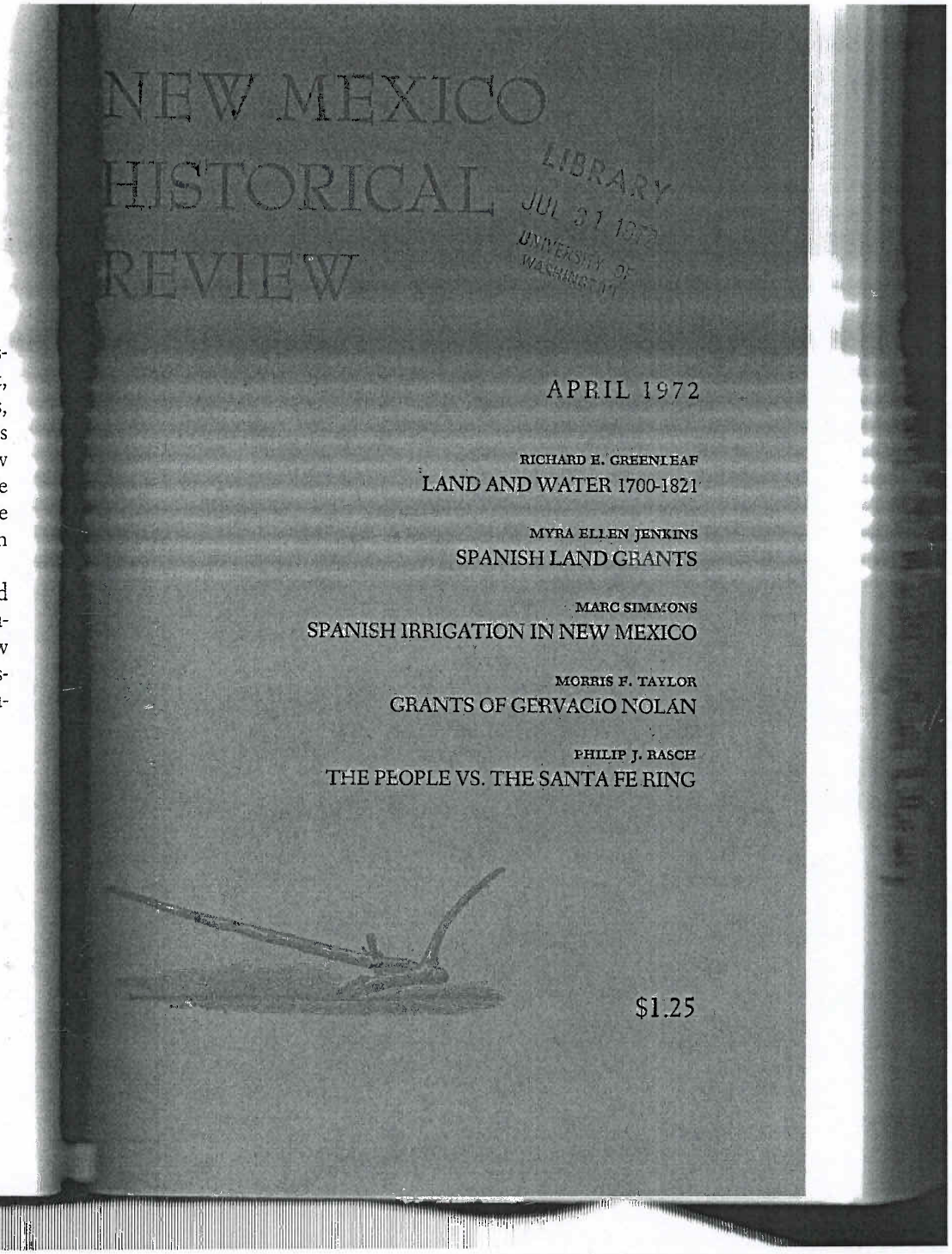
NEW MEXICO HISTORICAL REVIEW

A quarterly journal for the publication of legitimate historical material of New Mexican and regional interest, including scholarly articles, documents, bibliographies, and book reviews. Geographically, the region comprises the area of the Spanish Colonial Viceroyalty of New Spain north from Mexico City. This does not exclude the publication of material deemed relevant to the general background and understanding of this region even though not dealing specifically with it.

