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THE PUBLIC DOMAIN IN NEW MEXICO 1854-1891

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WHEN William Pelham, the first Surveyor General of New Mexico, arrived in Santa Fe on December 28, 1854, he had already been in office nearly five months, having been appointed by President Franklin Pierce with tenure to start on August first of that year. The office had been created by an Act of Congress approved July 22, 1854. The chain of command from President Pierce to Mr. Pelham consisted of Robert McClelland, the Secretary of the Interior, and John Wilson, the commissioner of the General Land Office.

Pelham was in Washington City, as our national capital was then called, when he received his appointment. He left Washington near the end of August and traveled to New Orleans by way of Cincinnati and the Ohio and Mississippi rivers. His journey then took him by steamship to Port Lavaca where he departed on the most perilous as well as time-consuming portion of his journey.

His trek to San Antonio was uneventful; but, from here it was necessary to traverse the country of the dreaded Comanches. Fortunately for Pelham's safety he was able immediately upon arrival at San Antonio to make connections with Major Emory's Boundary Commission, which was traveling to El Paso in the pursuance of its task of running and marking the line established between Mexico and the United States. The trip to El Paso took nearly six weeks, the party arriving at that location on December 4, 1854.

Within a few days he set out on a reconnaissance of the Rio Grande Valley to select a suitable point for the intersection of the principal meridian and the base line.

In his instructions to the Surveyor General, Commissioner John Wilson was understandably lacking in detailed knowledge of the wild frontier of this new Territory, and thus he allowed the Surveyor General considerable leeway in the exe-

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cution of his duties. He stated as a desideratum that the principal meridian should run near the suburbs of Santa Fe and that the base line interesect it possibly as far south as a point fifty miles east of the junction of the Rio Grande and the Rio Puerco. An alternate suggestion allowed, if expedient, the fork of the Rio Grande and the Rio Puerco as the junction point. This would place the principal meridian about fifty miles west of Santa Fe.

Surveyor General Pelham followed the second suggestion. "Agreeably to your instructions I selected a hill about six miles below the mouth of the Puerco river, which is two hundred feet high and of a rocky formation. This hill is nearly round, and is washed at its base by the Rio Grande. I have therefore established this hill as the initial point, and have caused a suitable monument to be erected on its summit."

His choice was probably dictated by expediency. Having made his approach from the south, it is assumed that he knew little about the terrain west of Santa Fe where his choice placed the principal meridian, nor is it likely that he was acquainted with the land 50 miles east of the junction of the Rio Grande and the Rio Puerco, where Commissioner Wilson's first proposal would have placed the principal meridian. It was simply convenient to place the initial point within the main traveled reaches of the Rio Grande Valley.

Having established an office at Santa Fe as passably as was possible under the circumstances, the Surveyor General set about the duties that he had traveled so long and wearily to commence. On the 9th of March, 1855, he let his first contract (for the survey of the principal meridian from near the Jemez Mountains to the southern border, and base line for 24 miles on either side of the principal meridian). Pelham's choice of a deputy for this work was John W. Garretson, "a surveyor of acknowledged ability, energy and experience and . . . a gentleman of respectability and integrity." Garretson had previously worked for Pelham when the latter was Surveyor General of Arkansas.

After signing the contract for surveying the base line and principal meridian, Garretson gathered together his materials and his surveying crew. He was required to furnish all

supplies and materials with the exception of a *standard chain* with which to compare his own from time to time. This chain had not yet arrived from the East, so Garretson delayed his departure for the initial point of survey until March 26. Even then the standard chain was not at hand but he hoped that it would be soon and could be forwarded to him. He waited in vain and finally sent two of his men posthaste to El Paso to get one of the chains awaiting shipment to the Surveyor General.

While Garretson's men were on their way to El Paso, he and the rest of his crew were busy locating and monumenting the initial point of survey selected by Pelham on the west bank of the Rio Grande about six miles south of the junction of the Rio Grande and the Rio Puerco and about 120 chains (a chain is 66 feet) northwest of Lajoya.

On April 14, Garretson's messengers returned from El Paso with the standard chain. The following day, surveying was started on the principal meridian south from the initial point. After surveying 60 miles, operations had to be suspended because there was no water on the *Jornada del Muerto*. By the 27th of April the surveying party had returned to the initial point and started the survey of the principal meridian northward.

Meanwhile, Surveyor General Pelham, in the press of other duties, had not completed his special instructions to Deputy Surveyor Garretson and intended to send them later. As a consequence, after having surveyed 48 miles of the principal meridian north of the base line, Garretson learned of a serious error he had committed. He had surveyed 108 miles of the principal meridian while using the wrong length for the standard chain. He had included the handles in his measure while only the space between the rivets on the handles was the proper measure. It was not only necessary to resurvey the work, but it was essential that the old monuments be destroyed.

Surveyor General Pelham had been instructed to survey only in areas toward which settlement was tending and to survey only township exterior boundaries in areas unfit for

cultivation. Commissioner John Wilson had informed him that the great body of settlements would presumably be found in the valley of the Rio Grande. This was in general true; nevertheless, the first requests for surveys by actual settlers came in 1855 from the region of Fort Stanton and the confluence of the Rios Bonito and Ruidoso. However, Pelham decided against surveys here in favor of those on the Conchas and Canadian rivers where rapid settlement was expected. His decision was based, in part, on the isolation of the Fort Stanton area, the dangers from Indian attack, and the difficulties of crossing the San Andres Mountains with the second standard parallel south. The last-named line would be necessary to tie in this region with the public surveys in progress. No surveys were made in the Fort Stanton area until 1867.

Pelham was given wide discretionary powers in the selection of areas to be surveyed. His suggestions in the matter were never questioned; however, in the fall of 1857 he asked for, and received, permission to make surveys without application to the General Land Office. He wanted to choose his own survey locations to avoid the long delay of having them selected in Washington. The granting of this request is significant because it shows great faith in Pelham's judgment and because it was not accorded to any of his successors. More important was Pelham's choice of survey locations under this permission.

