

ADVERSE POSESSION LAWS

Do Not Apply To Land Grants

*That were issued by the sovereignties of
Spain and Mexico*

*AS TREATIES ENTERED INTO
BY THE UNITED STATES CONGRESS*

(Treaty Of Guadalupe-Hidalgo)

are considered Supreme law

by

the Constitution of

the United States of America

Opinion and Belief of Bert M. Lucero, Trustee, LTLGA, 2 March 2007

After three centuries as Sovereign, the Government of Spain relinquished all Spanish claim in the Americas to a new Sovereign, “Mexico” via the Treaty of Cordova, 28 September 1821. Property rights were honored IAW (in accordance with) Las Siete Partidas and the International Law of Conquest. Land Grant ownership, management and operations were allowed to continue in the same manner as under Spanish Rule (Land Title Study, Koch, et al). The following year, on 24 February 1822, all of Mexico’s inhabitants, within its borders, were declared “Free and Equal Citizens” via the Plana de Iguala.

“...that all the inhabitants of New Spain, without distinction, whether Europeans, Africans or Indians are citizens of this monarchy, with the right to be employed in any post, according to their merits and virtues”.

“... the equality of civil rights to all the free inhabitants of the empire, whatsoever may be their origin in the four quarters of the earth”.

The United States of America (created in 1776), enacted Indian Intercourse Act of 1834 (Manifest Destiny), wherein it formalized it’s goal to claim all land, unto the Pacific Ocean: the means to clear the land of savages was authorized (and financed), immigration was encouraged. But this government did not expect its citizens to encounter “civilized” indigent inhabitants: indigents that were not savages, indigents that looked “Indian” but never the less” civilized according to English standards. Therefore, the United States Congress had to find another way to take the land. **Note:** *See United States of America Vs Jose Juan Lucero, 423 USC 1869; Spanish land grants were issued to Indians on same basis as other citizens; USA does not have authority to act on behalf of owners of land grant -- (Also summarizes New Mexico history including: Plan of Iguala, 24 Feb 1821 and Treaty of Cordova, 24 Feb 1822).*

With the withdrawal of Spain from the territory, people from the United States moved in to fill the gap; some claimed a gigantic portion of land, named it "Texas" applied for statehood (1832), after which the U.S. Government assumed that they could simply appoint a Territorial Governor and send in a standing army and claim the unprotected territory. But, in northern New Mexico, the local people defended their homes, lands, families and other rights (including people such as Geronimo and Cuerno Verde). After four battles, near present day Embudo, New Mexico, wherein the foreign governor appointee, was assassinated in 1846; the United States government declared "WAR" on Mexico, but did not warn Mexico. They sent two armies: one across the southwest through present-day New Mexico, Arizona & California and the other to the Mexican Capital AND... without resistance... captured Mexico City.

As a compromise, Mexico gave up its northern territory, all lands north of the 38th parallel via the Treaty of Guadalupe-Hidalgo: a Treaty of Peace between the United States and Mexico, 2 February 1948. This Treaty was enacted by the United States Congress. According to that Treaty, all Mexican citizens, who chose to remain (after one year), were granted all rights as "Citizens" of the United States of America. We assert that property ownership and rights were to be respected and honored IAW common practice of International Law of Conquest... this had been respected by the Kearny Code and reiterated in the Gadsden Treaty on 30 June 1854.

By virtue of this Treaty, former indigent natives ("Indians"), Spanish settlers and other "citizens of Nueva Espania (a new country named Mexico)", became citizens of the United States of America, with all rights and privileges of US Citizens (see articles VIII and IX of the United States Constitution). Along with that, they were entitled

"... to the enjoyment of all the rights of the citizens of the United States"... rights to be maintained, and the people "...protected in the free enjoyment of their liberty and property" (USA vs. Lucero).

The US Supreme Court even acknowledged that

"...the law of nations of justice, and of right, that by conquest and annexation the allegiance of the people is transferred from one sovereign to another, but the rights of the people to their property remain undisturbed, and their relation to each other" (US vs. Perch man, 7 Pet. 51.).

