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THE NEW MEXICO LEGAL RIGHTS DEMONSTRATION LAND GRANT PROJECT—AN ANALYSIS OF THE LAND TITLE PROBLEMS IN THE SANTO DOMINGO DE CUNDIYO LAND GRANT*

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HISTORY AND BACKGROUND

The problem of uncertain land titles within Spanish and Mexican land grants is rooted in New Mexico's colonial and territorial history. Situated on the frontier of New Spain, its settlement burdened by a difficult climate and hostile Indian population, the legal formalities of land titles in New Mexico were often neglected or disregarded. Further, civil law legal formalities and principles of the colonial era have often been misunderstood by the lawyers and judges of the United States trained in the English common law. The validity of the property claims of former Mexican citizens, their boundaries, their character as private or community grants, and related questions have disturbed the courts and the Congress of the United States since the accession of United States sovereignty.¹

These land title problems have been further exacerbated by the cultural resistance of many land grant residents to such legal formalities as recording instruments of title and probating estates. Unreliable county real estate records have served to make the problem even worse and more expensive to correct.

The impact of these land title problems on land grant residents was the subject of several sociological studies during the 1930's. The land title problems themselves were not investigated, however, until 1970-71 when the *Land Title Study* was prepared. This *Study*

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1. Stephen Watts Kearny established a civil government in New Mexico on September 22, 1846, after his successful invasion. The Kearny Code provided for a register of land claims; the clerk of the registry filled four volumes before this procedure was repudiated by the Act of July 14, 1851. Three years later Congress created the Office of Surveyor General of New Mexico. Although he was charged with determining the nature and extent of land claims, the Surveyor General was ill equipped to do so. He further complicated titles within land grants by taking the position that he was not to carry his survey of the public domain into land grants, performing no surveying within their exterior boundaries. Nor were tenures better defined or the interior of land grants surveyed after the Court of Private Land Claims was established in 1891.

reviewed on a general basis the myriad land title problems encountered by land grants, noting that

[a]pproximately two out of every three title transfers in Rio Arriba County need either a quiet title suit or other curative work, and in approximately seventy-five percent of these transactions the seller fails to provide an abstract, or the purchaser fails to require one of his own. An abstractor opined that ninety-eight percent of all titles to real estate within land grants in Rio Arriba have to be quieted in order to meet the demands of the Bar Association whereas only thirty percent of the patented lands needed a quiet title suit or curative work. . . . There are approximately 3,500 to 4,000 parcels in private ownership in Mora County, about eighty percent of which do not have a good title. The County Assessor estimated that ten percent of the private property owners have marketable title to their lands.²

The New Mexico Legislature, recognizing the hardship imposed upon land owners in many land grant areas by the problem of uncertain title, has begun to provide financial assistance to alleviate the problem. Because of the nonexistence of adequate land survey monuments within the populated portions of certain New Mexico land grants, the legislature authorized and funded the State Engineer's Office to supervise a program involving the installation of permanent second-order survey monuments within the previously unsurveyed portions of land grants,³ as well as one prototype project of tract to tract land survey within a land grant.⁴

Additionally, in 1972, the Four Corners Regional Commission authorized funding for the New Mexico Legal Rights Project⁵ to work generally in the area of water law and land title litigation. This project in its two years of operation worked extensively with the Chilili Land Grant,⁶ the Anton Chico Land Grant⁷ and the Manzano Land Grant.⁸ The project staff's conclusion at the end of this period

2. White, Koch, Kelley & McCarthy, Attorneys at Law, 65 and the New Mexico State Planning Office, Land Title Study (1971).

3. Koogle & Pools Engineering, Land Title Study: Survey and Monumentation Project (1970). Prepared for the New Mexico State Planning Office under contract to the Four Corners Regional Commission funded by a technical assistance grant under Title V of the Economic Development and Public Works Act of 1965.

4. This survey was made by the Town of Cebolleta Land Grant with matching funds from the New Mexico State Planning Office.

5. FCRC No. 343-399-027.

6. Moya v. Chilili Coop. Ass'n, 87 N.M. 99, 529 P.2d 1220 (1974), cert. denied 421 U.S. 965 (1975).

7. Mondragon v. Board of Trustees, No. 10194 (D.N.M. 1974).

8. Brazil v. La Merced del Manzano, No. 5357 (N.M. Dist. Ct. 1972).

was that a primary problem of community land grants was lack of adequate legal descriptions and defensible legal titles.⁹

On November 1, 1974, the Four Corners Regional Commission funded the New Mexico Legal Rights Demonstration Land Grant Project. This project had as its goal moving beyond theoretical study to the implementation of solutions to the specific title problems of a land grant. Its stated purpose reflected a synthesis of the previous theoretical studies¹⁰ and the practical experience of the New Mexico Legal Rights Project:

This is the first comprehensive attempt to develop a solution to the land grant tenure problem in New Mexico. Success in these efforts should form the basis for a larger program(s) to eventually secure clear land titles on a substantial portion of New Mexico Land Grants, thus paving the way for economic development, land for the rightful owners and providing other sources of financial benefit to these claimants or simply for developing effective conservation programs . . .¹¹

The approach was straightforward: 1) contact and evaluate as many community land grants in New Mexico as possible, 2) select a grant which could benefit from title clearance,¹² and 3) work with that grant to completion.¹³

CONTACTING THE COMMUNITY LAND GRANTS

The *Land Title Study* contains a list of the grants that were patented.¹⁴ Although this provided a good starting point, it did little to advance knowledge of the status of community land grants in New Mexico in 1975. The staff talked with and reviewed the files of the State Planning Office,¹⁵ the State Engineer's Office,¹⁶ the Museum of Anthropology,¹⁷ the State Historian,¹⁸ the State Highway Department,¹⁹ and the American West Center-University of Utah.²⁰

9. For example the Manzano Grant alone contains 330 parcels within 17,340.24 acres, no more than 20 having adequate descriptions.

10. *Land Title Study*, *supra*, note 2.

11. Proposal For the Establishment of the New Mexico Legal Rights Demonstration Land Grant Project, at 5.

12. *Id.* at 2-3.

13. *Id.* at 4-5.

14. *Land Title Study*, at 221-234.

15. Interview with Michael Collins, James Burkehead (Nov. 14, 1974).

16. Interview with Paul Bloom (Nov. 19, 1974).

17. Interview with Frances Swadesh (Nov. 14, 1974).

18. Interview with Myra Ellen Jenkins (Nov. 14, 1974).

19. November 19, 1974.

20. Telephone interview with Clark Knowlton (Nov. 21, 1974).

They wrote to the New Mexico State Extension Agents in counties where there were land grants,²¹ obtained and reviewed copies of interviews regarding grants conducted for the *Land Title Study*,²² and reviewed portions of suits and abstracts of the larger grants to see if any common lands were segregated. After this process was completed, the first contemporary list of the approximately thirty-four community grants in 1975 was compiled.²³

This list was pared down to twelve. These were examined in detail by the project board and the following criteria were applied to each one. There must be:

1. A grant community in nature with common lands identifiable by the residents and grant records, with good color of title and as few potential adverse interests as possible. The existence of a determination of heirship will be of significance in considering this criteria.
2. The presence of contested parcels within the exterior boundaries, but not so many as to destroy the community nature of the grant.
3. Location outside metropolitan areas preferably somewhere in the Northern counties.
4. A membership which is readily identifiable which exhibits cooperativeness and willingness to contribute financially or by way of in-kind services to the project.
5. A minimal set of grant records of conveyances, a minimal set of county records and/or abstract company records.
6. Potential for economic self-help and betterment of land grant claimants.
7. Land holders within the exterior boundaries of the grant, identifiable and typical but not excessively numerous.
8. The overall geographic site of the grant cannot be such that to attempt title clearance clearly exceeds the resources available.

After a review of all of these grants, the Santo Domingo de Cundiyo Grant was selected by the Project Board.

NEGOTIATING THE CONTRACT WITH THE GRANT BOARD AND OUTLINING SPECIFIC PROJECT GOALS

The Cundiyo Land Grant presently functions as a community grant and has been construed to be such by the Santa Fe District Court.²⁴ Its board of trustees serves as the governing body of a

21. December 9, 1974. Seven agents did not reply.

22. November 19, 1974 through December 31, 1974.

23. See Appendix A.

24. The Town of Cundiyo is governed by a board of five trustees acting under N.M. Stat. Ann. § 8-1-1 *et seq.* (Repl. 1974).

quasi-municipal corporation—literally the equivalent of the commissioners of a small town. It presented a myriad of legal and research challenges. It still contains approximately 2,100 acres of common lands.²⁵ Within the external boundary there were approximately 75 individual tracts which required surveying. The potential for economic development is good.²⁶ Further, the possibilities for gaining information about the legal processes and for involving the State District Judges in grant affairs seemed excellent.²⁷

In order for the project to function, a maximum commitment on the part of both the land grant and the staff was essential. This commitment would of necessity be reflected in a final written contract between the project and the grant board.

The Cundiyo grant board showed a great interest in having the project do the work; however, the staff concluded that mere agreement by the board without a community meeting and the full agreement of the residents would obviously cause problems in the later stages of the project. The decision was made by the grant board and the staff that the proposal would be explained to all grant residents at a public meeting and a vote would be taken. If the grant voted to proceed, a draft contract was to be prepared and circulated at a second public meeting between the grant board and the project staff. At this meeting the specific terms of the contract would be worked out.

At the first public meeting the project was agreed upon in principle and at the second the terms of the contract were worked out in detail. The community concerns were: 1) Would the project have sufficient funding to complete the job? 2) Would the abstracts and surveys become the property of the grant upon completion? 3) Would the grant be free of surveyor's liens upon completion of the project? 4) Would suits initiated under this project be prosecuted to completion by the project? All of these questions were answered in the affirmative by project staff.

Project staff in exchange for their promised performance were assured by the board that:

- 1) It would provide local matching funds.
- 2) It would cooperate fully in the title clearance process by, among other things, reissuing, when necessary, deeds to private tracts bearing accurate survey descriptions.