The administration of the public lands in the United States was inaugurated at a time and place when and where all land was available, in varying degrees, for agricultural purposes. In New Mexico this was not true and yet the Government did not change the policy. From the beginning the policy in New Mexico was to survey only land that was agricultural in the sense that it would grow crops. The entire question of land arability was variously interpreted by different Commissioners and Surveyors General. Pelham started out with a strict interpretation but, as he became acquainted with the land and the people, his definition broadened to the inclusion of pasture lands.

Having been forewarned that he would probably find the bulk of the settlements to be in the Rio Grande Valley, in 1856 Pelham turned his attention to surveys there. His interpretation of what constituted the Rio Grande Valley took in an area of roughly thirty-six miles in width. Only a small portion of this land could be cultivated but, as he explains, there was the factor of co-ordinating the survey of private land claims and also future public surveys. There seems to be another reason why these townships were subdivided.

Much of the area surveyed was in the *Jornada del Muerto* and could grow no crops. Why then was there any excuse for subdividing the area? The answer lies in a strong possibility of artesian well development at the time. This was suggested, in 1855-56, by Brevet Captain John Pope who had been assigned by Secretary of War Jefferson Davis to discover the possibilities of artesian well development near the 32d parallel of latitude in connection with possible railroad development.

Pelham believed that artesian well development would cause settlement of the regions involved. In view of Pope's findings, he had to consider both the lower Pecos and *Jornada* areas. The lower Pecos Valley was out of the question for surveys because of its inaccessibility and danger from Indian attack. This left the *Jornada* — an area north of the prosperous and productive Mesilla Valley. An abundance of artesian well water would have caused an influx of population and justified the surveys there.

Important surveys under Pelham extended to other regions. In September of 1857 the Surveyor General received a petition from a large number of persons requesting the survey of the area known as the *Valles* about forty miles northwest of Santa Fe.

On March 13, 1858, a contract was let with R. E. Clements for the survey of a large block of exterior township boundaries in the upper Pecos Valley. That same year surveys were made near Galisteo where settlements by claimants under the Donation Laws had been disputed since 1855.

Alexander P. Wilbar, Chief Clerk under Pelham, was appointed to the office of Surveyor General on August 29, 1860.

He was to serve but little over a year, when he was replaced because of the Republican administration of Abraham Lincoln. His predecessor had resigned. Charges of extravagance were later used to ease Wilbar out.

The most significant surveying matter under Wilbar was the San Juan Valley in present New Mexico, an area that was much discussed but into which no surveys were extended. Early in 1861 Wilbar asked Captain Charles Baker for a report on the region. Baker's report on the settlements and mines there was so favorable that Wilbar promised to report to the Government with a view to having surveys made in the vicinity. The early promise of the region, however, was not permanent. It was soon almost wholly abandoned by miners as the difficulty of importing provisions became apparent, and as the mines failed to materialize as expected. Hostility of the Indians also proved to be a strong deterrent to permanent settlement.

John A. Clark, of Freeport, Illinois, was commissioned Surveyor General for the usual four-year term on July 26, 1861, and he took charge on October 9th during the troubled times of the Civil War. Annual surveys dwindled until from 1863 through 1866 there were none at all. Thus the first years of Clark's administration were taken up largely with reconnoitering the Territory and making plans for surveys. Actual surveys were limited by Indian hostilities, and lack of military protection, to the vicinity of Fort Stanton, the Hondo River, and the Mimbres Valley.

The chief feature of Clark's administration was a determined effort to abide by the governmental policy of surveying only truly arable land. He personally examined these areas to make sure of selecting only land suitable for settlement and cultivation. He believed that, except for a few townships on the Canadian River, not *one per cent* of the land then surveyed in New Mexico could ever be cultivated. This was undoubtedly a reflection on Pelham's surveys on the *Jornada del Muerto.*

Dr. T. Rush Spencer took charge of the surveyor general's office on May 15, 1869. Surveys made under Spencer were not extensive. He proposed surveys on the San Juan, Cimarron,

Canadian, Pecos rivers, and near Fort Wingate, and in southwest New Mexico. Actually his surveys were confined to a region on the upper Pecos River, north of the Bosque Redondo Indian Reservation, and in southwest New Mexico. In the Pecos region he made some attempt to confine surveyed areas to the demands of actual settlers, while in southwest New Mexico his activities were governed by pressures from newly discovered mines.

James K. Proudfit, a native of Madison, Wisconsin, assumed the duties of Surveyor General on September 30, 1872. His administration is marked by a struggle for constantly increased survey appropriations at a time when Congress was calling for retrenchment. In 1874 he asked for $125,000 for surveys, but Commissioner Drummond in his estimate to Congress requested only $40,000. Drummond pointed out that in New Mexico from 1855 through 1873 upwards of $440,000 had been spent for surveying 4,860,410 acres of land, while the area disposed of by the Government, up to June 30, 1873, by homestead entry, cash sales, etc., was less than 150,000 acres. There was an ample back-log of surveyed land to take care of any reasonably sudden demand, but Proudfit attempted to prove that it was not. He pointed out that there had not been a great demand for land but that the day was rapidly approaching when this would change. Indian depredations had largely ceased, permitting expansion into new areas. In time past settlers were able to purchase land from private grants, but now land was becoming more costly because of the approach of railroads and expectation of mineral discoveries. He proposed that all the land in the Territory be surveyed as rapidly as practicable as had been done in such states as Illinois and Wisconsin.

What he overlooked, or perhaps chose not to see, was the great dissimilarity in the arability of the land in New Mexico and the States that he used as examples. There had been no change in the official Government policy requiring that land must be capable of growing crops to be homesteaded or preempted. There was, however, a growing tendency to overlook this requirement in actual practice. Whether this was good or bad depends on certain points of view. On the one hand it

did break the law; on the other, it made for more rapid settlement of the land with cattle ranchers serving as a catalytic agent in the process.

