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THE TEXAS GENERAL LAND OFFICE: PRESERVING EAST TEXAS LAND RECORDS

by Michael Q. Hooks and Jesús F. de la Teja

The General Land Office, which manages state lands and collects fees and other income from the use of these lands, is one of the oldest of the state agencies. The 1836 Constitution of the Republic of Texas called for the establishment of a general land office, "with a view to the simplification of the land system," where land titles would be registered and where officials could determine which lands were vacant and which lands were taken by previous colonization activities. In December 1836, the First Congress of the Republic carried out this directive by establishing the General Land Office.¹

Congress gave the Land Office, which was to be headed by a commissioner, responsibilities affecting the public lands of the Republic. The commissioner was authorized "to superintend, execute and perform all acts and things touching or respecting the public lands of the republic." To carry out this mandate, the commissioner was designated the custodian of all records, books, and papers pertaining to public lands. These records, located in various offices throughout the Republic, were to be given to the commissioner through his agents and placed at the capital. Furthermore, the commissioner was directed to make plats of surveyed lands, grant warrants to those entitled to them, and issue patents or titles for the lands. To the relief of those who received land from Spain or Mexico, the legislation confirmed all those titles, provided that all fees were paid and that the land granted did not exceed one league.² As a result of this law and further legislation passed by the Republic and later by the State, the Land Office became a major force in the land settlement of Texas during the nineteenth century.

Today, the records first gathered by Commissioner John P. Borden and those created by subsequent acts of the legislature are preserved, maintained, and made available for research at the Archives and Records Division of the General Land Office. This division was created in February 1984 by Land Commissioner Garry Mauro from the previous Records Division. Setting as his goal the establishment of a first-class archives for the agency, Mauro appointed the first archivist in the long and distinguished history of the Land Office. The archivist is developing programs to better preserve the records and to make them more accessible to researchers. These records are important because they document the original land settlement of Texas beginning with Spain's activities in the eighteenth century and continuing through the state's programs to the late nineteenth century.

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Although plans for the settlement of Texas were not new in the 1820s, conditions were propitious for their execution. Beginning in the late eighteenth century, individual Anglo-American settlers who found their way into East Texas, and the Philip Nolan, Gutierrez-Magee, and Long expeditions, all indicated sustained American interest in the territory. The last Spanish monarchs and the Mexican Republic thus realized the danger of losing Texas if it were not quickly and more fully settled. Recognizing the opportunity to gain favorable terms from the Crown, Moses Austin sought and received permission to settle 300 families in Texas in early 1821. Dying before he could put the plan into action, his son Stephen F. Austin took over the leadership of the project and shaped the development of early Anglo Texas.³

The agreement between the Crown and Moses Austin was very informal, the government assuming that the laws of the *Recopilacion de leyes de los reinos de las Indias* would govern the settlement of 300 families. Mexican independence voided the agreement and forced Stephen Austin to seek a new understanding with the newly established Mexican empire of Agustin Iturbide. Although the empire did not last much beyond it, a colonization law was passed that became the basis of subsequent legislation.⁴

Colonization law under the Spanish Crown was encoded in the *Recopilacion*. The *adelantados* or *descubridores* (colonizers and discoverers) contracted with the Crown to conquer, pacify, and settle a region. In return for opening a new province for the Crown, the colonizer received a broad range of discretionary powers, including naming officials and passing ordinances subject to royal approval. Settlers accompanying the colonizers were entitled to tax exemptions and reductions and titles of minor nobility, as well as lands for farming and home sites. A contractor was expected to have thirty settlers established within a given period of time, each with a minimum amount of livestock and poultry, in return for four square leagues (17,173.6 acres) of land.⁵

The Imperial Colonization Law of 1823 kept many features of earlier Spanish law. New towns were to be set out on a grid pattern, contractors (now called *empresarios*) received a premium of fifteen leagues and two labors (354.2 acres) of land for each 200 families up to 800. Settlers were required to occupy and put their land in production within a period of two years, and were exempt from all taxes. The emperor's instructions to Austin drew further on Spanish practice, placing the empresario in charge of organizing a militia of colonists and maintaining law and order.⁶

After Iturbide's empire was overthrown a Federal Republic was established and a new colonization law became necessary. The law of August 18, 1824, left most of the initiative with the states, prohibiting only settlement within ten leagues of the coasts and twenty leagues of the border with the United States without permission from the national government. The preference for Mexicans, especially veterans of the War of

Independence, found in the Imperial decree was made more definite in the new law. Also, more clearly defined was the amount of land that could be concentrated in the hands of one owner, a maximum of one league of irrigable land, four leagues of non-irrigated arable land, and six leagues of pasture, for a total of eleven leagues.⁷