25. Statement of the Cundiyo Board of Trustees (Feb. 10, 1975).

26. Statement of Eloy Vigil (Feb. 10, 1975).

27. Pursuant to N.M. Stat. Ann. § 8-1-11 (Repl. 1974), the New Mexico District Court in the District where the grant is located exercises supervisory jurisdiction over the Board of Trustees.

- 3) It would act as arbitrator in disputes between private individuals over their respective boundaries.
- 4) It would provide local volunteers for conducting interviews with persons "interested" in the grants and provide persons to be employed by the surveying company when necessary.
- 5) Provide local on-site office space for the project in the event that became necessary.

The contract ultimately signed reflected these agreements.²⁸

This process of involving the grant board and the residents in the formative stage of the project turned out to be critical. The land is the residents, the decision about what work should be done is theirs and the benefit or detriment as a result of the project falls on their shoulders. Without their total agreement and cooperation a project such as this could not and obviously should not be attempted.

The grant board listed the following as the work they wanted completed. They wanted the staff to: 1) resurvey all of the private tracts on the grant and map them, and 2) clear the titles to all of the private tracts within the exterior boundaries of the grant and adjacent to the grant.

THE INITIAL STEP—SURVEYING AND MAPPING

The approach from the beginning of this project was premised upon the assumption that the people within the grant know what they own. Therefore, the lack of adequate documents of title and not the residents' own views created the "title problems." Turning the traditional approach on its head, the staff decided it would be simpler to let the people describe what they own and create property descriptions based upon common community knowledge. New board deeds with accurate legal descriptions would ultimately confirm the boundaries. The titles would then be searched and quiet title suits would establish ownership.

What follows is a description of the surveying process. However, some surveying concepts must first be defined.

1) *New Mexico Coordinate System*. There is a general consensus that any project of this nature should be based upon this system. Under it, the location of a property corner is defined by stating the X and Y coordinates of the point which are the distances east and north of base lines that have been designated for the state. The system is defined and sanctioned by New Mexico Law,²⁹ and has many advantages over more conventional systems. In this project, the

28. The contract is set forth in its entirety in Appendix B.

29. See N.M. Stat. Ann. § 70-1-47 *et seq.* (Repl. 1961).

coordinate system was in every case supplemented by conventional metes and bounds data.

2) *Second order and third order surveys.* These are standards for procedures and accuracies established by the National Geodetic Survey (hereinafter NGS), an agency of the U.S. Department of Commerce. The NGS has established a net of extremely accurate first order survey points which tie the whole system together. Between the first order points are a series of points set to second order standards which are less demanding in terms of accuracy. New Mexico Law³⁰ requires that a second order point be set within one-half mile of any point when using the coordinate system or waiver of this requirement must be obtained. Thus, in surveying the grant, we had to establish second order control points (few existed in the grant prior to our survey) on which to base the survey. Other surveying between the second order points could then be done properly at third order standards.

Generally speaking, a second order survey will have about a fourth of a foot of error per mile and a third order survey will have about twice that.

3) *Position error.* When using photogrammetry,³¹ the location of a property corner is not determined by measuring to it but rather by observing its position in aerial photos. The position error is the discrepancy between the stated position of a point and its actual location on the ground. The position error can be kept as low as required, but greater accuracy is more expensive. In this project we would have a maximum position error of 0.2 foot in areas with tracts generally smaller than 5 acres, with spot checks to obtain greater accuracy on the very small tracts, and a maximum position error of 0.5 foot in areas with tracts generally larger than 5 acres. This is about equal to the accuracy generally achieved on rural subdivisions and appears to be satisfactory.

The procedure used for surveying the grant was as follows: We furnished several copies of recent aerial photos of the area to be surveyed. These were at a suitable scale to show all detail, such as fences, trees, and other objects. Different scales were used in different areas. For instance, a scale of approximately 1 inch to 50 feet or less was necessary in areas with very small tracts. This would have been cumbersome over the whole grant; so areas with large tracts had an approximate scale of 1 inch to 200 feet.

Using these aerial photos, the property corners were determined

30. N.M. Stat. Ann. § 70-1-52 (Repl. 1961).

31. Generally this means mapping and surveying by photographs.

by the grant residents and marked on the ground with an iron stake furnished by us with a cap or tag assigning it a number. At the same time, a mark was made on an aerial photo showing the location of the stake and its number. The surveyors assisted by demonstrating use of the stakes. All materials were furnished by the surveyors. The actual designation of corners and setting of stakes was left to the grant residents. We could not and did not tell the residents where their corners were. If there was a dispute, they simply set two corners and planned to resolve the matter at a later date. (All of the boundary disputes were ultimately resolved between the grant residents.) The surveyors also explained how to set the stakes when the property corner fell in the center of a ditch or other place that cannot be monumented.

Concurrently with this, the second order controls were established for the area as required by law, and monuments were set at one mile or shorter intervals.

After the monumentation of the property corners was completed and marked-up copies of the aerial photos were returned to the surveyors, they proceeded to determine the location of each stake which had been set using surveying procedures. From this data, final plats were prepared which are similar to conventional subdivision plats. Each tract was numbered, the bearing and distance of each property line was shown, and the area of each tract was stated. In addition, the number of each property corner as labeled in the field was shown on the plats and the coordinates of each point tabulated. These plats were filed on the fifteenth day of March, 1976 in the County Clerk's Office. The plats were at a scale as required by the assessor's office, but supplemental plats are added to show all detail. These maps now will replace the older highly inaccurate assessment maps of the area.

The aerial photography and the numbering of the property corners, both on the plat and on the ground, enabled everyone to clearly understand the location on the ground of each tract shown on the plat.

In the Cundiyo Grant there is an irrigated area of about 50 acres which lies north of the northwest corner of the grant. Although this was outside of the grant, the same people were involved and the cost was relatively small per tract; therefore, we had a tract survey of this done along with the area in the grant. Another option was a survey of the north, east, and south boundaries of the grant. The west boundary is adjacent to the populated area and could be retraced as

part of the tract survey. The remaining boundaries enclose grazing land and are not in doubt so we did not retrace them.³²

THE ABSTRACTING PROCESS AND GENEALOGICAL DEVELOPMENT

Problems of land titles have traditionally been solved by leaving the process of researching land title records to abstract and title companies on a contract parcel by parcel basis. We discovered, after a thorough examination of all of the separate tracts within and adjacent to the Cundiyo Grant that this totaled about 101 parcels. The cost to have each parcel abstracted could run from \$250 per abstract to \$500.00 per abstract. Thus, the total cost could have run from \$29,000-\$60,000 for the abstracting alone.³³

Recognizing the need for abstract services and the total economic and physical infeasibility of having these services performed, the staff adopted a novel approach that worked with overwhelming success. The decision was made to lease an abstract plant, hire three trainees from land grants,³⁴ and under staff supervision do all of the abstracting work ourselves. This was done and the title abstracting of all 101 parcels was completed.

The trainees gained invaluable experience by researching land grant records and, of course, increased in efficiency and speed as the training process came to a close.

The process of abstracting the titles to these parcels required a novel approach. Since land grant titles traditionally originate from the grant board or a small number of prominent persons, the decision was made to assemble nontraditional sources of information regarding the grant. The record of the proceedings before the Court of Private Land Claims was reviewed by consulting the records of the

32. The observation should be made that aerial photographs were immensely helpful in establishing corners. The residents took a great interest in helping out and marking their corners on the map and driving their numbered corner stakes. With just a few exceptions at this juncture boundary disputes were minimal. A pleasant surprise was that most of the small holding claims just north of the grant have been surveyed by the Federal Government and have at least on paper a fair legal description. Additionally, the photographic mapping process was an excellent vehicle for the staff to meet the residents regarding the mapping process, and to make an appointment to come back and copy their legal documents such as deeds and judgments. This was, of course, invaluable to supplement the abstracting work, since many documents are not recorded.

33. This discussion is largely theoretical since no abstract plant could have ceased work on all its other projects and concentrated exclusively on Cundiyo as was done by project staff.

34. These persons came from Tierra Amarilla, La Joya de Sevilleta and the Canon de Carnue Land Grants.

Bureau of Land Management. The Thomas Benton Catron Collection in the Coronado Room of Zimmerman Library at the University of New Mexico was consulted. This collection contains the papers of Matthew G. Reynolds, the attorney who represented the United States before the Court of Private Land Claims. His notes and memoranda add to the proceedings of the Court. Additionally, historical literature, the State Historian, and numerous experts who work in Northern New Mexico were consulted. This led to the discovery of anthropological data about the community.

This preliminary research indicated that the most prominent resident of the grant was Jose Antonio Vigil. A list was made, his name was searched in a general title search from 1848 to the present. This search yielded the fact that there were two Jose Antonio Vigils and other names of persons to whom they conveyed property. Lists were made of these names.

At the same time grant residents were being interviewed about their ancestors and about their land claims; on aerial photographs each present owner in possession indicated his property. In addition, interviews yielded a valuable piece of information—an unrecorded will in 1916 listing the names of the grant members in 1916. Lists of the names of persons obtaining small holding claims adjacent to the grant from the Federal Government in 1920 provided more information.

The interviews also produced several unrecorded deeds which were copied and ultimately included in the abstracts of title. All of these documents were reviewed and title searchers prepared an abstract of title for each parcel and consulted with the staff title abstractor. All abstracts were double checked. Ninety-five to 98 percent of the documents were in Spanish, so all were translated into English, proofread and put in final form. All abstracts were read by staff and legal opinions formulated which formed the basis for the quiet title action ultimately filed.