By 1873 Proudfit was openly propagandizing for the cattle industry in New Mexico, and striving to secure increased appropriations to accommodate its needs for surveys. In 1874 he enlisted the aid of S. B. Elkins, Delegate to the House of Representatives, to secure this increase. It was quite convenient for him to call upon Elkins since both, along with Marsh Giddings, Thomas B. Catron, and William W. Griffin, were incorporators of the Consolidated Land, Cattle Raising and Wool Growing Company, October 19, 1872, with home offices at Fort Bascom, Santa Fe, and Denver. Operations were planned in San Miguel County and in Colorado.

His survey locations were particularly interesting in the northeast part of the Territory and the Pecos Valley. Railroad talk was in the air and probably had some influence on the surveys in the northeast. Of more significance, the Prairie Cattle Company came to control most of the area now embraced by Union County. This was a Scottish firm incorporated on September 15, 1883. The Pecos Valley "was solely and strictly a cattle country — there were no other interests — and there were large herds."

Henry M. Atkinson, of Nebraska, took over the office of Surveyor General on March 31, 1876. By far the greatest amount of surveying in New Mexico was done under his supervision and irregular practices were common during his tenure. It was crystal clear that Atkinson operated within a specific framework of instructions as to areas that could be surveyed under the regular annual appropriations. These were:

1. Those lands adapted to agriculture without artificial irrigation.
2. Irrigable lands, or such as can be redeemed and for which there is sufficient accessible water for the reclamation and cultivation of the same not otherwise utilized or claimed.
3. Timber lands bearing timber of commercial value.
4. Coal lands containing coal of commercial value.
5. Exterior boundaries of townsites.
6. Private land claims.

Atkinson did not fulfill these stipulations. There might have been some question as to what constituted *agricultural* land except that Commissioner Williamson and Atkinson were clear on the matter: "The classification of surveyable lands made by Congress precludes the survey of portions of this Territory that are valuable for grazing purposes and which could be rapidly sold by the Government were they surveyed and subject to sale."

The special Deposit System became a matter of importance in Atkinson's surveys. It was originated by the Congressional Act of May 30, 1862, to reduce the Government cost of making surveys by authorizing that they be paid for by settlers in townships where they were desired. The law was modified in 1871 to the extent that deposits by settlers could be used in part payment for their lands in the townships the surveying of which was paid for out of these deposits. On March 3, 1879, the harmlessness of this law came to an end when certificates of deposits became negotiable and could be used in payment for public land anywhere under the terms of the Pre-emption and Homestead Laws. Nationally, the total deposits for survey in the seventeen years prior to the modification of 1879, amounted to $368,625.69. The deposits under the act from 1880 through 1884 were $5,813,368.58 and figures in New Mexico were $13,432.03 through 1879 and $891,707.85 from 1880 through 1884.

The situation became so intolerable that on August 7, 1882, a law was passed by which the use of certificates of deposit was confined to the land district in which the lands surveyed were situated. This caused a sharp drop in the amount of money deposited.

It is true that a large proportion of Atkinson's surveys were made under the deposit system and that, for purposes of accounting, special deposits were handled separately from the regularly appropriated survey funds. But surveys under special deposits were subject to the requirements of surveying only entire townships surveyable by law. It was furthermore specifically stipulated that no surveys were to be extended into townships not already settled.

Atkinson repeatedly blamed the large number of deposits

on the failure of Congress to make appropriations sufficient to prosecute the public surveys as rapidly as demanded by the settlement of the Territory. This is demonstrably strange reasoning even if the entire resident population was considered in the need for surveys. It is more reasonable to consider that the bulk of actual and legitimate settlement was demanded by newcomers who had not already acquired land. In 1883 the population of the Territory was about 130,000, three-fourths of whom were natives, and presumably had an abode of long standing. Of the remaining one-fourth all but a few foreigners were from the States. Even a large percentage of these had resided in the Territory for some years and had established an agrarian residence. That same year there were 12,847,970 acres of land surveyed in New Mexico; an average, in a single year, of almost 99 acres for each person living there at the time! Of this amount, at least 14/15 was done under the deposit system.

The only possible demand for that amount of surveyed land was that advanced by cattlemen. Two years later Commissioner Sparks reported that "the choicest cattle raising portions of New Mexico . . ." had been surveyed. The land was desired for grazing purposes. Atkinson's own words are proof of that. He had been questioned by Acting Commissioner C. W. Holcomb as to the validity of a contract in the region of the Llano Estacado east of the Pecos River.

Atkinson's answer is revealing: ". . . I presume that but a small portion of this land is suitable for agriculture, but it is adapted for grazing purposes and stockmen are desirous of securing their water and the land embracing same as the nucleus of their stock ranges."

It is evident that the General Land Office accepted this explanation at its face value because the contract was approved and duly executed. Such flagrant winking at the law can hardly be justified, but there is an explanation. Thinking men knew that the national land classification was unrealistic. They knew that large portions of the West were unsuited to anything except grazing, and yet there was no classification for grazing land. Such land could not legally be acquired for the only use for which it was suited. Perhaps men be-

came careless, or disillusioned, at the frustration of seeing this condition exist year after year with no attempt at a remedy. At any rate, Atkinson blithely continued, year after year, to certify that the areas of public surveys were confined to the classifications made by Congress.

Atkinson's surveys were so extensive that they covered nearly every region in the Territory, but a majority of this area was suitable only for grazing cattle. Atkinson himself was interested in the cattle business. In 1882 he was an incorporator, with Thomas B. Catron and John H. Thomson, of the Boston and New Mexico Cattle Company. The following year he and William H. McBroom and Joseph H. Bonham formed the New Mexico Land and Livestock Company. In 1884 he joined with Max Frost, W. H. McBroom, and three gentlemen from Kentucky in forming the New Mexico and Kentucky Land and Stock Company. These three companies operated in Santa Fe County. In 1886 the American Valley Company was incorporated by Atkinson, Thomas B. Catron, William B. Slaughter, and Henry L. Warren. The American Valley is in the triangle formed by the towns of Salt Lake, Trechado, and Quemado in present Catron County. The combined capitalization of these companies was $5,000,000.

