. L. 1897, provided in substance that no action in law or equity is maintainable by any person but within 10 years next after the right to commence, have or maintain such suit shall have come, fallen or accrued, and that all suits either in law or equity, for the recovery of any lands, etc. shall be had and sued within ten years next after the title or cause of action or suit accrued or fallen, and at no time after the ten years shall have passed. The above section of the compiled laws of 1897 was amended by the laws of 1899, so as to qualify by adding new elements of adverse possession of ten years required to raise the bar by providing that no person or heirs should maintain any action in law or equity against anyone having adverse possesion continuously, in good faith, under color of title, and who has paid the taxes lawfully assessed against the same. Thus it will be seen that since 1899, under the state statute, no title could be gained by adverse possession except under color of title. So that March 16, 1889, is the latest date under the state and territorial law in which a right could be initiated without color of title so as to become vested prior to March 16, 1899, when the state law was amended so as to require adverse possession under color of title and payment of taxes. In this connection paragraph (b) of Sec. 4 of the Act of June 7, 1924, provides for a statute of limitations to be plead by the adverse holder without color of title, and it provides that the claimant must have had open, notorious, actual, exclusive, continous adverse possession of the premises claimed with claim of ownership but without color of title from March 16, 1889, to the date of the passage of the Act of June 7.

Section 3365 of the Code was passed in its present form by an amendment, Sec. 2, Ch. 76, Laws of 1905, which defined the adverse possession required. It is defined to be an actual, and visible appropriation of land, commenced and continued under color of title and claim of right in consistent with and hostile to the claim of another; and in no case must adverse possession be considered established within the meaning of the law unless the

person claiming adverse possession, his predecessors or grantors, have for the period mentioned continuously paid all the taxes, territorial, county and municipal, which have during that period been levied upon the land or interest claimed, whether assessed in his name of that of another.

The intent of Congress to embody in the limitations set forth in ~~xxxxxxxx~~ paragraphs (a) and (b) of Sec. 4 the state and territorial statutes of limitation and adverse possession, with and without color of title, respectively, seems clear in view of the dates mentioned in the provisions of paragraphs (a) and (b). Otherwise, it seems to me to be impossible to explain the date January 6, 1902, in paragraph (a) and the date March 16, 1889, in paragraph (b). If it is held that any ten year period prior to June 7, 1924, will vest a title to the land held in the adverse holder, then clearly the provisions of paragraphs (a) and (b) amount to nothing, and to hold that any ten year period maturing prior to June 7, 1924, would vest title in an adverse holder would be to accuse Congress of doing a vain and futile thing in embodying the limitations provided in paragraphs (a) and (b). On the other hand, if the Board should hold that the state and territorial statutes of limitation had no application to the lands within the various Pueblo land grants subsequent to January 6, 1912, then the controverggy as towhether or not the state statutes of limitation and adverse possession applied becomes very largely immaterial, inasmuch as the Act of Congress embodies and protects any estates which could have been initiated and become vested under state statutes prior to January 6, 1912. It seems to me that only in those cases where an estate has vested under the state law and had been given up or deserted subsequent thereto that there would be any difference in the proof essential to establish title under the provisions of Sec. 3365 and those of paragraphx (b) of Sec. 4 of the Act of June 7.

5-1142

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN FIELD SERVICE

Santa Fe, New Mexico,
January 12, 1926.

Charles H. Jennings, Esq.,
1646 Irving St., N.W.,
Washington, D.C.

My dear Mr. Jennings:

I am enclosing herewith a Memorandum and copy of letter to the Chairman of the Pueblo Lands Board. The same are self explanatory and I need not discuss them further.

I trust that your visit to Washington has been beneficial in many respects, and that the coming conference of the Board with the Secretary of the Interior and Attorney General will prove the means of adopting many policies which will expedite the work of the Board.

Sincerely yours,

Walter C. Cochrane

WCC-EFS

Attorney for Pueblo Indians.

GPO