The NEW MEXICO HISTORICAL REVIEW is owned and published by The University of New Mexico. Manuscripts, editorial correspondence, and books for review should be addressed to The Editor, New Mexico Historical Review, The University of New Mexico, Albuquerque, New Mexico 87106.

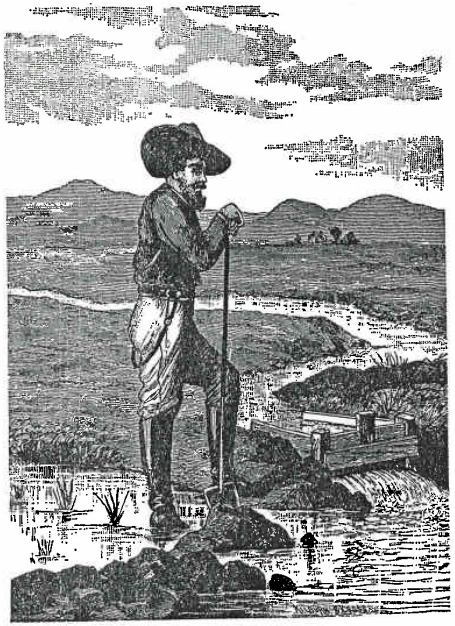


HP23371

LAND AND WATER

IN MEXICO AND NEW MEXICO 1700-1821

RICHARD E. GREENLEAF*



THE SPANISH KING was economic lord as well as political master of the "New Spain" colonized by his subjects in the three centuries after 1519. In theory he possessed all of the land, water, and minerals in Mexico. By royal concession he gave grants of usufruct of land and water to his subjects by the formal legal act of *gracia* or *merced*. The Hapsburg kings of Spain in the sixteenth and seventeenth centuries devised a corpus of land and water law for Mexico which rested upon Spanish legal theory, modified to meet the needs of the new world, which reflected growing Hapsburg absolutism, and which took into account Indian ideas of land use derived from their own historical tradition. These laws were codified in the monumental *Recopilación de leyes de los Reynos de las Indias* of 1681, a condensation of some 100,000 royal pronouncements on Indian affairs after 1492. The resultant 6,500 laws in the *Recopilación* were designed as a primary guide to substantive and procedural law in America.[1] The *Recopilación* was not a complete code. Book Two, Title One, Laws One and Two specified that matters not covered by the *Recopilación* were to be decided by the laws of Castile, including the *Siete Partidas*. Many principles of land tenure and water rights, therefore, must be studied in terms of the general laws of Spain as well as through the provisions of the

*This essay on the development of land policy is a prospectus of a wider analysis of land grant policies from a work to be entitled "The Proprietorship of Land and Water in the Hispanic Southwest."

HP23372

Recopilación. Archival investigators often suspect that it was Spanish custom that conditioned legal practice in remote areas of the empire, especially in northern Mexico, rather than Hapsburg absolutist legal theories contained in the *Recopilación*.

SOURCES FOR THE EVOLUTION OF LAND POLICY TO 1700

FORTUNATELY for Mexican litigants of the sixteenth and seventeenth centuries and for historical investigators today, two codes were developed during the first hundred years that provide legal continuity: the Vasco de Puga *Cedulario* of 1563 and the Diego de Encinas *Cedulario Indiano* of 1596.[2] These laws, along with other royal and viceregal ordinances, were later summarized in the *Recopilación*. In July 1573, Philip II issued his important *Ordenanzas para los nuevos descubrimientos* which gave detailed instructions for future pacification and colonization and minute rules for founding and organization of Spanish colonial municipalities. These ordinances also found their way into the *Recopilación*. As the northward advance of New Spain progressed in the seventeenth century these instructions governed conquest and colonization of the interior of Spanish North America.