Irregularities in surveys under Atkinson were prolific and brought repercussions while he was still in office. Commissioner N. C. McFarland condemned certain survey plats. He pointed out that the topography was poorly and roughly drawn and that the plats were "far below the average of other districts." An examination of survey plats for various periods, comparing them with resurveys, reveals that the early surveys, both in the field and on the plats, were much more accurate than those made in the 1880's under Atkinson.

In short, the surveys under Atkinson were not conducted in a creditable manner. However, he held office at a time when such practices were characteristic of the entire surveying service and particularly that of the West.

Clarence Pullen succeeded Atkinson on July 29, 1884. His administration was short and a large percentage of the surveys executed under his guidance had already been contracted for by Atkinson.

In 1885 President Cleveland, in a letter of May 11, asked George W. Julian to accept the office of either Governor or Surveyor General of New Mexico. Cleveland considered the office of Surveyor General the more important of the two.

Julian, who had cast his first presidential ballot for General Harrison in 1840, was seventy years old when, on July 22, 1885, he assumed the duties of his new office. He was a politician and a *good* government man, and tried to comply with the details of the law as he saw it. Above all, he could not be *bought* at any price. It was undoubtedly this unimpeachable honesty that endeared him so little to his contemporaries in New Mexico. Some historians have judged him too harshly. Evidence was everywhere at hand that the public domain was being harvested by fraud at an unprecedented rate. "No early problem of his Administration worried Cleveland so much as this wholesale spoliation of the West." This worry was honestly shared by Julian and he acted vigorously to save the public lands so they could be dispensed in the manner prescribed by existing laws.

Julian strove earnestly to take care of the demands of actual settlers. On the other hand, he had little patience with requests for surveys not for actual settlers. He was not as careful, however, to survey only areas strictly arable in nature. Atkinson had surveyed large quantities of non-arable land and certified that they had been arable. Julian and his superiors in Washington recognized some grazing land as being within the agricultural class even if the law clearly stated otherwise. Julian thus attained, to a lesser degree, the same results as Atkinson in the matter of surveying grazing land.

Edward F. Hobart replaced Julian on September 7, 1889, and served until August 2, 1893. He came into office with the Republican administration of Benjamin Harrison, but did not alter policies greatly from those of his Democratic predecessor. Toward the end of his tenure, Julian had been plagued by the need of a number of resurveys of work that had either been poorly done or in which the monumentation had been destroyed. Hobart faced this same problem. Julian's policy of confining surveys to those for actual settlers was continued

just as sincerely by Hobart. Furthermore, he probably was even more careful to survey only strictly agricultural land. Likewise continued was the policy of carefully examining all surveying returns and work in the field. It is evident that the extremely loose practices of the early 1880's were at an end.

Donations of land to actual settlers were made in Florida and in the Territories of Oregon, Washington, and New Mexico as a means of public defense. They were calculated to promote the military strength of settlements exposed to attacks by Indians. The legislation allowing for donations in New Mexico was contained in the second, third, and fourth sections of the act establishing the office of Surveyor General of New Mexico. By the provisions of these sections, 160 acres of land was granted to every white male citizen of the United States over twenty-one years of age, or to such person who had declared his intention of becoming a citizen, who was residing in the Territory prior to January 1, 1853, or who moved there prior to January 1, 1858.

Claimants of Mexican or Spanish land grants were not allowed to file for a donation claim. Likewise, holders of donations were excluded from pre-emptions or homesteads on the grounds that both classes required actual settlement and cultivation and one person could not fulfill these requirements on two claims. A donation claimant could, however, relinquish his claim and file the same land under the Homestead or Pre-emption Laws.

The first application for a donation claim that fulfilled all the requirements stipulated by law, and thus resulted in a notification, was made by Pinckney R. Tulley on December 22, 1858. This was for 160 acres in Section 34, T.18S, R.4W, in present Doña Ana County. Along with a number of others, it was abandoned and finally forfeited on August 8, 1870. The first donation certificate was issued to James T. Johnson on July 18, 1870, for 160 acres of land in Section 6, T.18N, R.20E, near the south boundary of Mora County.

Actually there were a number of applications for donation claims prior to Tulley's notification. No less than thirteen were made in 1855, the first year that the surveyor general's

office was opened. These could not be accepted because the claimants did not actually live on the land they claimed. They lived in settlements away from the land for the protection of their lives and property from attacks by Indians.

Another difficulty confronting donation claimants was the requirement that the land be surveyed. Most of the land in the vicinity of the settlements had already been reduced to private property. If settlers removed to a distance from the settlements, there were disputes concerning boundaries which were difficult to settle when the land was surveyed.

A third problem was that when making application for a donation, no one could be certain that he was not locating on a private claim. Donation claims located on private land claims could not be honored due to the extreme slowness with which title to private claims was settled.

As early as 1858, Secretary of the Interior Jacob Thompson had urged that the Donation Act be discontinued. It had been initiated as a means of public defense, but proved ineffective as a measure of public policy. The length of residence required, and other conditions imposed on claimants, caused complications in settling the titles of the donations themselves as well as trouble and delay in settling titles to adjacent lands. Surveyor General Pelham had earlier reported these troubles to exist.

It also became a potent instrument for fraud. Celso Baca received donation certificate No. 4, in 1870, and made a homestead entry in 1876. It was against the law to acquire a homestead in addition to a donation. Even then Baca was not content and in 1881 his name appeared on another homestead entry. Related to Baca's activities was the donation entry and homestead entry of Marcelino Moya. The first was in 1870 and the second in 1876. Neither of these was proved up. In May of 1881 he made another homestead entry and made final proof in June of that year. In December of the same year, his name was on still another entry. Strangely enough, Moya was an invalid who hadn't been out of bed for several years and who lived in the house of Celso Baca! There is no doubt that Moya was a tool of Baca, who possessed the lands thus entered.

Witnesses swore that Moya had lived on the land since before January 1, 1858. In the same statement they mentioned that they had known the applicant for six or seven years only. In other cases different signatures appeared in the same handwriting. Many signatures were written near the bottom of the sheet, indicating that the proof had been filled in afterward.