Taking these provisions into consideration, the March 24, 1825, Colonization Law of *Coahuila y Texas* established the guidelines for empresario contracts. Contractors had six years to introduce the required number of families, "losing the rights and privileges offered in their favor, in proportion to the number of families they shall fail to introduce."⁸ The contract became null if they failed to introduce 100 families. Distinctions were made in the amounts of land granted to married and single men. Although colonists were to pay for the land, they had six years in which to put their lands into production or face forfeiture, and were exempt from taxes for ten years.⁹

Of the more than thirty colonization contracts made during the Mexican period, only fifteen were fully or partially fulfilled. Stephen F. Austin was the most successful empresario. Through his efforts the imperial colonization law was issued in 1823, and he influenced subsequent legislation as well. Austin settled over 1,100 families under five contracts, and by 1831 had 5,665 Anglo Americans living in his colonies. By 1834, *San Felipe de Austin* reported the third largest population of any municipality in *Coahuila y Texas*. Austin worked hard to integrate Anglo settlement and Mexican law. He acted as lobbyist for all the Anglo colonists and arbitrator between the other empresarios.¹⁰

Even before the Imperial Colonization Law was passed, extensive Anglo American settlements had begun throughout East Texas. As early as March 1825, Baron de Bastrop estimated there were some 10,000 people living in Texas without the government's permission. "These families, which have introduced themselves into the country without the government's knowledge, for the most part have established themselves within the twenty border and ten littoral leagues exempted from colonization by the law of 18 August [1830]."¹¹ Many of these settlers eventually gained permission to remain on these lands, and on various occasions commissioners were sent out to issue titles.¹²

The independent settlers of East Texas also had to contend with empresarios whose contracts covered the older homesteads. In 1825, Haden Edwards contracted to settle 800 families, but he so antagonized Spanish and Anglo inhabitants and the political chief at San Antonio that the contract was canceled.¹³ More successful in advancing its own interests while retaining the good will of older settlers was the Galveston Bay and Texas Land Company. This company was headquartered in New York and was operated by a group of investors who purchased the empresario contracts of David G. Burnet, Joseph Vehlein, and Lorenzo de Zavala. Although the contracts were bought by 1830, colonization did not start in earnest

until 1834, owing to General Manuel Mier y Teran's enforcement of the Colonization Law of April 6, 1830, which excluded colonists from the United States except for Austin's and De Witt's colonies.¹⁴ When colonists began to arrive in 1834, they did so in quick and steady fashion. Between the autumns of 1834 and 1835, almost 1,100 titles were issued by the company both to new colonists and older settlers who had not received titles.

The growing influx of Anglo American settlers led Mexican authorities to take other measures aside from the short-lived ban on further immigration imposed by the Law of April 6, 1830. One important measure was the promotion of Mexican colonies. Already in 1824, Martin de Leon had received permission to settle a group of families on the lower Guadalupe, where they established the town of Victoria. The colonization contract made with James Power and James Hewetson called for at least half the colonists to be Mexican. The empresarios were to give the inhabitants of Goliad and other Mexicans a preference in grants. In East Texas many Mexicans concentrated on purchasing the larger tracts allowed to them under the law. Speculation in these lands was widespread as lands that were bought from the government for twelve cents an acre could be resold for a dollar.¹⁵

Because the empresario was considered a businessman contracting with the government, the actual execution of the titles rested with the commissioners appointed by the governor of Coahuila y Texas. Under Spanish law the king delegated authority to the viceroy, governors, or other officials to grant lands in his name. After independence this authority became vested in the executive branch of government. Although the Imperial Colonization Law of 1823 made no mention of what individual was to be responsible for issuing titles, Emperor Iturbide's decree authorizing Austin's colony called for the governor of Texas, or a commissioner appointed by him, to place the colonists in possession.¹⁶

Coahuila y Texas' Colonization Law of March 24, 1825, was the first expressly to create the position of land commissioner. Following previous custom, matters concerning the granting of land were placed within the governor's purview. Recognizing the distances involved and considerable amount of work to be done, the legislature authorized the governor to commission a knowledgeable individual to oversee land distribution and surveys. The duties of the commissioners were spelled out in the instructions issued by the governor's office in September 1827. As would later be the case under the Texas Republic and state, the land commissioner was to inspect the certificates proving the right of the would-be colonist to land. The commissioner was to issue land titles, maintain records of the titles, provide copies to the grantees, make maps for their regions, and make sure surveys were accurate. Unlike the modern land commissioner, the colony commissioners held a number of other responsibilities. They were to issue the oath of allegiance to new settlers, appoint surveyors, select the sites and lay off the streets for new towns, provide for and

maintain ferries within their jurisdictions, and preside over the election of town councils.¹⁷