When reading an abstract on a land grant no accurate analysis of the validity of conveyances can be made without knowing the family history of the parties. Problems with community property, intestate succession and probate clouds could exist and never be discovered without knowledge of the family history.³⁵ Consequently the staff circulated notices (see Appendix C) indicating they wished to talk with everyone living on the grant. Interviews were scheduled with

35. For example, if a deed runs to two parties as husband and wife and is deeded out by the husband alone, it is crucial to know if the wife was living at the time of the second conveyance, and if there were any children, since after 1915, the wife's signature was essential to the validity of any transfer of community property.

each property owner and a complete family history was taken. Additionally, people were urged to bring all of their legal papers to the interviews which were conducted in the community center at Cundiyo. A portable Xerox machine was used and all documents were photocopied on the spot. As noted above, this was immensely helpful since many documents were not recorded or were incorrectly recorded. Further, residents were reluctant to have documents taken away from the grant for copying.

In addition, a genealogical study of the families living on the grant was completed in the early 1940's by a social anthropologist. This was used to cross-check against the interview information. Using all of this information, a complete genealogy of all of the families on the grant was prepared. A copy of this genealogy is contained in the base abstract prepared for all of the parcels and it formed the basis for determining who should be served in the quiet title suit.

LEGAL STRATEGY AND LITIGATION

Our overall legal strategy was to use the grant board's power to issue deeds to parcels within the exterior boundaries of the grant as a vehicle for incorporating the new legal description into the chains of titles to parcels within the grant. See Appendix D. Since the definition of what is and is not a community land grant is far from clear, our first step was to get a binding decision among the residents that this grant was a community land grant and that it had the power to issue deeds to owners of parcels within the exterior boundaries of the grant. A declaratory judgment action was filed by the Board of Trustees seeking an adjudication that the grant was a community land grant and that the board had power to issue deeds to parcels within its exterior boundaries. On September 25, 1975 a judgment was entered by the Santa Fe District Court, Cause No. 49776, to this effect. See Appendix E.

The second problem was one of settling once and for all the boundary disputes between all property owners of the grant. Therefore, a second action was filed seeking a declaratory judgment that the resurveyed boundary accurately reflected the extent of real property ownership of each property owner on the grant and that each property owner had a real property interest in his own property in fee simple, but not in the property of any other owner within the grant. On June 4, 1976 a declaratory judgment was entered by the Santa Fe District Court, Cause No. 51054, which: 1) settled all boundary disputes among all property owners on the grant, and 2) settled all questions of ownership among all residents of the grant. See Appendix H.

The final and most difficult task still lay ahead. This was to read and review all of the abstracts, study the genealogy and bring an action to quiet title against all persons whose unextinguished interest created a cloud on the chain of title. Two options were available. One was to bring a separate quiet title suit for each separate parcel. This would mean over one hundred separate lawsuits. A second option was to bring one action by all of the present land grant owners in possession against all of the persons out of possession clouding the chain of title. This could easily be done since all problems *inter se* had been resolved among all persons in possession and all of the parcels were contiguous. On March 31, 1976, an action was filed on behalf of all of the 72 owners of property in Cundiyo against the 263 defendants reflected in the chain of title.

The decision was made to join as defendants all living persons whose names appeared on the genealogy, as well as the known heirs of those who were deceased. Of course, in accord with N.M. Stat. Ann. § 22-14-2 (1953), the unknown heirs and unknown claimants of interest were also joined. All parties were served either personally or constructively. Meetings were held at the grant to explain the significance of the final judgment. Although judgment could have been entered as early as August of 1976, additional time was given to make sure all parties were in agreement. No serious disputes arose, so the final judgment was filed in April of 1977.

All of the abstracts of title were certified by a licensed abstracting company and distributed to grant members. Since they have been certified under N.M. Stat. Ann. § 20-2-13 (Repl. 1970), they will be admissible in court if the need should arise in the future.

LAND TITLE PROBLEMS DISCOVERED IN THE CUNDIYO GRANT

Arguing that the continual dividing of their estates had reduced their land to the point they could no longer support their families; four residents of Chimayo requested six times the amount of land they had at a place near them called Cundiyo.

To the Governor and Captain General:

Joseph Isidro de Medina, Manuel de Quintana, Marcial Martin and Miquel Martin, residents of the canada and puesto (site) of Chimayo, jointly and in agreement with the best form which royal law permits us, appear before your Excellency and say: That inasmuch as all four of us are burdened with children and wives and without having land in our possession to cultivate for our support, because those which we have are very limited as we have inherited them from our parents and our brothers were so many that we received a piece so small that

we can scarcely plant one almund of corn on account of which we have experienced great want and hard work in order to alleviate this through the providence of God and the assistance of your Excellency in your great charity we have decided to register and do register a piece of land which is above the Potrero which is called Cundiyo, vacant and unoccupied and as such, crown land to which no one has any right, in which said place there are about three fanegas of corn planting land, and its boundaries are, on the north the Pueblo Quemado, on the south an arroyo of agua sarca (clear water) and the league of Nambe (interpolated, but genuine) on the west the lands of Juan Martin, and on the east the mountain range. Therefore, and according to what we have said we ask and supplicate with the full rendering of our veneration that Your Excellency will be pleased to attend to our need, and for the love of God grant us the said land, in the name of our majesty, God preserve him, as we will therefore receive the grant with justice which we ask, and that the Alcalde Mayor or his Lieutenant will give us royal possession so that we may settle it, and we swear by God and the sign of the Holy Cross that our petition is not in malice but is for a just need in what is necessary, etc.

Joseph Isidro de Medina

Manuel de Quintana

Marcial Martin

Miguel Martin³⁶

Governor Mendoza denied the petition on August 31, 1743, finding the land requested was too small and the grant would interfere with the neighbors using the land for pasture. He reversed his decision on assurances of the Alcalde of Santa Cruz that there was no reasonable objection and wrote a decree:

In the Villa of Santa Fe, Capitol of this Kingdom of New Mexico on the twelfth day of the month of September of the year one thousand seven hundred and forty-three, I Lieutenant Col. Don Gaspar Domingo Mendoza, Governor and Captain General of the said kingdom must say that in spite of the previous decree, and having been informed by a letter from Capt. Juan Jose Lovato, Alcalde Mayor of the jurisdiction to which the petitioners of the said grant reside, informs me that there is no reasonable objection to the possession of petitioners for all which I order and command that the said Alcalde Mayor or his Lieutenant give them the royal possession they request for themselves, their children and heirs in full right and that in the name of his majesty, God guard him, they may hold, cultivate and improve it observing fully the boundaries and necessary conditions and that in the first place it is given them without damage

36. Land Title Study, *supra* note 2, at 219.

to the third party. For this reason I provide, order and sign with the customary formalities of this kingdom which I certify as valid.

Don Gaspar Domingo de Mendoza³⁷

The Alcalde placed them forever in possession, excepting from the possession a section which was being cultivated by someone else.

A town grew up on the grant, and, on December 12, 1900 the Court of Private Land Claims confirmed the grant to the heirs and legal representatives of the four original grantees. See Appendix I.

The grant was surveyed in 1901 and was found to contain 2,137.08 acres. A patent was issued on February 11, 1903. Prior to our study, very little more was known about the Cundiyo Grant. And, even less was known about the private parcels within its exterior boundaries.

Indeed, the interviewers who worked on the *Land Title Study* were unable to obtain any "meaningful statistics on the status of titles to private tracts within land grants . . ."³⁸ As noted above, in the summer of 1975 the staff of the New Mexico Legal Rights Demonstration Land Grant Project made over one hundred title searches in preparation for writing abstracts of title for the private tracts within the Santo Domingo de Cundiyo Land Grant. These searches, together with interviews of property owners, begin to provide this much needed information. They also present a picture of title problems somewhat different from that in the *Land Title Study*.³⁹

Vague and Inadequate Property Descriptions

A major problem in the Cundiyo Grant was that property descriptions in deeds frequently conveyed little information to outsiders. A typical example in Cundiyo is: "A piece of land that is in Cundiyo, measured from north to south it is 35 yards on the east side and 35 yards on the west side; its boundaries are north Antonio Vigil, south Marselino Vigil, east Jose Ines Vigil, west of the road."⁴⁰ This means nothing to an outsider, but to a Cundiyo resident it is a sufficient description to locate the property.

The legal issue raised is whether the property description is so vague as to render the deed void and invalidate the conveyance. The

37. *Id.* at 220.

38. *Id.* at 64.

39. *Id.* at 68-71.

40. Hijjuella from the Undersigned Heirs of the Deceased Florencio Vigil and Maria Antonia Vigil to Benjamin Vigil, October 9, 1935, in Book 283 Misc., page 288 (Santa Fe County Clerk's Office).

New Mexico Supreme Court stated a test for determining how much information is needed in a deed description in 1885.

The general rule is, that if the description of the premises given in a deed affords sufficient means of ascertaining and identifying the land intended to be conveyed, it is sufficient to sustain the conveyance.⁴¹

This tautology appears to have been followed by the Court to date. Fortunately, for the residents of Cundiyo, the description on the face of the document need not contain all of the information necessary to identify the land. Rather, in a challenge to the sufficiency of a deed, extrinsic evidence is admissible to locate, identify and connect the land with the deed.⁴²

In analyzing the question of whether a deed description in a grant such as Cundiyo is sufficient to constitute a conveyance, the issue is not could some third party locate the property solely from the description in the deed, but is the description sufficiently definite so that the parties to the deed know what property was conveyed?

[T]he real question before us is therefore whether or not the assumed grantee has established title to land within the external boundaries of the assumed grantor's larger tract. In arriving at the correct solution of this problem, it is the province and duty of the court to place itself as nearly as possible in the situation of the parties to the instruments under which title is claimed, and endeavor to discover and give effect to the intention of the parties. *Simpson vs. Blaisdell*, 85 Me. 199, 27 Atl. 101, 35 Am. St. Rep. 348. Much is said in the books about deeds which are void because of uncertainty in a description of the premises attempted to be conveyed, but it is not to be understood that the sufficiency of the description in a deed is to be measured by any inflexible rule or set of rules. The test in every case, as in the case of contracts other than deeds, is *whether or not the intention of the parties can be discovered and effectuated*. If so, unless the rights of third parties intervene to prevent, the deed is valid; if not, it is invalid. So, if a deed contains an indefinite and uncertain description, and the parties, either before the execution of the instruments or afterwards, by agreement, go upon the ground and mark out the boundaries of the land intended to be conveyed, the deed is valid (*Simpson vs. Blaisdell, supra*), and the same result

41. *Armijo v. New Mexico Town Co.*, 3 N.M. 427, 435, 5 P. 709, 712 (1885).