On August 21, 1880, John Gwyn made donation entry No. 164, in T.14N, R.8E, southwest of Santa Fe, representing the date of settlement as June 10, 1879. The land involved was marked on the plats in the land office as *mineral land.* It was well known that Gwyn had been for years past, and was at the time, a resident of Santa Fe. He was also a large owner in land grants. About this time Gwyn's brother, Thomas, who was in charge of the register's office, filed a pre-emption declaratory statement on land that was also mineral. He likewise had never resided upon the land filed on.

In 1884, Land Inspector Frank D. Hobbs ventured the opinion that not over two per cent of the 457 donation applications on file were valid claims. Of 332 land claims investigated by Special Agent H. H. Eddy in 1883, only that of Juan Martinez, T.19N, R.30E, was a donation. On it were some crumbling walls of an adobe building that had never been roofed and had long been abandoned.

In examining Registers and Receivers monthly abstracts of donation notifications and certificates, certain entries stand out when they appear in the same township on the same date. This could happen occasionally by chance, but when they appear in this manner regularly it prompts the question, did all the neighbors ride to town the same day to file on donation claims? It is more probable that the entries were made in the interest of someone bent on acquiring more land in the township than was legal.

In 1880-81, when the cattle industry was starting its boom, there was a sudden increase in donation entries. In 1880 there were 172 donation notifications and 162 donation certificates. Each group was more than in all the previous years combined. The final figure for donation certificates was 51,989 acres (338 entries) through the final entry in 1884.

There were also 73,298 acres (465 entries) in donation *notifications* through the final entry in 1882. It was required by law that a settler, to avail himself of a donation, must have commenced his residence, settlement, and cultivation in New Mexico not later than January 1, 1858. The question arises why were there suddenly so many qualified donation entrants? True, the law did not stipulate when they were to file, but why had they waited 22 years after the final date that residence could be established? The answer is that they were not *bona fide* entrants. In 1882, Secretary of the Interior Teller affirmed that

> it was the intent of Congress, in the passage of the New Mexico donation act, that all selections should be made under the act, and settlement and cultivation be commenced by the 1st day of January, 1858, that being the limit of the time within which the necessary residence could be acquired.

As a result in 1883, there was not a single donation notification or certificate. A lone certificate in 1884 closed the books on this class of land entry in New Mexico.

The Homestead Act with its principle of free land for actual settlers was the inevitable culmination of national and regional pressures. Tolerance towards squatters, donations to pioneers on the frontier, and modifications of the preemption privilege favorable to the settler, all pointed to free land. Generosity, subsidization, natural rights, class struggle, and expediency were co-ordinately parts of the pressure.

The 160 acres allowed was based on the theoretical amount of land required by the head of a family to make a living in a typically fertile farming community. But New Mexico was arid and 160 acres was not enough. Therein lay the great weakness of the Homestead Act. The idea of small farms here was a tenacious eastern dream and wholly untenable. It was forced upon the Territory and to blame the people for resulting pernicious developments would be uncharitable; it is realistic to say that it developed into another way of acquiring large amounts of grazing land.

During the decade of the 1880's cattle raising became the

great bonanza. Newspapers, periodicals, and livestock journals pointed out the large profits to be made in that business. It was said that an investment of five thousand dollars would net the investor a profit of forty or fifty thousand dollars in four years. Within that time a calf worth five dollars could be matured at little cost on the grass of the public domain and sold for forty or fifty dollars.

Acquiring a stock range was a simple matter in the early days of the industry before the country became crowded with cattle. It was only necessary to secure title to an available water supply to control land for miles around just as surely as though that land was actually owned. In this way the public domain was used without the payment of any tax.

During the late eighties and early nineties, cattle ranchers began to extend their private holdings. There were several reasons for this. As the ranges became overstocked, not only did the supply of grass dwindle but grazing areas became increasingly hard to control. Surpluses of cattle led to lower prices. Drouths and bad seasons made inroads on the vast herds then in vogue. Many cattlemen found they could raise better beeves more economically through selective breeding and supplementary winter feeding. Also, land entries were being more widely made by those desiring to farm where it was possible and by persons desiring to get into the cattle-raising business. To protect their interests, established ranchers had to secure ownership of land to meet the new competition.

There were a number of ways in which this was done. In New Mexico as elsewhere it was possible for one person to acquire 1,120 acres of land by the legitimate use of the land laws. The land laws became so complicated that a shrewd businessman had a decided advantage over a settler in acquiring large properties. These possibilities were well known at the time the laws were being most widely used.

Some land was sold at private entry and public auction, but such sales did not bring a quick turn-over of land, which indicates that other available methods were adequate and just as advantageous. These sales were minor in the aggregate.

Far more land benefited applicants by virtue of applications than by securing actual patent under the various conditions of the laws. It took from seven years (for a homestead) to thirteen years (for a timber-culture claim) before an entry lapsed. During this period the applicant was actually protected since proof was not required until submission for patent. Meanwhile, exclusive grazing and watering rights were available. Conditions in the land offices were chaotic and, even without collusion, an application might drag out for many years with no attempt to offer proof. In the meantime the applicant may have made his *pile* and didn't care whether he secured patent or not.

In amounts in excess of the legal limits of the land laws, public land could be acquired only by purchase from persons who had secured it by compliance with the laws. The alternative was fraud.

Some of the large holdings of grazing land were procured by purchase from homesteaders or pre-emptors who failed on their claim and sold out to ranchers. There were always a number of misinformed or stubborn settlers who insisted on trying to grow crops where none could be grown.

In the early 1880's, ranchers were usually bitter toward settlers because they were changing the old ways of the free range. But as it became evident that private holdings must be developed to meet competition, the wiser of them changed their attitude. Settlers were not then always looked upon with disfavor by the cattlemen who knew that most of them must eventually give up their efforts to be dirt farmers. If these settlers could be encouraged to remain long enough to prove up their claim before leaving, the rancher could buy the land where he could not legally acquire it otherwise. Some settlers had this in mind from the beginning and others were rapidly *educated* by crop failures. This *education* was painful and most were inclined to move away and let their land go back to the Government. If ranchers could encourage them to stay long enough to procure title, both would benefit: the rancher by acquiring the land, and the settler by some remuneration for his patience and effort in acquiring title to it.