According to Article IV and- Paragraph 2 of Article VI of the United States Constitution, the Treaty of Guadalupe-Hidalgo was to be considered "Supreme Law", wherein... ***ALL treaties entered into by the United States Congress, become "Supreme Law" and no other law, by any lesser governing body, may be enacted to circumvent that treaty.*** For this reason, application of Adverse Possession Laws, in my opinion, are not applicable to the Las Trampas Land Grant, nor to any other Land Grants.

All "Mexican" citizens (that chose to remain)... became United States citizens, with all rights and privileges as all other United States citizens; including the right to protection of property and that of "due process". Only the sovereign changed, all personal property was to remain unchanged and respected as if the sovereign had not changed. The Territory of New Mexico later enacted the Organic Act, which reaffirmed property protection rights of citizens - reaffirming that no law would be enacted that could/would interfere with the established system of land ownership IAW the International Law. All rights would be honored and allowed to continue... as before the change of sovereign governing nations. No law, could be enacted to

violate the property rights of land grants, that had been granted by former sovereigns of Spain or Mexico (*see Land Title Study, White, Koch, Kelly & McCarthy, State Planning Office, 1971 and Robert J. Torres, State Historian, The Enduring Legacy of Spanish and Mexican Land Grants in New Mexico, 12 pages, Statement to US House of Representatives, 26 March 1998*)

However, beginning with the Court of Private Claims Act of 1854, owners of land grants struggled to keep their lands that had been granted to them by the sovereign governments of Spain and Mexico. Even the Homestead Act of 1862 was a means of displacing indigents by encouraging colonization by the people of Europe (most of whom were fleeing religious persecution).

And in 1884, the Territory of New Mexico decided to adopt the Partitioning Laws and Adverse Possession (laws of English design). These were the primary laws that lawyers and greedy speculators used to segregate the common lands from the newest indigents, now citizens of the United States of America, Heirs of the Las Trampas Land Grant and other Land Grants (*see also David Benavidez, Lawyer-Induced Partitioning of New Mexico Land Grants, An Ethical Travesty, Thesis paper by David Benavidez, Rio Grande Valley Library System, Special Collections*). These citizens, owners of land grants, were at a great disadvantage for many reasons:

1. American Laws were written in English
2. These laws were “foreign” concepts to the indigent Spanish & Indian populations.
3. Most could not read, write, speak nor understand the English language
4. Indigent citizens did not have access to legal council
5. Rural self-sustaining barter lifestyles could not easily convert to a cash economy.
6. Indigent peoples placed their trust in “American English speaking lawyers’ to defend their rights.

The Legal System of the United States of America, did not have adequate “checks & balances” to prevent abuses by it’s own lawyers and judges. Lawmakers and law enforcers and even those appointed to oversee justice in the “law” seemed to allow their greed and hunger for power, land & gold to dictate their every move; and it appears to have been sanctioned by the United States (*see writings of Malcolm Ebright & William deBuys*). We therefore assert that the most evident tactic was to simply ignore the International Law of Conquest, Kearny Code, the Territorial Organic Law and the Treaty of Guadalupe-Hidalgo and also Gadsden Treaty; all of which were supposed to have been “Supreme Law”... and thus, many people lost their “common lands” and their means of survival.

Additionally, in 1935, New Mexico instituted a new Tax Law. I believe and assert that it does not apply to deeds granted by the United States of America. In the case of the Las Trampas Community Land Grant, “...the towns, settlements or segregations...” of the Las Trampas Land Grant were not partitioned legally; nor should/could they have been declared “fee simple”. Therefore the Taos County clerk erred, when she “sold” the property belonging to the heirs of the Las Trampas Land Grant to the state of New Mexico -- due to unpaid taxes going back to 8 December 1935. Taxes had been paid since 1914, and now they were being assessed against individuals, rather than against one entity. Chapter 27, Section 24 of the 1934 Tax Laws of the State of New Mexico reads as follows:

“... no person shall be permitted to question the title acquired by

deed of the treasurer, without first showing that he, or the person under whom he claims title to the property, had title thereto at the time of sale, or that title was obtained from the United States...”

