

THE SAN MATEO SPRING TRACT, NO. 134.

L E T T E R

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A supplementary report by the surveyor-general for New Mexico on private land claim, the San Mateo Spring tract, No. 134.

JANUARY 13, 1890.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 7, 1890.

SIR: In pursuance of the requirements of the eighth section of the act of Congress approved July 22, 1854 (10 Stat., 308), I have the honor to transmit herewith for Congressional action the supplementary report of the United States surveyor-general for New Mexico on the private land claim in that Territory, in the name of Santiago Duran y Chaves, for the San Mateo Spring tract, No. 134; also copy of a letter from the Commissioner of the General Land Office to the Department, dated the 4th instant, transmitting the report.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 4, 1890.

SIR: I have the honor to transmit herewith, for submission to Congress, the supplementary report, in duplicate, of the United States surveyor-general for New Mexico on the private land claim in the name of Santiago Duran y Chaves, for the San Mateo Spring tract, No. 134.

United States Surveyor General Atkinson, in his report dated April 4, 1883 (which report was transmitted to the Department January 15,

1885, for submission to Congress), recommends the confirmation of this claim—

to the heirs, assigns, and their legal representatives of Santiago Duran y Chaves to the extent of one square league * * * the right to such mineral as was reserved by the Spanish Government, at the date of the grant, is reserved to the Government of the United States.

The supplementary report herewith was made by the United States Surveyor-General Julian, March 29, 1889, who recommends—

the rejection of this claim by Congress, and the immediate restoration by the General Land Office of the land involved to the public domain.

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

LEWIS A. GROFF,
Commissioner.

Hon. JOHN W. NOBLE,
Secretary of the Interior.

Private land claim of Santiago Duran y Chaves, known as the San Mateo Spring grant, and reported No. 134.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. Mex., March 29, 1889.

This claim was filed in this office by Roman A. Baca on the 3d day of July, 1882, claiming title as one of the legal representatives of the said grantee, Santiago Duran y Chaves, to a tract of land in Valencia County, N. Mex., at a place commonly known as the San Mateo Spring. On the 4th day of April, 1882, Surveyor-General Atkinson recommended the confirmation of the claim, and the papers in the case were duly forwarded in triplicate to the General Land Office for transmission to Congress. The case is now before me for re-examination under instructions from the Commissioner of the General Land Office.

The validity of the grant as made to Santiago Duran y Chaves is one question, and the title of the present claimant, Roman A. Baca, is a totally different one. The latter question does not seem to have been well considered by Surveyor-General Atkinson. The testimony shows that said Baca, at the date of his application, was one of numerous parties in the occupancy of the land claimed, and that he had occupied it since the year 1862, when his father, José Antonio Baca, died, who had occupied it up to that time, and whose occupancy was preceded by that of Domingo Baca, his father, who took possession of it in the year 1801. The testimony further shows that prior to that date the land was in possession of the Indians. Conceding the grant to the said Chaves to have been authentic, and that juridic delivery of possession was duly made as shown by the papers, the title of the present claimant must be shown. There is no proof that the grantee ever complied with the conditions specified in the grant and imposed by the Spanish law. The ceremony of juridic delivery was a requisite of title, but it did not obviate the necessity of proving the performance of those conditions. There is no legal presumption that such proof was made, and it must be shown affirmatively by the party claiming title under the grantee.

Nor is there anything to show that the grantee ever transferred his title, if he ever perfected it, to Roman A. Baca, or to any one else. One of the witnesses, José Benito Baca, when asked if he knew how Domingo Baca came into possession of the land, says "he took possession in the year 1801," and he had already testified that before that time it was in possession of the Indians. The present claimant is made a witness, and testifies that he never knew until some eight years prior to the date of his testimony (1883) to whom the grant was made; that he then began to hear of the heirs of the grantee claiming an interest in it, and that he then investigated and found a record of a grant from the government of Spain in the office of the Surveyor-General. He further testifies that the tract is a valley about 6 miles square, although the grant itself restricts it to 1 league, and makes no reference to it as a valley. There is no satisfactory proof that the grantee ever transferred his interest or any part of it to the said Baca, or to any of the people who have occupied the land since the Indians possessed it, numbering now over four hundred. When questioned as to his title he said "it was understood there was a grant, and although it was not known to be in possession of our ancestors, it was presumed they were there by right,