But not all homesteads were entered by legitimate settlers. in the decade of the 1880's the population of New Mexico increased by 33,601. Since only 35 per cent of this increase was engaged in agriculture, only 11,760 can be considered as prospective farmers. At a contemporarily calculated figure of four persons per family, 2,940 would be eligible to take out a homestead. But in these ten years, there were 5,740 original homestead entries. In the same period there were 6,937 pre-emption declarations. These required a residence of five years for a homestead and six months for a pre-emption to acquire title. During the same period there were 1,547 timber-culture and 1,207 desert land entries. For these no residence was required.

Over-all figures are nearly as startling. In 1890, the population of New Mexico was 153,076 persons (exclusive of tribal Indians), or about 158,000 in 1891. Since only 35 per cent of the population in the Territory was engaged in agriculture, only 55,300 can be further considered. This figure is further reduced by the residents of the more than 5,000 small-holding claims in the Territory who had a settled place of abode from which they almost certainly would not have removed to prove up a homestead. At four persons per family, their population would be 20,000. In this class were the 8,278 residents of the pueblos who were almost entirely agricultural and were permanently located. Also deducted are the 1,461 soldiers stationed in the Territory at the time. The figure is now 25,561. Using four persons per family there were 6,390 persons eligible to apply for homesteads. But there were 6,784 homesteads applied for as well as 465 donations. All eligible persons, to comply with the residence requirements, would have had to leave a former home, move to the new land, build a house, and cultivate the soil. It is absurd to think that this happened. Furthermore, the 6,784 homestead applicants would have had to establish six months residence on 7,657 pre-emptions. Of the 6,784 homesteads entered through 1891, only 3,702 were given final certificates through 1896 (when those entered in 1891 would normally be completed). Also, homesteads could be filed only in legally subdivided townships. The clamor for surveys was constant, indi-

cating that many persons desired to make entries where the land was not surveyed. If they were waiting to file on unsurveyed land, it follows that they could not legally have filed on surveyed land.

Of the townships that had original entries by the close of 1891, about 53 per cent were not climatically capable of supporting the growth of crops, so could not have complied with the requirement of cultivation. By the end of 1896, of the townships that had final certificates, about 49 per cent were incapable of supporting crop growth and could not have complied with cultivation requirements. It should be borne in mind that much of the area climatically capable of raising crops was not suitable for that purpose because it was mountainous or timbered. The Homestead Law did not apply to timber land.

At the close of 1891 there were about 6 original entries per township and 5 final certificates at the end of 1896. This is an average. Any township capable of growing crops would have had more than 800 acres homesteaded out of a possible 23,040. Evidently much of the land was acquired to control widely scattered water which dominated grazing land rather than for cultivation, and since there were not nearly enough legitimate settlers for the quantity entered, it follows that it was done illegally.

In the more agrarian sections of the nation, fraud was committed by persons who wished to sell their ill-gotten gains. Fertile crop land was valuable, and speculating in it was frequently lucrative. In New Mexico, however, people wanted land for raising cattle. More particularly, they wanted land to control the sources of water for these cattle. In most cases these waterholes were valuable only for watering stock because they would support little irrigation.

Since control of one waterhole could gain command over thousands of acres of grazing land, it provided a good living for a family. Control of several watering places controlled more land and might bring wealth. This became the goal and achievement of some persons. Such was their greed that they knowingly broke the law to acquire whatever might and cunning would avail them.

In the 40-mile square area known as the American Valley, in Catron County, there were six springs; six claims entered in behalf of the American Valley Cattle Company covered nearly all the water in the vicinity. None of these entries were legal.

Fradulent entries were common throughout the Territory and those in Colfax County were among the most prevalent. Special Agent John M. Dunn made some investigations in this area as well as elsewhere in the Territory. When he could find but very little fraud, at a time when other inspectors were finding almost nothing else, the General Land Office became suspicious and sent Inspector Frank D. Hobbs to check the cases already covered by Dunn. Hobbs found many people who believed that Dunn had not acted in the best interests of the Government and that he had devoted his time to protecting the interests of stockmen who were parties to illegal entries. Dunn spent much of his time at the home of S. W. Dorsey, used Dorsey's horses at will, and enjoyed himself generally. Upon one occasion he inspected fraudulent entries at the Dubuque Cattle Company and was picked up at Dorsey's ranch by a four-horse rig belonging to the Dubuque outfit. A few days later he returned in the same comfortable manner. Inspector Hobbs unearthed convincing evidence that a great deal of land was entered by illegal means and straightway came into the ownership of Mr. Dorsey and other ranchers in the area. One person who swore to affidavits in wholesale lots was a young gentleman named Kit Carson, Jr., who was employed by Dorsey as a cowboy, teamster and general utility man.

The Prairie Cattle Company, owned entirely in Scotland, pre-empted and homesteaded most of present Union County without making a dollar's worth of improvements. The Palo Blanco, Dubuque, and Portsmouth Cattle Companies and J. S. Taylor, E. J. Temple, H. M. Porter, W. E. Corbitt, J. W. Dwyer, and John Delano, all had numerous entries.

Few if any of the original entrymen complied with the law. For example, José Ma. Martinez transferred seven claims to the Dubuque Cattle Company by quitclaim deeds in an impossibly short length of time.

In 1882 and 1883, 7,200 acres of public domain in the eastern part of the Territory were taken up by one individual for grazing purposes by homestead and pre-emption claims entered in the name of fictitious persons under conditions that made it impossible for them to be legal. In southern New Mexico the Vermont and Rio Grande Cattle Company acquired 3,000 acres of land by similar methods. In 1885 all southeast New Mexico was devoted exclusively to cattle ranching.