Early in the sixteenth century Viceroy Antonio de Mendoza issued land ordinances which included instructions on size of land grants and how to measure them. In 1567 Viceroy Marqués de Falcés amplified the Mendoza rules and provided a fundamental ordinance on land measurement, splendidly detailed and technical, which was translated by Adolph Bandelier and published by Charles W. Hackett in 1923. More recently Charles Gibson made a corrected translation clearing up some terminological problems. An accurate table of measurement of various sizes of Spanish municipal and rural landholdings was prepared by John A. Rockwell in 1851 when United States lawyers became interested in Spanish land law as a result of the Mexican Cession.[4]

The pattern of land grants for ranching and grazing has been examined in detail by William Dusenberry in 1963.[5] Helen Phipps published a competent summary of municipal and rural landholding in 1925.[6] Betty E. Dobkins has provided the most detailed and sophisticated analysis yet available in English of Iberian and Spanish colonial water law applicable to the Southwest. Her extensive bibliography shows remarkable mastery of the Spanish sources.[7] Wells A. Hutchins has described water law in colonial Mexico and the Southwest as it related to irrigation and appropriation of waters.[8]

The magisterial study on the evolution of royal legislation dealing with land tenure, its history, its theory and practical application was published by José María Ots Capdequí, *El régimen de la tierra en la América española*.[9] Any investigation of settlement patterns and municipalities as they relate to land tenure in colonial Mexico must rely on Rafael Altamira, "Plan y documentación de la historia de las municipalidades (Siglos XVI-XVIII)," and other valuable analyses of economic and political functions of local government in *Contribuciones a la historia municipal de América*, 1951.[10] Both works have extensive treatment of provisions of the 1681 *Recopilación* which pertain to colonization and landholding, particularly Books Four and Six, which lay the foundation for land and society in Bourbon Mexico and the Spanish Borderlands.

EVOLUTION OF LAND POLICY IN BOURBON MEXICO 1700-1812

IN THE FIRST decades of conquest and colonization in Mexico there was no discernible development of great haciendas or large landed estates, and the crown protected the Indian population's property rights.[11] Modern research has linked the origin of haciendas to severe population decline in the second half of the sixteenth century.[12] Studies show that as Indian population declined, Spanish landholders increased the size of their properties, expanding on to lands previously occupied by the natives. As Indian

HP23373

population began to grow in the seventeenth and eighteenth centuries it had to be confined to restricted areas because Spaniards had monopolized choice lands. Although New Mexico Indian population did decline during this same era, it never suffered the drastic decreases of central Mexico. Nevertheless, Spanish settlers did encroach on Pueblo lands. By the end of the sixteenth century it had become apparent to royal officialdom that many people were squatting on royal lands which had not been assigned to them and that many others had expanded their actual holdings far beyond boundaries described in original grants, both on to royal lands and into Indian communities.

In order to regularize legal structure of land tenure in New Spain the crown allowed the ancient process of *composición* to become standard procedure for legalization of defective land titles.[13] Philip II issued a royal cédula to that effect in November 1591.[14] Throughout the seventeenth century *composiciones generales* were announced so that those holding shaky or spurious land titles might get clear title after payment of a fee. While these "adjustments" did increase royal revenues when the crown was in need of money, for the most part the charges for *composición* were moderate and periods of grace for obtaining clear titles were lenient. *Composición* on the one hand and *congregación* (consolidation of several villages owing to population decline) on the other were vehicles for land-grabbing by unscrupulous Spaniards, even though the laws carried with them the usual provisions:[15]

> that no injustice should be done to Indians, that the possession of property acquired unlawfully from them should not be confirmed, that their communal lands should in no case be invaded, that Indian villages should also be admitted to the privilege of *composición* and should be given preference in case of a clash of interests.

Specific instructions on how to proceed with actual *composiciones* were issued by Viceroy Salvatierra in 1643, and these were expanded and made "more scientific" by the Audiencia of Mexico on June 3, 1717.[16] Related to *composición* was another ancient device for acquiring title to land, the *denuncia,* formalized in colonial

Mexican procedural law by a royal decree of November 24, 1735.[17] Under this rule a citizen of New Spain might "denounce" or file a claim on vacant royal lands and on other lands known to be held illegally without title. Then he might proceed with a *composición* in order to obtain clear title in his own name. In each case, *composición* and *denuncia,* titles, oral declarations, and other corroborative documents had to be examined by competent judges before any action was taken. Often Indians and other humble folk had great difficulty offering legal proof of ownership and continuous occupancy, but thick bundles of surviving documents in the archives show that the Indians of Central Mexico became very astute in such legal matters.