42. *First Savings Bank and Trust Co. v. Elgin*, 29 N.M. 595, 22 P. 582 (1924); *Garcia v. Pineda*, 33 N.M. 651, 275 P. 370 (1929); *Weeks v. Padilla*, 35 N.M. 180, 291 P. 922 (1930); *Adams v. Cox*, 52 N.M. 53, 191 P.2d 352 (1948); *Quintana v. Montoya*, 64 N.M. 464, 330 P.2d 549 (1958); *Hughes v. Meem*, 70 N.M. 122, 371 P.2d 235 (1962); *Marquez v. Padilla*, 77 N.M. 620, 426 P.2d 593 (1967).

would undoubtedly follow if the grantee should go upon the lands of the grantor and mark out the boundaries and go into possession of the land claimed under the conveyance and so remain in possession with the acquiescence of the grantor.⁴³ (Emphasis added)

Cundiyo's typical descriptions, such as the one above, become insufficient to pass the above legal test with the passage of time. It is rare that a deed written before 1890 can be located with any certainty on the ground because boundarymen and frequently place names have changed radically during the interval. It has been only since the 1960's that any of the private tracts within the grant have been surveyed. Indeed, the survey descriptions in an adjacent area patented as Small Holding Claims in the 1920's have largely been abandoned in favor of the traditional descriptions, even though the monuments of the Surveyor General have remained in place.⁴⁴ Therefore, the need for survey descriptions was real in Cundiyo.

Failure to Write Wills and Probate Estates

A second group of title problems developed from the various methods Cundiyo residents use to devise their real property. It is fairly certain that a small village has existed on that grant since 1770.⁴⁵ The grant boasts three cemeteries, and between 1770 and today many people have died. However, only two have had their estates probated. In general, the essential parts of a probate are a judicial determination that the will is valid, and a determination of the heirs of the decedent. Anything less raises questions among those people who worry about such things, namely lawyers, abstractors, title insurance officers, county assessors, State Property Appraisal personnel, and purchasers from outside the community.

By count ninety people have died in Cundiyo between 1861 and the present.⁴⁶ Not all were property owners. Of those that owned property, many sold it before their death; for example, an old man

43. *First Savings Bank and Trust Co. v. Elgin*, 29 N.M. at 608-609. But, cf. 26 C.J.S., *Deeds* § 30 at 643-644. Collateral to the issue of validity of deeds but relevant is the doctrine that where fenced boundaries exist between parcels that are recognized by the abutting owners for a long period of time, a boundary is legally established. *Retherford v. Daniel*, 88 N.M. 214, 539 P.2d 234 (Ct. App. 1975); *Thomas v. Pigman*, 77 N.M. 521, 424 P.2d 799 (1967); *Hobson v. Miller*, 64 N.M. 215, 326 P.2d 1095 (1958). This is true even though the parties remain silent. *McBride v. Allison*, 78 N.M. 84, 428 P.2d 623 (1967); *Woodburn v. Grimes*, 58 N.M. 717, 275 P.2d 850 (1954).

44. *Property Survey Santo Domingo de Cundiyo Grant (with Adjoining land in Sec. 17, T. 20 N., R. 10 E., NMPM)*, March 15, 1976 (Santa Fe County Clerk's Office).

45. *Deposition of Myra Ellen Jenkins, In re Santo Domingo de Cundiyo Land Grant*, No. 49776 (Santa Fe County District Court, 1975).

46. Em Hall, "Cundiyo Genealogy." Unpublished manuscript, 2nd ed, rev., 1975.

(Jose Antonio Vigil the younger) wrote four deeds on February 18, 1891 and four on February 17, 1894, leaving nothing to be devised. Of those that died owning property, seven wrote wills, six had their estates distributed by their heirs, seven conveyed their property and reserved life estates, and two apparently made no arrangements at all.

Jose Antonio Vigil, who moved to Cundiyo about 1820 and who died in 1861, is the first generation of the Vigil family of Cundiyo. His children, the eldest of whom petitioned the Court of Private Land Claims for the grant, is the second. His grandchildren, who, with one exception, died before 1970, are the third generation, and his great grandchildren are the present property owners within the grant.

After his death in 1861 the will of the first generation Jose Antonio Vigil was probated, and the estate of his wife was included in his estate.⁴⁷ Forty years later an administrator's deed was written by the one surviving administrator to the decedent's youngest son, who was a minor in 1861.⁴⁸

In the second generation only one will was written, and that was very late, in 1935.⁴⁹ Nieves Garcia de Vigil was the testatrix; she was the second wife of the youngest member of the second generation. In her will she recited that she was the widow of Eulogio Vigil and she named the six children she had by him, giving five one dollar each, presumably so that they would not be in a position to make additional claims against her estate. The rest of her property she left to one son who was taking care of her and who had pledged himself to pay her debts. She did not mention in her will the four children Eulogio had by his first wife, and there is no surviving will of Eulogio giving everything to Nieves. It is not unlikely that the heirs of Eulogio assembled and agreed that Nieves should receive the estate, and that nothing was written. However, no documentation of such an event exists.

The third generation used wills, administrations, and life estates to devise property.

The strangest will written in Cundiyo is that of Juan D. Vigil.⁵⁰ The instrument was primarily an attempt to limit the membership in the Santo Domingo de Cundiyo Grant to those people who had

47. Estate of Jose Antonio Vigil, October 14, 1861, in Testamentos Etc. 1852-1862 (Rio Arriba County Clerk's Office) pages 384-394.

48. Administrator's Deed from Jose Antonio Vigil, Jr. to Eulogio Vigil, March 26, 1901, in Book G-1, page 632 (Santa Fe County Clerk's Office).

49. Will of Nieves G. de Vigil, January 15, 1935, in Book 282 Misc., page 243 (Santa Fe County Clerk's Office).

50. Will of Juan D. Vigil, March 13, 1916 (not recorded).

contributed to the cost of the Surveyor General's survey of the grant. The will goes on to appoint an executor, and it is clear from later deeds by that executor that he had received instructions to disburse the parts of the estate that were not included in the will.⁵¹

Reyes Vigil, also of the third generation, wrote a will in 1933 that most clearly approaches the norm of these wills.⁵² Reyes recited that he was the husband of Manuelita and the father of six unnamed children. He left everything to his wife on the condition that she pay his debts. He signed in the presence of two witnesses, and the will was recorded in the Santa Fe County Clerk's Office after his death.

In the absence of a will the heirs would assemble to distribute the estate. Under one system all the heirs would sign two or three deeds giving various parcels of land to one or another of themselves.⁵³ Under another system two or three of the heirs would be appointed administrators to disburse the estate.⁵⁴ It happened once that the heirs assembled and conveyed all the property to the widow who, in turn, disbursed it.⁵⁵ There were six administrators in the third generation.

Two estates in the third generation produced no testamentary documents at all.⁵⁶ The children simply took possession of one part or another; when the children conveyed the property they recited that they had received the property from their deceased parents.

One family in the third generation, that of Pedro Vigil started using the method of conveying property and attempting to retain a life estate. On one deed Pedro wrote, "Understood that with the death of Pedro it shall belong to Mr. and Mrs. Alex Archuleta;"⁵⁷ in another, "The conditions of this writing are that the seller Pedro

51. Warranty Deed from Emiliano V. Vigil to Frances Vigil, April 4, 1921 (not recorded); Agreement between Emiliano V. Vigil and Frank Vigil, January 26, 1926, in Book T Misc., page 423 (Santa Fe County Clerk's Office).

52. Will of Reyes Vigil, May 8, 1933, in Book Y Misc., page 470 (Santa Fe County Clerk's Office).

53. Hijuella from The Undersigned Heirs of the Deceased Florencio Vigil and Maria Antonia Vigil to Canuto G. Vigil, October 9, 1939, in Book 283 Misc., page 288; Warranty Deed from Damacio Vigil, et al. to Leonardita Vigil, July 17, 1952, in Book 67 Misc., page 193 (Santa Fe County Clerk's Office).

54. Hijuella from Antonio D. Vigil et al. as Administrators of the Estate of Felix Vigil, deceased, to Pedro Vigil, February 9, 1935, in Book 34 Misc., page 383 (Santa Fe County Clerk's Office).

55. Warranty Deed from the Heirs of Jose Dolores Vigil to Enepomosena T. Vigil, May 5, 1960, in Book 173 Misc., page 548 (Santa Fe County Clerk's Office); Warranty Deed from Enepomosena T. Vigil, wife of the deceased Jose Dolores Vigil to Gilbert Trujillo and Utilia M. Trujillo, April 15, 1961 (not recorded).

56. The Estates of Luis Vigil and Longino Vigil.

57. Warranty Deed from Pedro Vigil to Mr. and Mrs. Alex Archuleta, May 13, 1963, in Book 209 Misc., page 561 (Santa Fe County Clerk's Office).

Vigil shall have the right to use the land during his lifetime.”⁵⁸ When Pedro wrote his will, a year later, he stated that the deed to the Archuletas was an *inter vivos* conveyance; even though the conveyance of this property obviously did not take effect until after his death.⁵⁹

The idea of using a life estate has replaced administrations in the fourth generation. Eight deeds have been written with some attempted life estate restrictions ranging from: “. . . subject to the right of . . . the grantor herein, to use of the said lands, rents and profits therefrom during her natural life,”⁶⁰ to the more bizarre: “This paper will remain in full force, at the same time, that it may be better understood, if we do die before Antonio S. Vigil, this paper will be considered a warranty deed; in case something should happen to us concerning that which is here written or understood, and if we find ourselves in some great necessity, we can sell part or all of the property.”⁶¹

The fourth generation has also produced two wills. Damacio Vigil wrote a will in the usual form and left his property to his wife;⁶² she conveyed some of the property and sold the rest and retained a life estate. On January 22, 1971 Demecia C. Vigil died, and her executrix started the two year process of probating her will cost \$250.76.⁶³

These wills ended a rather long drouth at the Probate Court since one hundred years had passed since the last estate in Cundiyo was probated. Other wills exist which theoretically could be probated, but no such effort has ever been made. Real difficulties exist with those estates that were administered. If no will is written, the State writes a will for the deceased by means of the intestate succession laws. Herein lies another source of numerous clouds on the titles. Appendix G to this report is a checklist used for reading abstracts of title developed by the staff.