Another case involved 6,500 acres of fraudulent pre-emption and homestead claims. Ninety-one entries, embracing 14,000 acres, were acquired by another cattle company. In San Miguel County 84 entries of 160 acres each were found to have been made in behalf of still another cattle company. In the Las Cruces district 56 entries covering 10,500 acres were acquired illegally by a firm of cattlemen. A case in Colfax County involved 7,000 acres and 45 entries. Commissioner Stockslager reported that "While the entries in the above-mentioned [five] cases . . . only cover about 52,000 acres, they actually control an immense territory by appropriating all the water in the respective localities. The cattlemen are masters of the country, and they domineer and rule the people in their vicinity in such a way as to make it exceedingly difficult to induce parties to give evidence of the fraudulent transactions."

There is further evidence that homestead entries were made in the interest of parties other than settlers. Often groups of entries were made in a single township on the same day. Preceding and following these groups are completely random entries. Either groups of neighbors filed the same day or the land was filed upon by several persons in the interest of party or parties desiring to consolidate holdings in that area. The latter is more likely.

In 1883, Special Agent Eddy investigated 200 homestead claims; only 65 (32.5%) complied with homestead regulations. The chief factor in non-compliance with the law was the complete absence of any settlement or improvements on the land of any kind whatsoever. In other instances the land had been abandoned for years; the applicant was under legal

age; a house had been built by a party other than the applicant; or the resident on the land had never filed a claim and didn't even know that one had been filed. Frequently settlers in the neighborhood had never heard of the supposed claimant. Eddy concluded that "An honest investigation would result in the cancellation of hundreds of fraudulent entries, and many thousand acres of land would be thrown open to entry by actual settlers. . . . the office should send at least six agents into this Territory without delay. . . ."

Only 58 per cent of original homestead entries were patented. An application provided the use of the land, and for grazing purposes frequently this is all that was desired. It was estimated in 1885 that 40 per cent of five-year homesteads in New Mexico were fraudulent, which is close to the 42 per cent that were not patented but lower than Eddy's findings of 67.5 per cent in 1883.

The Homestead Law was not suitable for any except limited portions of New Mexico, and it was greatly abused; nevertheless, no essential change was made in the system until the Stock-Raising Homestead Act of 1916. Halfway attempts at compromise had been made with the Enlarged Homestead Act of 1909 and the Three Year Homestead Act of 1912. It was not until the act of 1916 that grazing land was recognized as such, by classification, in a homestead law. Before that the idea of a homestead as a crop-raising farm unit had basically prevailed.

The question may well be asked why settlers would buy land when free land was available through homesteading? There is no one answer to this question. One obvious answer is that a homesteader could secure additional land, through pre-emption, after completing a homestead entry by a five years residence or commutation to cash in six months. Many settlers did this. The homesteader could also purchase lands that were, from time to time, offered for sale by the Government.

Another reason is more unpleasant. It was easier for the unscrupulous to find a bogus entryman to stay six months on a pre-emption claim than five years on a homestead, and less

difficulty was encountered in concealing the nature of a false pre-emption entry for the shorter time.

Land could be acquired for cash in New Mexico through public auction, private entry, pre-emption, commuted homesteads, land scrip, and sale of military and Indian reserves.

In the spring of 1870, there was considerable excitement in the Territory occasioned by a coming public auction sale of areas in certain townships principally along the Canadian and Hondo rivers. The sale was to continue for no longer than two weeks, then the land was to be opened to private entry. Pre-emption claimants in the designated areas were required to establish their claims to the satisfaction of the Register and Receiver at Santa Fe where the sale was to be held, commencing August 8th. They were, furthermore, required to make payment on their claims before the date of the sale or else forfeit their rights to any land they claimed. They were unable to do this in every instance because some of the land had not yet been subdivided.

It is evident that the publicity attending the public sale of 1870 gave a comparatively large impetus to the land disposal program in New Mexico, small as it was in actual number. In the two years prior to 1870, there were only 10 original homestead entries filed and in that year there were 96. From 1858 through 1869 there were 13 donation notifications and in 1870 there were 14. The first mineral land sales were made in 1870; there were 21 of them. In the same year there were 26 cash sales. The only previous sales were three in 1868.

The sale itself was not immediately a great success, since only 1,958.23 acres were sold for $2,447.79. No one would bid over the going rate of $1.25 per acre for pre-emption land. After the sale, the unsold land was placed in the offered class and eventually disposed of through sale at private entry.

Among the largest purchases at the sale were those of Wilson Waddingham along the Canadian River and Ute Creek near their confluence. In 1871 he bought 6,589.58 acres of land from the Government and the following year 5,427.79. This land followed precisely along both sides of the streams. These purchases became part of the domain which was to be known as the famous *Bell Ranch*. Settlers in the region had

been repeatedly urged by the Register at Santa Fe to enter their lands. Many of them failed to heed the warning, and consequently lost the tracts that they had settled upon when Waddingham bought the land.

Waddingham's purchases were not looked upon with favor by some people in New Mexico:

> In my judgment the lands put in market for private entry should be limited in quantity to each purchaser. It is a common practice in this Territory to enter the smallest legal subdivisions bordering on streams, with a view to speculation and to secure the public land adjacent thereto for grazing purposes without purchase.

Other extensive purchases at private entry were made by Joseph C. Lea along the Rio Hondo from its source to its junction with the Pecos River. From 1879 through 1885, he bought 13,386.98 acres. Other members of the Lea family bought more than 2,400 acres in the same area.

Sales made under the Proclamation of May 3, 1870, were suspended on July 10, 1886, pending a determination of its legality. On June 9, 1890, Secretary of the Interior Noble rendered an affirmative decision based on the Act of July 22, 1854, establishing the Office of Surveyor General of New Mexico, Kansas and Nebraska. The last clause of section 13 of this act gave the President authority to make sales of land in Nebraska. Since the whole act included New Mexico, it was ruled that this authority also extended to that Territory. J. C. Lea was one of the persons whose land was in question and, as demanded, filed an affidavit that he had made various private entries in good faith and that his improvements on the land had cost not less than $20,000. In view of the lapse of time and the expenditures made on the faith of the offering, the Proclamation was ordered to be legally held as *res judicata* and the titles to the lands involved were no longer questioned.