and they remained there in undisturbed possession, and our family have done the same under that assurance." But this certainly does not show any transfer of right to Baca from the grantee. Such a right as he claims must have a better foundation than a mere presumption. Besides, the testimony fails to show that the Baca family, who took possession after the Indians, did so under any color or pretence of a grant. Their peaceable possession might be urged as the basis of a claim independent of a grant, but the claim I am considering involves solely the question of Baca's right as a *legal representative of the grantee*, and as such it is not supported. It is true he further testifies that he has a great many other titles to the land besides that derived from his father, consisting of deeds of conveyance from the heirs of the grantee; but these deeds were not produced, and I cannot assume their existence. In short, I cannot escape the suspicion that the claim in this case is an invention and an after-thought, suggested by the discovery of the grant, and that but for this discovery the thought of such a title as is now set up would never have occurred.

At the date of the grant, and for a long time following, land was cheap and abundant in New Mexico, and it was by no means uncommon for parties to settle on the public domain without any legal right. The land in this case is shown to have been in possession of the Indians prior to 1801. The grandfather of the present claimant then took possession, and his descendants have since occupied it with numerous other settlers. The present claimant testifies that he never heard of any claim of the heirs of the grantee to the land as a grant till the year 1875. Up to that time he and his ancestors and other occupants of the tract must have understood that they were holding by possession merely, or by some other title than that of a grant. If there was a grant, as already stated, its validity must of course be shown, and a legal transfer of the right under it to the present claimant.

But if I am wrong in these views there is still another question which invites particular attention, namely, the locality and boundaries of the land. This question has received a very cursory examination by Mr. Atkinson, although it involves the whole matter in dispute, as I shall show. The grantee in his petition says: "I have registered a spring, which they commonly call the San Mateo Spring, in the vicinity of Navajo; for, although in the vicinity of said spring some Apaches cultivate land, they can not be damaged, because there is ample space toward the prairie where I can keep my stock without injuring them, and the said place is really the surplus of the grant that was given to Don Bartolomé Fernandez," etc. This shows that the land he wanted was contiguous to the grant to said Fernandez and immediately south of the same, and that it included the San Mateo Spring, which was in the vicinity of some Apache Indians near by, who were cultivating lands there. If the location of this spring can be determined, it will be an important fact in fixing the location of the grant; but if its location can not be ascertained the location of the grant will be impracticable.

Governor Mendinueta, in making the grant, says: "I did and do make a grant to Santiago Duran y Chaves of a tract of land of pastures and waters at the place he mentions, provided it shall not exceed 1 square league, which shall be commenced to be measured from the boundary which Don Bartolomé Fernandez has marked in the direction looking towards the said San Mateo Spring, without prejudice to any third party who may have a better right, and very especially to the Apaches, who cultivate the said San Mateo Spring."

The Governor designates no boundaries, but instructs his alcalde to fix the same subject to the general directions just stated as to the starting point of the survey, the limits of the area, and the security of the rights of the Apaches.

The alcalde says: "I commenced from north to south, and, not being able to complete the same, the valley being small, and the mesas preventing it, I ceased measuring, and designated as boundaries the mesas that surround said valley on the four sides, which may contain in the center a little less than the four leagues above mentioned." He says the Apaches were satisfied. It will be noticed that the alcalde disobeyed the instructions of the governor as to the commencement of his measurement at the south boundary of the grant to Don Bartolomé Fernandez and the restriction of the area of the land to 1 square league, and arbitrarily made the mesas on the four sides of the valley the boundaries, which he says inclosed a little less than the four leagues mentioned. No four leagues had been mentioned, but only the four sides of one league. He says he commenced from north to south, but that the smallness of the valley and the mesas surrounding it prevented him from measuring the land as he had begun it; but he had nothing to do with the smallness of the valley or the mesas he encountered. The grantee had petitioned for "a tract of land of pastures and waters" at the spring, and said nothing about valleys or mountains.

The alcalde should have executed his instructions and restricted the land to one league, establishing firm and durable land marks of the boundaries, as required by his instructions, and should then have reported his work, "showing the measurement and boundaries," as required by the governor. He failed to do this, and made a report in violation of his instructions; and if he submitted it to the governor there

is no evidence that he approved it, nor is there any probability that he would have done so. The alcalde had no power to enlarge the grant or to disobey his instructions, and so far as he did so his action is a nullity, and the case stands as if no alcalde had been appointed or acted. I do not say that the formal approval by the governor of the act of the alcalde would be indispensable in this case if he had obeyed his instructions, but he grossly and palpably violated them, and I can not presume that the governor sanctioned his conduct and thus betrayed his official trust.