These laws provided beginning in 1907 with respect to the disposition of community property, that when the wife dies and there are no children: “. . . the entire community property, without

58. Warranty Deed from Pedro Vigil to Carlos G. Vigil and Lydia T. Vigil, June 9, 1966, in Book 246 Misc., page 418 (Santa Fe County Clerk's Office).

59. Will of Pedro Vigil, January 23, 1967 (not recorded).

60. Quitclaim Deed from Maria T. Vigil to Emeterio Vigil and Amelia Valdez Vigil, November 8, 1973, in Book 303 Misc., page 591 (Santa Fe County Clerk's Office).

61. Warranty Deed from Emiliano V. Vigil and Sinforosa T. Vigil to Antonio S. Vigil, August 6, 1973, in Book 303 Misc., page 591 (Santa Fe County Clerk's Office).

62. Will of Damacio Vigil, September 17, 1966, in Book 255 Misc., page 324 (Santa Fe County Clerk's Office).

63. In The Matter of the Last Will and Testament of Demecia C. Vigil, Deceased, No. 4518 (Santa Fe County Probate Court, 1971).

administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her by a judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and *in the absence of such disposition, goes to her descendants or heirs, exclusive of her husband.*"⁶⁴ (Emphasis added) With respect to the same circumstances only when the husband dies, "... one-half of the community property goes to the surviving wife and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes *one-fourth to the surviving wife and the remainder in equal shares to the children of the decedent and further as provided by law.*"⁶⁵ (Emphasis added)

Additionally there was a general statute relating to non-community property which provided that *subject to the above two provisions*, "... when any person having title to *any* estate, not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed . . . in the following manner: One-fourth thereof to the surviving husband or wife and the remainder in equal shares to the children of the decedent and further, as now provided by law."⁶⁶

The above three provisions remained unchanged as the law until amended in 1973 when the successors to *Laws of 1907* Ch. 35 § 27 and 28 above were repealed and the distinctions between husband and wife were eliminated. As of 1973 to date the law now provides that:

Upon death of a spouse, the entire community property goes to the surviving spouse, subject to the deceased's power of testamentary disposition over one-half of the community property⁶⁷

64. [1907] N.M. Laws ch. 37, § 26.

65. [1907] N.M. Laws ch. 37, § 27.

66. [1907] N.M. Laws ch. 37, § 28.

67. N.M. Stat. Ann. § 29-1-9 (Supp. 1975). Moving away from the direct situation of a spouse dying with children to the situation of the spouse dying *without* children, and without another spouse, N.M. Stat. Ann. § 29-1-12 & -13 (1953, Supp. 1975) are applicable. These statutes had their origin in [1889] N.M. Laws ch. 90, § § 1412, 1413. They remain unchanged in effect from that date and presently provide with respect to the situation where a child has children of his own but dies before his parents:

"If any one (1) of the children of the intestate be dead, the heirs of such child *shall inherit his share* in accordance with the rules herein prescribed in the same manner as though such child had outlived his parents." N.M. Stat. Ann. § 29-1-12 (1953) (Emphasis added).

This statute obviously contemplates a *per stirpes* distribution.

If a person dies without *ever having had* children, or his children die without issue, the law provides:

"If the intestate leaves no issue, the whole of his estate shall go to his surviving spouse. If he leaves no surviving spouse, the portion which would have gone to

The above statute dealing with inheritance of *non*-community property, Laws of 1907 Ch. 37 §28, remains the law today and is codified as N.M. Stat. Ann. §29-1-10 (1953). The combinations of fractional interests which were created by these laws when no will was written by someone who died years ago are nothing short of incredible.

Under the above statutory scheme when only one property owner, Jose Simon Vigil, died without a will, he left a real property interest which is divided among twenty-one different persons today.

Failure to Join Wife in Conveyances of Real Property

By far the most frequent title problem to occur on the Cundiyo Grant was created when the husband failed to join his wife when conveying community property. This occurred in the chain of title of seventy-nine percent of the individually held tracts in the Cundiyo Grant. As with unprobated estates, the effect was to leave the landscape littered with up to three hundred unresolved interests. Detecting this problem was not always an easy task in reading the abstracts since the wife's role in property conveyance law has changed over time.

The first statute concerning the subject is Section 1509 of the *Compiled Laws of 1897*. This law provides *inter alia* that "... no conveyance or contract for the sale of real estate or of any interest therein by a married woman, or any mortgages on lands or leases shall be valid unless, her husband shall join with her in such conveyances. . . ." It makes no mention of the husband's right to convey without the wife's signature. Presumably then, at least prior to this time and until some legislation to the contrary, the husband could convey community property without joining the wife since he was master of the community under traditional practice. This is consistent with informal interpretations of the Santa Fe Title Standards.^{6 8}

In the Laws of 1899, Chapter 80 Section 21, an amendment was added, stating that:

the survivor shall go to the intestate's parents. If one of his parents be dead, the portion which would have gone to such deceased parent, shall go to the surviving parent." N.M. Stat. Ann. § 29-1-13 (Supp. 1975).

It should be noted that prior to 1973 this statute used to refer only to the entirety of the husband's estate reverting to the wife. However, Attorney General Opinion Number 1723, states: "... If a husband or wife dies leaving no will and no children, the survivor inherits all of the property of the deceased." Thus, the statute apparently has always been read to apply to husbands or wives. 1723 Op. Att'y Gen. 296 (1915-1916).

68. Santa Fe County Bar Association, *Title Examination Standards of the Santa Fe County Bar Association, New Mexico* ([Santa Fe]: Santa Fe County Bar Association, 1950). See also, *Reade v. de Lea*, 14 N.M. 442, 9 P. 131 (1908).

The signature of consent of the wife shall not be necessary or requisite in any conveyance, incumbrance or alienation of real property owned by the husband, whether such property became his before or during coverture; but the right to make such conveyance or create such incumbrance shall exist in the husband to the same extent as though he were married.

Thus, property deeded to him during marriage could presumably be deeded out without any problem of the wife's community interest creating a cloud.

The *Laws of 1901* Chapter 62, repealed Section 21, Chapter 80 of the *Laws of 1899*. Substituted therefore was a confusing statute confirming community property status for married persons. It provided in relevant part:

(a) Neither husband nor wife shall convey, mortgage, incumber or dispose of, any real estate, or legal or equitable interest therein acquired during coverture by onerous title, [community property] unless both join in the execution thereof”

In Chapter 37 of the *Laws of 1907* the law was changed again to provide:

Power of the Husband Over Community Property.—The husband has the management and control of the community property, with the like absolute power of disposition, other than testamentary, as he has of his separate estate; Provided, however, that he cannot make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent [sic] thereto, and; Provided, also, that no sale, conveyance or incumbrance or the homestead, which is then and there being occupied and used as a home by the husband and wife, or which has been declared to be such by a written instrument signed and acknowledged by the husband and wife and recorded in the county recorder's office of the county

Thus, from 1907 to 1915, unless a deed recites it is for no consideration, or unless it was used as the homestead or was recorded as such, the husband could convey. A conservative view might be that during this period if a conveyance were made by the husband alone, an affidavit that the property was not a homestead would be required to avoid a cloud on the title.

Whatever ambiguities may have existed prior to 1915, in 1915 the right of the husband alone to convey ceased. The law was amended by Chapter 84, *Laws of 1915*, to provide:

Section 16. Power of the Husband Over Community Property. The

husband has the management and control of the personal property of the community, and during coverture the husband shall have the sole power of disposition of the personal property of the community, other than testamentary, as he has of his separate estate; but the husband and wife must join in all deeds and mortgages affecting real estate; Provided, that either husband or wife may convey or mortgage separate property without the other joining in such conveyance or mortgage; And, Provided, Further, that any transfer or conveyance attempted to be made of the real property of the community by either husband or wife alone *shall be void* and of no effect.

In Chapter 84, *Laws of 1927*, the law was amended to provide that spouses could convey to each other, and remains virtually unamended to date.⁶⁹

If the conveyances of real property without the wife's signature are in fact void, the community property interest of the wife remains hers, and upon her death passed by intestate succession to her heirs. Again, the combination of fractional interest created over time becomes immense.

Other miscellaneous problems were discovered such as liens, unpaid taxes and deeds claimed to be forged as well as defects in acknowledgement and signature. Many of these are cured by statutes of limitation and corrective statutes.⁷⁰ The graph below outlines the major types of title problems discovered and the percentage of each existing in the private parcels examined:

GROUP I: Abstracts where the failure to join a spouse created a cloud on the title because of an unextinguished community property interest.

69. *McGrail v. Fields*, 53 N.M. 158, 168, 203 P.2d 1000, 1006 (1949). Until 1942, the Supreme Court interpreted, "... void and of no effect" to mean what it says, but in the case of *Jenkins v. Huntsinger*, 46 N.M. 168, 187, 125 P.2d 327, 339 (1942). Justice Bickley dissented and argued that "void" means "voidable." Since that opinion the Court seems to be modifying its interpretation. In *McGrail v. Fields*, *supra*, the Court appeared ready to apply the doctrine of adverse possession to a deed which the wife failed to join, but denied relief because the payment of taxes had not been met. Additionally, the Court appears to have held that laches was a defense to a person seeking to assert the invalidity of a deed based upon failure to join the wife at some earlier time. The Supreme Court directed the lower court to specifically "... grant to plaintiff a new trial, and to confine such trial to the determination of whether the plaintiff's claim is barred by the laches of himself and predecessors in title."