“... in all cases where the owner of the land sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the said lands, or in the purchaser, to defeat the same, and, if fraud is established, such title shall be void.”

I thank you for your time and consideration. I have listed a few cases that help me to form the above opinion. If you ask your legal department to confirm my understanding of them, they should confirm the same.

Submitted Respectfully,

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Case Reference

1854? *United States Vs Perchman 7 Pet 51, 18*

Excellent source of International Law

DECISION Affirms International Law of Conquest

1867 *United States of America Vs Jose Juan Lucero USC 42, 1867*

United States of America files suit against Jose Juan Lucero for building a home within the exterior boundaries of the Cochiti Indian Reservation

DECISION USA does not have authority to act on behalf of Cochiti Indians
Land Grant given to Indians on same basis as all other land grants from Spain & Mexico

1876 *Unites States of America Vs Joseph 94 USC 614, 1876*

The United States of America files against Joseph, a Taos Indian, who established a ten acre home site within the exterior boundaries of the Pueblo of Taos

DECISION Pueblo Indians hold lands by a right superior to that of the United States
Land grants given by the Sovereign of Spain or Mexico are superior to any other documents

1882 *Grant Vs Jaramillo 6 SCNM 313, 1882*

Grant files against Jaramillo for adverse possession of an inchoate land grant claimed by Jaramillo

DECISION Ejectment from Grant Lands determined by Senior Rights

1886 *Browning Vs Estate of Browning 3 NM (Glid. E.W.S. ed) 659, 9 P. 667, 1886*

DECISION Organic Act is Constitution of Territory; Legislature cannot make laws in conflict with it or laws adopted by it

1889 *Botiller Vs Dominquez 130 US 238, 247, 1889*

DECISION Court obligated to follow Acts of Congress even if they are in conflict with treaty with Mexico; US Government & Mexico must resolve obligations

1895 *United States Vs Texas 162 US 867, 1895*

Boundaries of the 1818 Melish Map and 1819 Treaty with the United States and Spain at the 100th meridian do not match

DECISION The United States concluded a Treaty with Spain over Texas Borders
Contains many citations of International Law known as Vattel Law of Nations, Chitty's Edition

1896 *United States Vs Santa Fe 165 US 874, 1896*

City of Santa Fe tried to claim a portion of land to which it was not given by Land Grant

DECISION Excellent Translations of the Recopilacion de las Indias; applicable to Community and Private Land Grants

19?? *Marbury Vs Madison 5 US (1 Cranch) 137 at 179; 2L.Ed. 60 at 74, 19*

DECISION Government Acts Repugnant to the Constitution are Null, Void, and Without Legal Effect at its Inception

1901 *Torrez Vs Board of Commissioners 10 NM 670, 65 P. 181, 1901*

Constitution of the United States and Organic Act, under which a territory is organized and acts supplemental or in addition thereto form the Constitution of a territory

DECISION Any territorial act of legislature inconsistent with these acts of Congress is unconstitutional and void

1903 *Territory of NM Vs Persons of Delinquent Tax List of Bernalillo County 12 SCNM 63, 1903*

Bernalillo files against land owners who did not pay property tax on inchoate land grant

DECISION Perfect land grants that have received a US Patent are taxable as a UNIT
Taxes cannot be assessed until grants are made perfect & proper survey exists

1904 *Territory ex rel. Curran Vs Gutierrez 12 NM 254, 78 P. 139, 1904*

DECISION Organic Act and Acts of Congress operated as a constitution for the Territory of New Mexico
Appeal dismissed (202 US 614, 26 S. Ct. 766. 50L. Ed. 1171, 1906)

1904 *Territory of NM Vs Persons of Delinquent Tax List of Bernalillo County 12 SCNM 169, 1904*

Bernalillo files against land owners who did not pay property tax on inchoate land grant

DECISION Perfect land grants that have received a US Patent are taxable as a UNIT
Taxes cannot be assessed until grants are made perfect & proper survey exists

1957 *State ex rel. Bliss Vs Greenwood 63 NM 156, 315 P.2d 223, 1957*

DECISION Organic Act was the Constitution of Territory of New Mexico and the Legislature could not pass laws in conflict with it.

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