During the years there was considerable effort on the part of local land office officials to make known to the nation what New Mexico had to offer in the way of land available for purchase. They stressed pre-emption and private entry rather

than homestead. It was natural that they should do so since a major part of their income depended on fees from their business. There was also a certain amount of pride in the "Sunshine State." In correspondence regarding the possibility of buying land from the United States, it was frankly stated that there was good grazing land available and some excellent land susceptible to irrigation. "New Mexico," it was pointed out, "is very different from any other part of the Republic. Cultivation is wholly consequent upon irrigation and where water cannot be brought, the soil is unfit for cultivation."

Cultivation of the soil was a requirement for pre-emption, and yet it was reported that 60,000,000 acres of land were available in New Mexico for pre-emption. This was more public domain than was available in the Territory, and a majority of it would grow no crops.

Land officials of that day did not consider this a contradiction. They reflected that most of the land was fit only for grazing, and that the law should so allow. It was their duty to administer the land laws as they were written, but they saw the hopelessness of a literal interpretation of that duty and tempered their actions with the realities of the arid domain under their jurisdiction. It was not generally their intention to condone unlawful entries, but rather to make it possible for lawful entrants to secure land. Without a liberal interpretation of arability, this could not often be done.

Nevertheless, lawlessness did prevail. It was estimated that, based on reports of special agents, from 75 to 90 per cent of pre-emption claims in New Mexico were fraudulent. This may be somewhat high. Findings of Special Agent H. H. Eddy indicate 56.7 per cent. Of 111 cases examined by Eddy 63 in no way complied with the law. In one case in T.15S, R.17W, northwest of Silver City, James Voss was the pre-emptor but never lived on the land. It was further learned that Voss did not know which of three claims he supposedly owned and didn't care because J. W. Fleming was going to give him $300 for proving up. Later Voss said he didn't want to pre-empt a claim but Fleming told him he had to do so be-

cause his name was already in Washington. Such blackmail tactics were typical of the fraudulent cases.

By the four categories of free land (homestead, timber culture, donations, and soldiers and sailors homesteads), there were 622,684 acres deeded to individuals. On the other hand, settlers paid cash for 648,028 acres of Government land.[1] The railroads also sold 356,260.56 acres during this period. In addition a large amount was purchased by individuals from grant owners. It is evident that many people preferred to buy their land rather than get it free from the Government with the strings that were attached by the latter.

The Timber Culture Acts were, "in substance, a subsidy paid in lands to encourage the planting and culture of timber." They were in operation from 1873 until their final repeal in 1891. They were a mistake in arid New Mexico. Except in rare instances it was impossible to comply with the law. Nature controlled the balance here. Where there were trees, timber culture was illegal. Where there were no trees, none were destined to grow without irrigation, and irrigated land was more valuable for crops than for trees.

Compared to other States and Territories where it was tried, little land was disposed of under the Timber Culture Act. Still, considering the difficulty of compliance, an amazing number of persons took steps to avail themselves of this

1. Cash Sales through 1891 break down as follows:

	Entries	*Acres*
Final Desert Land Certificates (Through 1894)	398	139,622
Pre-emption sales	2,574	369,631
Private Entry sales	196	50,061
Public Auction sales	112	15,671
Excess payments on Homesteads, etc.	553	2,324
Homestead Entries commuted to cash	315	46,686
Mineral Land sales	517	9,015
Coal Land sales	39	4,189
Purchases with negotiable Scrip	108	10,829
	4,812	648,028
Final Certificates under the Land Laws:		
Final Homestead Certificates (Through 1896)	3,702	549,297
Final Timber Culture Certificates (Through 1903)	91	12,937
Donation Certificates	338	51,989
Soldiers and Sailors Homestead Declaratory Statements (could be entered immediately)	61	8,461
	4,192	622,684

class of national bounty. There were nearly eighteen times as many original entries as final certificates. By 1891, the year the law was repealed, 1,609 entrants had filed original papers for 230,335 acres. By 1903 the final returns were all in and there were only 91 certificates with 12,937 acres.

This shows that frequently the law was used only to hold possession with no intent to acquire title. There was more interest in the immediate use of the land than in ultimate ownership. A timber-culture entry ran for thirteen years before it lapsed. Eight years were required for final proof and five more years were allowed to complete the entry, and even longer if failure to complete the entry did not come to the attention of local land officials. During this time the entryman had use of the land "free of rent, interest or taxes."

Fraud in timber-culture entries was widespread. Land Inspector A. H. Greene, after a scathing denunciation of the entire timber-culture system, concluded that, "The experiment has approximated success about as nearly as an effort to make water flow up hill. I doubt if the trees standing on any timber-culture entry west of the hundredth meridian would retard a zepher."

The fault was chiefly in the system. Human nature was too weak to refrain from violating a law which was so easy to circumvent. So lightly was the law regarded that it became *neighborly* to exchange services as witnesses to affidavits. The more innocuous method of evasion was simply the failure of careless entrymen to obey the law. It was a common practice for homestead and other settlers to take up an adjoining quarter-section of land as a timber-culture claim with no intention of growing trees.

A more flagrant practice was that of cattle corporations. There was frequently no pretense of complying with any part of the law. The object was to secure valuable grass land by controlling water for their stock. It was accomplished by requiring their herders to take out entries covering these watering places. The adjoining land was valuable only to those who controlled the water. In this way entire townships were dominated by cattle interests.

Registers and Receivers' monthly abstracts of timber-culture entries show numerous entries in the same township on the same date. These groups stand out because they are surrounded by random entries. Chance cannot account for these claims so close together in time and location in thinly settled New Mexico. It is easier to believe that the consecutive entries were made in the interest of an individual or corporation trying to acquire more land than this law allowed.

In 1883 Special Agent H. H. Eddy examined 332 land claims in the Territory. Only seven were timber culture. None of these complied fully with the law.

The wisdom of the Timber Culture Act is open to question. It was passed at a time when the subject of promoting timber resources was coming to the public attention. It was thought possible to transform the bleak plains of the West by having land-hungry men cultivate trees in exchange for a farm. This was a visionary dream and no more. It was a failure as far as accomplishing what Congress had in mind and, in New Mexico, it was the least successful of all the land laws.

(To be continued)