Three types of commissioners functioned in East Texas during the Mexican period. First there were those appointed to specific colonies. For example, the Galveston Bay and Texas Land Company had one commissioner, George A. Nixon, who issued over 1,000 titles in approximately one year. The second type of commissioner included those appointed to issue titles outside the boundaries of colonies. Jose Francisco Madero, George W. Smyth, and Charles S. Taylor issued 442 titles to lands sold or granted by the government in East Texas. The third group, though not strictly speaking commissioners, were the *alcaldes* (magistrates) of Nacogdoches, who received authority from the state to grant lands within their jurisdictions. Between the various issuing authorities in *Coahuila y Texas*, some 3,700 titles were distributed. Of these, individuals with Hispanic surnames received 680.¹⁸

The closing of the land offices in Texas on November 13, 1835, marked the end of Mexican control over most of Texas' public lands. It did not, however, mark the end of Mexican and Spanish influences on the land system of Texas. All valid titles were accepted and all legal issues concerning Spanish and Mexican land grants remained subject to Mexican civil law when the Republic adopted English common law for its legal system in 1840. Another feature of the *Coahuila y Texas* land system accepted in the Republic, and in force today, is the Texas *vara*, or yard, of 33 $\frac{1}{3}$ inches. The Texas *vara* was the result of early surveyors agreeing to standardize the Mexican *vara*, which lacked a specific length.¹⁹

Land distribution after independence also drew upon Mexican usages. In establishing the various categories of headrights, the Texas government made provisions for granting those married men who had arrived before independence the league and a labor to which they were entitled under Mexican law. Many East Texas residents, who for one reason or another had been unable to acquire valid titles during the Mexican period, successfully petitioned the Republic for their lands under the headright provision of the 1836 Constitution. The Texas Congress was later forced to pass an act "To Quiet the Land Titles within the twenty Frontier Leagues bordering on the United States of the North," in 1841, in order to settle the matter of fraudulent claims in that part of the country.²⁰

The principal concern of Texas' government immediately after independence was the national debt. Population and resource poor, the only asset of the Republic consisted of its lands. Headright, pre-emption, and empresario grants were designed specifically to answer the population problem. The issuance of bounty and donation warrants and Confederate scrip was designed to reward veterans in lieu of monetary rewards. Land scrip, as well as a number of special acts, effectively conveyed public lands for the reduction of debt. Land was also granted in an effort to promote internal improvements, for instance, canals, railroads, and industry.

Finally, public land was made available to the counties for education purposes, and special grants were made to the public university system of the state.²¹

Documentation for these grants is preserved at the General Land Office. In the Spanish Collection, formerly the Spanish Archives, the researcher finds that although a few of the land titles record the long rule of Spain in Texas, the majority show the colonization efforts prior to Texas independence in 1836. A preliminary inventory indicates that the Spanish Collection contains *empresario* contracts, land titles, field notes, family registers, correspondence, mission property inventories, government communications, reports of officials, and character certificates. At this time, the primary guide to the collection is the *Index to Field Notes, Plats*, which indexes more than 3,700 titles. The index is arranged alphabetically and gives information on the location of the document, date of title, amount of land, colony or commissioner's name, county where located, situation, original field notes, location, survey number, and miscellaneous remarks. A valuable source of genealogical information is Gifford White's *Character Certificates in the General Land Office of Texas*, which accesses twenty-eight boxes of the certificates, dated 1825-1836, required of individuals who sought to settle in Texas. According to White's survey, the bulk of this collection pertains to the Department of Nacogdoches, which covered all of East Texas. Other useful guides are Villamae Williams' *Stephen F. Austin's Register of Families*, Gifford White's *1830 Census of Texas*, and colony censuses and registers which have been transcribed and/or translated.

Two major projects are underway to make the Spanish Collection more accessible to researchers. First, a detailed inventory is being made of the records. The goal is to prepare a descriptive guide which will be available to other archives, libraries, and individuals. Second, although the General Land Office has been required by law since 1837 to employ a translator to translate all Spanish-language documents to English, the project has never been finished.²² Our translator has embarked on a systematic program designed to clean up old translations and to provide translations of those documents previously not done.

The documentation in the Spanish Collection not only serves a historical and genealogical purpose but continues to be used for surveying and legal matters. Some records, for instance those regarding Pelham Humphries, whose land lies at the core of the Spindletop oil field, are in almost constant use. For the most part, however, the Spanish and Mexican records help family and local historians trace the origins of many East and Central Texas communities and families.