These are the material facts touching the location and boundaries of the land claimed. Is it possible to determine them? The measurement was to begin at a point to be designated by Don Bartolomé Fernandez in the south boundary of his grant. Where is that point? There is nothing in the papers or proofs which fixes it, except the unsupported statement of the deputy surveyor that "it is a well-known point, and constitutes the south boundary of the Bartolomé Fernandez grant." That boundary is over five miles in length. So far as the proved facts are concerned the preliminary survey throws no light on it. If Bartolomé Fernandez ever designated the point there is no evidence of the fact, and none is now attainable, as the grant is over one hundred and twenty years old.

In fixing the location of the land it is of course important to find the San Matéo spring, where the grant was to be located; but there are two springs known by that name, as will appear by the map accompanying this report, which I have caused to be prepared as a help in ascertaining the true localities of important points referred to in the papers. Two affidavits are on file touching the identity of the spring named in the grant, and both speak of it as having its source in the San Matéo Mountains; but the other San Mateo Spring has the same source. One of these springs is located at the south corner of the grant as surveyed. I think it ought to be called the Rito Colorado Spring, for it is the source of the stream of that name, as the map will show. The misnomer of this spring would seem to be a suspicious circumstance, and it throws light on the probable motives which suggested to the surveyor his location of the grant. As the map will show, this location would cover a body of very tempting valley land in the vicinity, which could readily be made available. This fact is too significant to be overlooked in the inquiry I am making. The other San Mateo Spring, as shown by the map, is at the head of the San Mateo Creek, and its name is so appropriate as the source of that stream as fairly to indicate its identity as the one named in the grant. It is situate in the northwest quarter of the northeast quarter of section 31, township 13 north, range 7 west, and is about 1 mile and 65 chains southeast of the center of the town of San Mateo, in a narrow cañon of the mesa, and about 2 miles from the nearest point of the grant as surveyed. My opinion that the San Mateo Spring mentioned in the grant is the one which forms the source of the stream of that name is strongly supported by its relative location to the south boundary of the Bartolomé Fernandez grant. It would make the body of the grant lie due south of the said Bartolomé Fernandez grant as located by the papers and contiguous to it, while the grant as surveyed lies southwest of the Bartolomé Fernandez grant and at a much greater distance from it, as a reference to the map will show.

The survey also places the spring some 6 miles from the nearest point in the south boundary of the Fernandez grant, while the survey itself at the nearest point is 2 miles from the same. These facts are utterly irreconcilable with the terms of the grant and the theory that this spring is the one contemplated by it, as the land could not be "the surplus" of the Fernandez grant, nor have any relation to it, in this investigation. This view is further strengthened by the fact already mentioned that the grant as surveyed is valley land, and more desirable than any that could have been had lying due south of the Bartolomé Fernandez grant, and located at the spring forming the source of the San Mateo Creek. I may be mistaken in these views, but they seem to me to be supported by strong probabilities, and are perfectly consistent with the reckless and indefensible policy which has long prevailed in New Mexico touching the location and survey of Spanish and Mexican grants. It is certain, at all events, that the preliminary survey in this case can not be harmonized with the facts disclosed, and that the reservation of the land covered by it should be revoked and the land restored to the public domain. This is clearly called for under your recent decision respecting the Tumacacori and Calabazas private land claims in the Territory of Arizona. In my opinion the location of the San Mateo Spring grant is clearly impossible; but it is absolutely certain that the present claimant has not shown "the precise locality and extent" of the land claimed by him, as he was required to do under the decision referred to and the instructions of the Secretary of the Interior.

For the reasons given I recommend the rejection of this claim by Congress, and the immediate restoration by the General Land Office of the land involved to the public domain. Copies in triplicate of this supplemental opinion are forwarded as required.

GEORGE W. JULIAN,
Surveyor-General.

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

I hereby certify that the foregoing on six pages is a full, true, and correct copy of the original from which it was made, which original is on file in this office, in the matter of Private Land Claim No. 134, in the name of Santiago Durany Chaves, for the San Mateo Spring tract.

In witness whereof I have hereunto subscribed my name and caused the official seal of this office to be affixed at the city of Santa Fé, this 4th day of April, A. D. 1889.

[SEAL.]

GEORGE W. JULIAN,
Surveyor-General.

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