See also *Batts v. Greer*, 71 N.M. 454, 379 P.2d 443 (1963), holding that using an easement under color of title in which the wife did not join was sufficient to bar acquisition of the easement by prescription.

70. *See* e.g. N.M. Stat. Ann. §§ 23-1-2 to 4 (1953, Supp. 1975); N.M. Stat. Ann. § 23-1-20 (1953); N.M. Stat. Ann. §§ 23-1-21 to 22 (1953, Supp. 1975); N.M. Stat. Ann. §§ 27-1-1 to 2 (1953); N.M. Stat. Ann. §§ 31-8-2 to 5 (1953, Supp. 1975); N.M. Stat. Ann. §§ 72-7-34 to 35 (repealed, 1974); N.M. Stat. Ann. § 72-13-53 (Supp. 1975); N.M. Stat. Ann. § 72-31-81 (Supp. 1975); N.M. Stat. Ann. § 23-1-27 (Supp. 1975).

- GROUP II: Abstracts where defective wills or no will created an unextinguished intestate interest and thus placed a cloud on the title.
- GROUP III: Abstracts where there existed a complete break in the chain of title.
- GROUP IV: Abstracts where a defective life estate was written, thus clouding the title.
- GROUP V: Abstracts with no defects.

SUMMARY OF ACCOMPLISHMENTS, CONCLUSIONS AND RECOMMENDATIONS

The staff of the New Mexico Legal Rights Demonstration Land Grant Project abstracted the title to everyone of the 101 separate parcels within and adjacent to the Santo Domingo de Cundiyo Grant. Each of these parcels has been resurveyed with a description agreeable to all adjoining property owners. A Declaratory Judgment action was filed and won which cleared the way for the land grant board to issue deeds approved by a State District Judge to all parcels within the exterior boundaries of the grant. And, a genealogy of the grant membership dating back to 1855 was completed. A Declaratory Judgment action has been filed and won which settles all of the boundary and property ownership disputes between all residents of the grant and establishes the new survey descriptions in easily readable form as the correct property descriptions for all of the parcels on the grant. New deeds bearing accurate legal descriptions have been approved by the District Court and issued by the board to all property owners on the grants. Finally, a quiet title action has been filed on behalf of all grant residents which by mid-August, 1976, will quiet the titles to all of the separate 101 parcels in the grant. Additionally, valuable hard data on the land title problems of a sample of 101 separate parcels of land within a land grant in Northern New Mexico is compiled in this report.

At the outset, the assumption was made by the staff that there existed something called a "typical" community land grant. Our research has shown that atypicality is the only typical thing about community land grants in New Mexico. There are at least six different types of community grants functioning in New Mexico. One is the grant which operates under the general land grant statute,⁷¹ such as Cundiyo, Anton Chico, Cubero and Ceboyetta. See Appendix D.

A second includes those land grant corporations which were incorporated under an Act of the Territorial Legislature in 1891;⁷² for example, the towns of Torreon and Atrisco.

71. N.M. Stat. Ann. § 8-1-1 et seq. (1953).

72. N.M. Stat. Ann. § 8-2-1 et seq. (1953).

A third type is the grant which has been transferred into a more traditional cattle grazing cooperative such as Abiquiu and Chilili. A fourth type is the grant which has been partitioned but is still functioning as a community grant, such as Cristobal de la Serna and Jacona. A fifth type is a grant which exists as a splinter from a larger grant, such as Las Ceritas de las Vigiles which is separated from the Town of Las Vegas Grant. Each separate organizational structure, of course, may yield a need for different kinds of legal work. Nevertheless, the following conclusions can be drawn from our experience in Cundiyo:

The first is that for clearing private tracts, the use of aerial photography and the community itself to locate and establish its boundaries is amazingly successful. Of the 101 separate parcels, none is in dispute. This demonstrates that people, without the benefit of lawyers, can arrive at a just settlement of their boundaries. Indeed, in most cases the lack of Anglo-American metes and bounds has proven no barrier to the erection of fences and monuments which people are willing to live by. Unfortunately, the histories contained in one's head and the good relations contained in one's heart are of little value to the assessor's office or a title company writing title insurance. Thus, the ability to agree on boundaries is a necessary but not a sufficient condition. Consequently, the abstracting and title clearance process is also essential.

A second conclusion is that a highly skilled title abstractor, with trainees and the use of a title abstracting plant, can short-cut both in dollars and time the traditionally cumbersome title abstracting process.

A third conclusion is that the personal interview method of obtaining genealogical and property ownership information is crucial. Fully bilingual interviewers can obtain important information and a portable Xerox machine can place into title abstracts information which has never been recorded elsewhere.

A fourth conclusion is that for a project like this to succeed it must be working with a community grant with a viable board that is willing to commit its time and energy to involving all of the grant residents in the problem-solving process; and, upon completion of the title clearance process, to issue board deeds to parcels within the grant.

A fifth conclusion is that the method of first solving boundary problems *inter se* between owners in possession and then bringing an omnibus quiet title suit against all persons clouding the titles, but outside of the grant, is a very efficient and effective way of proceeding once the abstracting work is done.

Finally, it is obvious that to do all of the above title clearance work one must have money. Since, as this study demonstrates, these title problems can be solved, appropriations from the Legislature of New Mexico should be made available to continue this important work. It is the hope of project staff that this study will be of value in encouraging the New Mexico Legislature to make available this much needed funding.

APPENDIX A

COMPOSITE LIST OF EXISTING GRANTS IN 1975

PREPARED BY PROJECT STAFF

1. Tecolote (San Miguel)
2. Jacona (Santa Fe)
3. Cristobal de la Serna (Taos)
4. Rosario Grant (Rio Arriba)
5. Cebolleta (Valencia, McKinley, Sandoval)
6. Ranchos de Taos (Taos)
7. Abiquiu (Rio Arriba)
8. Bartolome Sanchez (Rio Arriba)
9. Cundiyo (Santa Fe)
10. Villa de Santa Cruz (Santa Fe)
11. Francisco Vigil (Rio Arriba)
12. Anton Chico (San Miguel, Guadalupe)
13. Rancho del Rio Grande (Taos)
14. Santa Barbra (Taos)
15. Antonio Martinez (Taos)
16. Arroyo Hondo (Taos)
17. Anton LaReux (Taos)
18. Pedro Lumbré (Rio Arriba)
19. Juan Jose Lovato (Rio Arriba)
20. Canones (Rio Arriba) (Juan Bautista Valdez)
21. Ojo Caliente (Rio Arriba)
22. Polvadera (Rio Arriba)
23. Pateca (Rio Arriba)
24. Chilili (Bernalillo-Torrance)
25. Torreon (Torrance)
26. Manzano (Torrance)
27. La Joya (Valencia-Socorro) Tevillea
28. Cubero (Valencia County)
29. Town of Mora (Mora County)
30. Guadalupita (Mora County)
31. Ojo Felix and Town of Lucero (Mora County)
32. Town of Chacon (Mora County)
33. Amallia Costillo Land Grants (Taos)
34. Gijosa (Taos)

APPENDIX B
CONTRACT FOR LEGAL SERVICES

On November 1, 1974 the Four Corners Regional Commission funded the Legal Aid Society of Albuquerque, Inc. to conduct the New Mexico Legal Rights Demonstration Land Grant Project. This project has as its purpose clarifying land titles within a community or community-like land grant with the hope of ultimately improving the potential for economic betterment of grant residents and increasing the body of knowledge regarding land title problems in New Mexico. After studying the various community and community-like grants in New Mexico, including on-site visits to determine interest and suitability, the Santo Domingo de Cundiyo Land Grant was selected and then voted to become the demonstration grant for the work of the New Mexico Legal Rights Demonstration Land Grant Project.

Pursuant to these arrangements the Legal Aid Society of Albuquerque, Inc. and the Board of Trustees of the Santo Domingo de Cundiyo Land Grant agree as follows:

1. The Legal Aid Society of Albuquerque, Inc., through the staff of its New Mexico Legal Rights Demonstration Land Grant Project, agrees to perform all of the services listed below to the extent in their legal opinion such services are required:

- A) Survey the exterior boundaries of the common lands and the boundaries of the individual farming and residential tracts within the exterior boundaries of the grant and those reasonably contiguous to them;
- B) Do title abstracting and historical research as necessary to clarify the status and location of land titles to the common lands and individual tracts within the exterior boundaries of the grant and those reasonably contiguous to them;
- C) File quiet title suits where necessary to establish clear title to the common lands in the name of the respective owners.

Each of the above is contingent upon the continuing availability of funds for the New Mexico Legal Rights Demonstration Land Grant Project. Based on representations made to it by the Four Corners Regional Commission, the Legal Aid Society of Albuquerque, Inc. anticipates that funding will be available to the New Mexico Legal Rights Demonstration Land Grant Project for two additional years, if necessary to the completion of the work. In any case the Legal Aid Society of Albuquerque, Inc. also agrees to turn over to the Board of Trustees of the Santo Domingo de Cundiyo Grant all of the relevant Cundiyo title documents of the New Mexico Legal Rights Demonstration Land Grant Project, including surveys and abstracts at the expiration of this agreement.

2. The Board of Trustees of the Santo Domingo de Cundiyo Land Grant agree as follows:

- A) To provide local matching funds, payable to the Legal Aid Society of Albuquerque, Inc. in the amount of \$1,500.00 to be paid

on or before November 1, 1976. The Legal Aid Society of Albuquerque, Inc. warrants that payment of the \$1,500.00 shall constitute all charges forever to be made for work contemplated by the project and also warrants that no liens of whatever kind shall attach to either the common lands of the grant or the individual tracts within it as a result of the project's work.

B) To cooperate fully in the title clearance process by, among other things, reissuing, when necessary, deeds to private tracts bearing accurate survey descriptions.

C) To cooperate fully in the title clearance process by acting as arbitrator in disputes between private individuals over their respective boundaries.

D) To provide local volunteers for conducting interviews with persons interested in the grant and to provide persons to be employed by the surveying company when necessary.

E) To provide local on-site office space for the project in the event that becomes necessary.