Another major collection is the Land Grant Collection. This collection contains records for the headrights given to the heads of families and single men who settled in the Republic of Texas; the bounty grants given for service in the Army of the Republic; the donation grants for special service during the revolution (in prescribed battles); pre-emption grants

to those who homesteaded a tract of land; and scrip for Confederate veterans and for internal improvements, such as irrigation canals, roads, and ship building. The records are filed by land district, type of grant, and file number. Land districts were created by legislative act in 1846 from the counties existing during the Republic. Of the thirty-six original land districts, part or all of eighteen districts could be found in East Texas, with the counties of Smith, Cherokee, Nacogdoches, and Angelina in the Nacogdoches Land District; Rusk County in the Rusk Land District; San Augustine in the San Augustine Land District; and Tyler, Polk, San Jacinto and Liberty in the Liberty Land District.²³

The researcher should not stop with the Spanish Collection and Land Grant Collection because there are other sources of information to be found in the archives. Among these records are German Contracts, court of claims reports and correspondence, returns of clerks for county Boards of Land Commissioners, colony contracts, railroad and canal contracts, patents, deeds of acquittance, school land files, and scrap or vacant land files. Within these files, researchers can discover information pertaining to East and Central Texas lands.

As with the Spanish Collection, the Republic and state land records can be put to a variety of uses. Genealogists, surveyors, and attorneys are the primary users. But historians and other scholars can find information on which to build their studies. Land settlement patterns, women as grantees, land title disputes, biographical sketches, and land surveyors are just some of the subjects which can be researched in the records. And, as always, those scholars who are creative can determine many other topics which can be uncovered in these records.

The history of Texas is not only the story of its people and its institutions, but also of its public lands. After all, the lands were used to attract settlers and to encourage economic development. This story can be traced in the records of the General Land Office. If historians fail to make use of these documents, they fail to write a complete history of Texas.

NOTES

¹H.P.N. Gammel, ed., *The Laws of Texas, 1822-1897*, 10 vols. (Austin, 1898), I, pp. 1081, 1276-84. Hereinafter cited as Gammel.

²Gammel, I, pp. 1081, 1276-84.

³Mattie Austin Hatcher, *The Opening of Texas to Foreign Settlement, 1801-1821* University of Texas Bulletin, No. 2714, April 8, 1927, pp. 55-59; Ohland Morton, "Life of General Don Manuel de Mier y Teran, As It Affected Texas-Mexican Relations," *Southwestern Historical Quarterly* 47 (July 1943), p. 32, hereinafter cited as SHQ; Eugene C. Barker, *The Life of Stephen F. Austin: Founder of Texas, 1793-1836* (Austin, 1969), pp. 23-32.

⁴Governor Antonio Martinez to Moses Austin, February 8, 1821, copy in *Registro de los documentos y titulos en la primera empresa de colonizacion del Empresario Ciudadano Estevan F. Austin En Texas*, Spanish Collection, Archives and Records Division, Texas General Land Office, Austin, Texas, hereinafter cited as GLO; Gammel, I, pp. 27-30.

⁵*Recopilacion de leyes de los reinos de las Indias*, Libro 4, titulo 5, ley 6 and ley 11.

⁶Gammel, I, pp. 27-30, 31.

⁷Gammel, I, p. 38.

⁸Gammel, I, p. 41, article 8.

⁹Gammel, I, p. 41, article 8.

¹⁰Message of the Governor of the State of Coahuila and Texas to the Legislature of the States, January 2, 1834, census report for the state, Spanish Collection vol. 57, p. 62, GLO; see also, Barker, *Life of Austin*, chapters 4 and 11.

¹¹Eugene C. Barker, ed., *The Austin Papers*, American Historical Association *Annual Report*, 1919, 2 vols., (Washington, D.C., 1924), I, p. 948.

¹²Madero to Musquiz, October 18, 1830, Spanish Collection vol. 44, p. 1; Papers concerning land grants to Atascosito settlers, November 26, 1827, vol. 52, p. 247, both in GLO; *Austin Papers*, III, p. 398.

¹³Barker, *Life of Austin*, pp. 148-65.

¹⁴Barker, *Life of Austin*, p. 271.

¹⁵Mary Virginia Henderson, "Minor Empresario Contracts for the Colonization of Texas," *Southwestern Historical Quarterly* 32 (July 1928), pp. 4-10, 10-12; Henry B. Prentiss to Gilbert Allen, June 20, 1833, R.G. Partlow Collection (unprocessed), Sam Houston Regional Library and Research Center, Texas State Library, Liberty, Texas.

¹⁶Gammel, I, p. 31, second paragraph.

¹⁷Gammel, I, p. 45, article 38; 180.

¹⁸Compiled from *Index to Field Notes, Plats, Spanish Archives* (GLO, 1981).

¹⁹Gammel, II, p. 177, section 2.

²⁰Gammel, I, p. 542, 641.

²¹Thomas Lloyd Miller, *The Public Lands of Texas, 1519-1970* (Norman, Oklahoma, 1972), see chapters 5,6,7.

²²Gammel, I, p. 1415.

²³Gammel, II, p. 1540; Land Districts in Texas (map), GLO.