APPENDIX C

Legal Aid Society of Albuquerque

NEW MEXICO LEGAL RIGHTS PROJECT

1015 Tijeras, N.W.

Albuquerque, New Mexico 87102

May 28, 1975

Charles T. DuMars
Em Hall
Attorneys at Law
243-4464

Michael J. Rock
Luella Rubio
Research Assistants
243-5640

Estimado Residente de la Merced de Cundiyo:

Juntos con los agrimensores, hemos hecho una mapa de los trechos privados dentro de la Merced de Cundiyo. La mapa enseña cada trencho con nombre y con numero. La mapa no trata de enseñar los linderos correctos. Solamente enseña nomas los dueños de cada trecho. Por quietar el título del trecho de usted, estamos haciendo un abstracto por cada trecho. Por hacerlo, tenemos que tener los papales (documentos garantizados, trespasos, hijuellas y testamentos) que tiene usted tocante a cada trecho y tambien tenemos que saber quienes son sus parientes (hermanos, hermanas, hermanos de mitad, etc.) y quines eran sus antepasados. Empezando el Lunes, día 2 de Junio vamos a tener juntas separadas

con cada residente de la merced segun la horario conectado. A la hora arreglada para usted, por favor traiga a la escuela en Cundiyo todos los documentos que tiene usted tocante el título de su trecho. En la escuela tenemos una macinita que se puede copiar hay mismo los documentos que traiga usted. Usted no tiene que dejar los documentos con nosotros. Si no puede usted venir a su junta arreglada aqui, por favor párese a la escuela y dejemos saber quando podra venir. Gracias.

Por su cooperacion y su attencion.

Sus Servidores,

Emlen G. Hall, Abogado
Luella G. Rubio, Asistente

APPENDIX D

CHAPTER 8

COMMUNITY OR SPANISH LAND GRANTS

8-1-1. Management of Spanish or Mexican grants.—All grants of land in the state of New Mexico made by the government of Spain, or by the government of Mexico, to any community, town or pueblo, or of the class of grants mentioned in section 800 [8-1-2], shall be managed, controlled and governed as herein provided.

8-1-2. Application of article.—This article shall apply to all grants of land made by the government of Spain, or by the government of Mexico, to any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; to all grants that were prior to March 18, 1907, confirmed by the Congress of the United States, or by the court of private land claims, to any community, town, colony or pueblo, and to all grants or private land claims recommended by any surveyor general of New Mexico for confirmation by Congress to any town, colony, community or pueblo, or designated as a grant to any town, colony, community or pueblo, in any report or list of land grants prepared by such surveyor general and confirmed by Congress in accordance therewith; but shall not apply to any land grant which is now managed or controlled in any manner, other than herein provided, by virtue of any general or special act.

8-1-3. Board of trustees—Management of grant—Powers.—The management and control of all the grants and tracts of land to which this chapter is applicable by virtue of section 800 [8-1-2] is hereby vested in a board of trustees, to be known as the “Board of Trustees of the _____ Land Grant” (designating the same by the name of such town, colony, pueblo or community), and said board shall have the following general powers:

I. To control, care for and manage the said grant and real estate, and to prescribe the terms and conditions under which the common lands thereof may be used and enjoyed, and to make all necessary and proper rules and regulations for the government thereof.

II. To sue and be sued under the title aforesaid.

III. To sell, convey, lease, or mortgage so much of the land grant or real estate under its control as aforesaid as is held in common.

IV. To prescribe the price to be paid for the use of the said common lands and to prohibit any person failing or refusing to pay such amount from using any portion of the same while he continues in default in such payments; Provided, that the amount so fixed shall be in proportion to the number and kinds of livestock pasturing upon such common lands.

V. To adopt and use an official seal.

VI. To appoint judges and clerks of election at all elections herein provided for, subsequent to the first, and to canvass the votes cast thereat.

8-1-4. Board of trustees—Members—Qualifications.—The said board of trustees shall consist of five (5) members, no three (3) of whom shall be a resident from the same precinct. No person shall be qualified to be a member of said board unless he shall be a qualified voter at a general election in this state and shall have an interest in said grant by inheritance or by purchase of an interest in common lands, and who shall not be in default of any dues, rent or other payment for the use of any of the common lands of said grant.

8-1-5. Election of members of board of trustees—Voters' qualifications—Registration.—(a) Elections for the choice of members [of members] of such boards shall be held on the first Monday in April, of each alternate year. All persons residing within the limits of such grant, who have an interest in the common lands, and who have resided for the period of five (5) years prior to the election at which they offer to vote, and who are qualified electors at the general elections held in this state, and who are registered as herein provided, shall be qualified to vote at such elections. Each of such voters may vote for five (5) trustees, all upon one (1) ballot, but no ballot shall be counted that bears the names of two (2) persons residing in the same precinct, except in cases where there are not five (5) precincts within such grant. The persons receiving the greatest number of votes shall be declared elected as such trustees.

(b) The registration of all qualified voters shall be conducted in the manner prescribed in chapter 41, Laws of 1927 (3-2-5 to 3-2-47), and acts amendatory thereof, substituting, however, the words "board of trustees" and "secretary" wherever the words "county commission" and "county clerk" are used in said act.

(c) The registration books so compiled before each election shall be used at such election and no person shall vote at such election unless duly registered in said books, and no ballot of any unregistered person shall be counted or canvassed.

(d) In each community land grant in which an election is to be held in April of the year 1937, the boards of trustees, immediately after the passage and approval of this act, shall proceed to call registration boards and provide for the registration of all duly qualified electors for the election to be held at such time; Provided that said board of registration shall be required to meet only one (1) day for the purpose of registering said electors, which day shall be not less than twenty (20) days prior to said election.

8-1-6. Calling of election—Notice—Ballots.—Whenever, in any of the grants aforesaid, there is any committee, board or body of men assuming and claiming to control or manage such grant, or to represent the same, and actually exercising the powers and rights so claimed, and which committee, board or body of men has been chosen, elected or authorized, or whose claims and actions have been in any manner ratified or approved, by a majority of the qualified voters within said grant, it shall be lawful for such committee, board or body of men to give public notice of the time of said election, and to fix and give notice of the places therefor in each of said precincts, which notice shall be given by handbills posted in five (5) public places in each of said precincts at least fifteen (15) days prior thereto, and also by publication for said period in some newspaper published within said grant, in case there be one. Said election shall be conducted, as nearly as practicable, in the same manner as provided by law for the holding of general elections in this state, except that no registration shall be required, and it shall not be necessary to have an official ballot, or one of particular size, and the judges and clerks of such election shall be appointed, and the votes canvassed by such committee, board or body. In case there is no such committee, board or body of men, or the same fails or refuses to call said election, then the said election shall be called, notice given, judges and clerks appointed, and the votes canvassed by the board of county commissioners of the county, within which said grant or the greater portion thereof is situated, and such board of county commissioners shall so act upon the petition of any three (3) qualified voters residing within said grant, presented to it in writing thirty (30) days or more prior to the date herein fixed for such election.

8-1-7. Canvass of votes—Certificate of election.—Said committee, board or body of men, or the board of county commissioners of said county, appointing such judges and calling such election, shall meet on the first Monday following such election and canvass the votes cast thereat, and issue to the persons having a majority of such votes a certificate showing such persons to have been duly elected thereat.

8-1-8. Organization of board of trustees—Treasurer's bond—Deposit of funds—Vacancy in treasurer's office—Appointment and qualification of successor—Collectors' bonds.—The members of such board, so elected shall meet on the first Monday after the votes are canvassed and organize by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required of him by such board; said treasurer shall also furnish to said board a good and sufficient surety bond in a sum as hereinafter fixed, said bond to be conditioned as are the bonds of other public officials handling public moneys, and it is hereby made the duty of said treasurer to deposit all the moneys coming into the hands as such treasurer in some bank organized and doing business in New Mexico.

Provided, however, that in the event of the death or resignation of said treasurer the said board shall fill the vacancy by appointing one of the members of said board as such treasurer, who shall before entering into the performance of his duties as such treasurer, execute and furnish to said board a good and sufficient surety bond, similar to the bond entered into by his predecessor.

Provided, further, that the amount of bond so required of said treasurer and his successor shall at all times be for a sum of at least, double the amount received by and deposited in the said bank by the said treasurer. Provided, further, that in the event said board of trustees delegates any other of its members to collect moneys due the grant such other person shall be bonded in the same manner as is herein provided for the bonding of the treasurer and in any event those authorized to collect moneys shall give receipts for the moneys collected, which receipts shall be in no other form than that prescribed by the board of trustees as an official receipt.

8-1-9. Meetings of board.—Regular meetings of said board shall be held at such times as such board may of its rules determine, and special meetings may be held at any time on call of the president, five (5) days' notice thereof being given to each member.

8-1-10. Quorum in board meetings—Binding effect of lawful acts.—A majority of such board of trustees shall constitute a quorum for the transaction of business, and the town, colony, or community aforesaid, and the inhabitants thereof, shall be bound by the acts of such board done in pursuance of the provisions hereof.

8-1-11. Sale, mortgage or alienation of common lands—Restrictions.—No sale, mortgage or other alienation of the common lands within such grant shall take effect unless authorized by a resolution duly adopted by the said board of trustees, and until after approval of such resolution by the district judge of the district within which said grant or a portion thereof is situate.

8-1-12. Board meetings to be public—Resident's right to be heard—Annual report.—All meetings of said board of trustees shall be public and no executive sessions shall be held; all persons residing within the limits of such grant shall have the right to be present at all times when such board is in session, and to be heard on all matters in which they may be interested. The board of trustees shall annually make public a report of all the transactions of said board for said year.

8-1-13. Vacancies in board—Filling.—If a vacancy shall occur in any such board, the remaining members thereof shall fill such vacancy by appointment, to be made at a regular meeting, and the person so appointed shall hold his office until the next regular election.

8-1-21. Anton Chico grant—Rights of lessees and purchasers.—Any person or persons or corporation who through purchase or lease may come to live within the limits of the Anton Chico land grant shall only have a right to the lands he or they may acquire through said lease or purchase but not to the common lands in said land grant.

APPENDIX E
IN THE DISTRICT COURT OF
SANTA FE COUNTY

IN RE SANTO DOMINGO DE CUNDIYO
LAND GRANT

No. 49776

*DEFAULT JUDGMENT PURSUANT TO
RULE 55 OF THE
NEW MEXICO RULES OF CIVIL PROCEDURE*

The Plaintiffs having applied to this Court for default judgment and the Court having reviewed the record in this case including depositions filed in this action and being fully advised in the premises, finds as follows:

- 1) All persons named as party defendants have been personally served with process in accordance with the rules of civil procedure.
- 2) None have answered or otherwise pleaded in this action.
- 3) Plaintiffs are entitled to judgment by default pursuant to Rule 55 of the New Mexico Rules of Civil Procedure.

THEREFORE, this Court enters the following Declaratory Judgment:

- a) 8-1-1 through 8-1-19 N.M.S.A., 1953 Comp. apply to the Santo Domingo de Cundiyo Grant; and
- b) Pursuant to 8-1-3 N.M.S.A., 1953 Comp. the Plaintiffs—Board of Trustees—have the power to contract for and receive services to clear title to the Grant for the benefit of the residents of the Grant.
- c) Pursuant to 8-1-11 N.M.S.A., 1953 Comp. District Court approval is required on all resolutions to issue deeds to the common lands.

s/ Edwin L. Felter
DISTRICT JUDGE

APPENDIX F
IN THE DISTRICT COURT OF
SANTA FE COUNTY

IN RE SANTO DOMINGO DE CUNDIYO
LAND GRANT

No. 51054

*DEFAULT JUDGMENT PURSUANT TO
RULE 55 OF THE
NEW MEXICO RULES OF CIVIL PROCEDURE*

The Petitioners having applied to this Court for default judgment and the Court having reviewed the record filed in this action and being fully advised in the premises, finds as follows:

- 1) All persons named as parties Respondent have been personally served with process in accordance with the rules of civil procedure.
- 2) None have answered or otherwise pleaded in this action.

3) Petitioners are entitled to judgment by default pursuant to Rule 55 of the New Mexico Rules of Civil Procedure.

Therefore, this Court enters the following Declaratory Judgment:

1) The following persons are the sole owners in fee simple of the properties listed below in this Judgment.

2) No Respondent in this action has any real property interest in any of the parcels described below except those parcels specifically enumerated as being owned by him.

3) The survey descriptions as reflected on the Santo Domingo de Cundiyo Grant Survey filed in the Santa Fe County Clerk's Office March 15, 1976 accurately describe the boundaries of the parcels listed. The parcels included in this Judgment are as follows:

The following lots as shown on the plat of the Santo Domingo de Cundiyo Grant, which plat was filed in the Santa Fe County Clerk's Office on March 15, 1976:

- 1) Eloy Vigil and Martha Mechem Vigil, husband and wife
Lot 1, excepting therefrom all that property conveyed by Marcos T. Vigil to the Cundiyo Mutual Domestic Water Association by Spanish Warranty deed dated August 22, 1951 recorded September 14, 1951 in the Santa Fe County Clerk's office in book 60 of Deeds, pages 201-202. And, easements of ingress and egress to said property for water lines and maintenance of the water system. And, Lot 2.
- 2) Esquipula Vigil and Francisquita Trujillo de Vigil, husband and wife
Lots 3, 8, 29, 52, 58, 79, Small Holding Claim Number 5744, Tract 3
- 3) Sabino Samuel Vigil and Andreita Vigil, husband and wife
Lots 4, 10, 28, 31, 78
- 4) Elizardo C. Vigil and Trinidad Vigil, husband and wife
Lots 5, 23, 42, 44, 74, Small Holding Claim Number 5019, Tract 2
- 5) Sarita V. Trujillo, widow
Lots 6 and 21
- 6) Amado I. Vigil and Emma C. Vigil, husband and wife
Lot 7
- 7) Canuto G. Vigil and Augustina T. Vigil, husband and wife
Lots 9, 13, 18, 19
- 8) Emiliano V. Vigil and Sinforosa T. Vigil, husband and wife
Lot 11, Lot 37 and Lot 45; Lot 45 being subject to any real property interest that may have been previously vested in Lilly V. Cordova
- 9) Antonio S. Vigil and Augustina T. Vigil, husband and wife
Lot 39
- 10) Joe G. Montoya and Gloria G. Montoya, husband and wife
Lots 12, 15, 60
- 11) Adelina Vigil, an unmarried person, subject to a life estate in Noberto Vigil and Elena T. Vigil, husband and wife
Lots 14, 20, 26, 27, 30, Small Holding Claim Number 5744, Tract 2
- 12) Adelina Vigil, an unmarried person
Lots 51, 16, 76, 59

- 13) Noberto Vigil and Elena T. Vigil, husband and wife
Lot 17
- 14) Gilberto E. Trujillo and Utelia Trujillo, husband and wife
Lots 22, 32
- 15) Tobias Vigil and Conseulo Vigil, husband and wife
Lot 24
- 16) Abel Vigil
Lot 33, and Lot 34 without prejudice to his claim that Lot 33 extends to State Highway 4 on the West side, of said property.
- 17) Leonardita L. Vigil, a single person
Lots 38, 57, 36, 35
- 18) Luciano T. Vigil, a single person
Lots 40, 41
- 19) Tomas Vigil and Miquelita Vigil, husband and wife
Lots 43, 77
- 20) Committee Village of Cundiyo, an unincorporated association
Lots 46A and 46B
- 21) Emeterio Vigil and Emilia Valdez de Vigil, husband and wife
Lots 47, 56
- 22) Livorio Vigil and Martina Vigil, husband and wife
Lots 48, 55
- 23) Archbishop of Santa Fe and his successors in office
Lot 49
- 24) Heirs of Jose Simon Vigil
Lot 50
- 25) Ricardo T. Vigil and Rosie Ortiz de Vigil, husband and wife
Lots 53, 61
- 26) Vedelio Trujillo, a/k/a Bedelio Trujillo and Sylvia V. Trujillo, husband and wife
Lot 54
- 27) Willie Cordova and Sabina Cordova, a/k/a Sabinita V. Cordova, husband and wife
Lots 62, 66
- 28) Manuelita Vigil, widow
Lot 63
- 29) Frank McGuire, a single person
Lot 64
- 30) Luis T. Vigil and Delores Vigil, husband and wife
Lots 65, 76, Small Holding Claim Number 5031, Tract 1; Small Holding Claim Number 5533, Tract 7
- 31) Harold W. Pool and Corina V. Pool, husband and wife
Lot 67
- 32) Benjamin Vigil and Luisita V. Vigil, husband and wife
Lots 68, 87, 81
- 33) Emiliano T. Vigil and Rebecca V. Vigil, husband and wife
Lots 69, 89, Small Holding Claim Number 5744, Tract 1; Small Holding

Claim Number 5028, Tract 3

- 34) Marcos B. Vigil and Floripe V. Vigil, husband and wife
Lots 70, 72
- 35) David G. Vigil, a single person and Lucille Vigil, a single person
Lot 71
- 36) Jake Vigil and Marie E. Vigil, husband and wife
Lots 73, 88, Small Holding Claim Number 5028, Tract 2
- 37) Anthony W. Coca and Elizabeth V. Coca, husband and wife
Lot 80A
- 38) Ramon Vigil and Estefanita C. Vigil, husband and wife
Lot 82, Small Holding Claim Number 5744, Tract 4
- 39) Rosie M. Leyba Sanchez, a single person
Lot 83
- 40) Felix F. Vigil and Trinidad Vigil, husband and wife
Lot 84, Small Holding Claim Number 5744, Tract 5
- 41) Florence (Archuleta) Lesperance and Larry Lesperance, husband and wife
Lot 85
- 42) Jose Benito Sandoval and Norberta V. Sandoval, a/k/a Bertha V. Sandoval, husband and wife
Lot 86, Small Holding Claim Number 5744, Tract 6
- 43) Guadalupita V. Lujan, a married woman acting as her sole and separate estate, subject to a life estate in Noberto Vigil and Elena T. Vigil, husband and wife
Lot 90
- 44) Carlos G. Vigil and Lydia T. Vigil, husband and wife
Lot 80B
- 45) Luciano Vigil, a single man
Lot 25

This Declaratory Judgment does not effect rights of ingress and egress to property; the rights to use of easements of record or equitable servitudes established by adverse user.

s/ Edwin L. Felter
DISTRICT JUDGE

APPENDIX G

ABSTRACT QUESTIONNAIRE TO BE COMPLETED BY REVIEWER

1) Who is recognized by all to be the present owner, in possession by "tacking" or otherwise for ten years? _____ Did he or he and his predecessor in interest pay taxes for the previous ten years? _____

2) Did a previous owner from whom our client takes in the chain of title die intestate? _____ If yes, who may have an unextinguished interest? _____

(complete question 2 on the back)

3) Are there any deeds out of the chain of title not coming back into the owner in possession? _____ If yes, who appears to have an unextinguished interest out of the other chain? _____

(complete question 3 on the back)

4) Does the face of any deed in the chain raise the possibility of an unextinguished community property interest? _____

5) Does the abstracting contain any liens which are not released? _____ If yes, who holds these liens? _____

6) Are any descriptions so vague as to cause a break in the chain of title? _____ If yes, who may have an intestate interest as a result? _____

(complete question 6 on the back)

7) Are there any tax deed problems? _____ If yes, who may have an unextinguished interest as a result? _____

(complete question 7 on the back)

8) Are there any persons living from whom quitclaim would solve the above problems? _____ If yes, list the names below. _____

9) Are any affidavits needed to solve any *description* or *deed name* problems? _____

10) Who are the boundary persons from whom quitclaim deeds must be obtained? _____

11) Quiet title suit is required. Yes _____ No _____

No, if affidavits and quitclaims are obtained from:

1. _____ concerning _____

2. _____ concerning _____