Reform of land tenure was implicit in many administrative and economic reforms announced by the Bourbon Kings after mid-century. The 1735 cédula providing for *denuncia* tried unsuccessfully to systematize rules of landholding and to expose fraudulent titles. It probably did little to clarify actual boundaries of private properties and vacant royal lands. Ots Capdequí feels that the October 15, 1754, cédula was the most important Bourbon attempt to reform land tenure in the eighteenth century.[18] Once again Viceroys and Presidents of Audiencias assumed the exclusive role of selling and *composición* of vacant royal lands. While they might appoint subdelegates or land commissioners, it was understood that the king held viceroys and judges personally responsible for his land policies. Not only did he wish to increase revenues; he also intended to create more of a small landholding class and to protect it from the evils of latifundia. The king ordered that Indians and mestizo groups (*individuos de distintas castas*), who were the small farmers of the colony, be protected in their rights. He charged viceroys to proceed "mildly, temperately and moderately" with these humble folk who might have difficulty proving title to their lands, and to see that acts of usurpation against them in the past were rectified. If at all possible they were to gain land rather than to lose it as a result of the new policies.

The 1754 cédula used the first year of Bourbon rule, 1700, as its departure for agrarian reform and it relied heavily on the

HP23374

Recopilación. Owners of land acquired prior to the turn of the century were to be confirmed in their titles even though they might have defective instruments of possession—provided that they followed proper procedures to normalize their titles and provided that they were cultivating or otherwise using the land. These individuals were to be free from any encroachment by processes of *denuncia* or *composición* of their lands by second parties any time in the future. As for property acquired after 1700, the titles were to be clarified by royal authorities depending on the legitimacy of claims. Those who could prove "continuous and ancient possession" of the land since 1700, even though they lacked royal confirmation, were not to lose title or possession if they initiated *composición* proceedings within a specified time. Others who had legitimate titles merely had to present them to the proper authorities and have them registered in accordance with the new law. Fees charged were moderate, no more than two to three per cent of the value of the land in question, and all manner of safeguards were written into the procedures to prevent fraud and collusion. Substantive provisions of the 1754 cédula continued to be enforced in New Spain until the Cortes of Cádiz met during the Mexican Independence movement and framed the Spanish Constitution of 1812. Viceroys of Charles III (1759-1788) and Charles IV (1788-1808) in Mexico modified procedures for implementing the cédula, but intent of the law remained the same.

Innovative administrative changes in the government of New Spain were put into effect between 1776 and 1786. In order to curb foreign intrusion and to cope with Indian depredations more effectively, the north Mexican states and the Spanish Borderlands of the American Southwest as far east as Louisiana were organized in 1776 into a military jurisdiction, a Comandancia General of the Provincias Internas.[19] The Commandant General—eventually there was a commandant for the East and one for the West—administered the area under military codes and exercised considerable authority over land and water rights in presidio locales. In 1786 the entire provincial jurisdiction of New Spain below the audiencia level was reorganized into an Intendancy system, and

lengthy ordinances for governing each Intendencia were composed by Colonial Secretary José de Gálvez and the Council of the Indies. Article Eighty-one of the ordinance of Intendants for New Spain provided that:[20]

> The intendants shall also be the sole judges in any cases that may arise within the area of their provinces concerning sales, compositions, and distributions of the royal lands or private domains. The owners and those who seek new land grants shall allege their rights and make their petitions before the said intendants in order that, after these papers are drawn up legally by an advocate of my royal treasury whom they shall appoint, they shall decide them according to law with the advice of their ordinary assessors; and they shall permit appeals to the *junta superior de hacienda*, or if those interested do not enter any recourse, (the intendants) shall give account to the *junta* with the original proceedings when they judge them to be in condition to issue a title, so that when the proceedings are reviewed by that body, it shall return them or issue the said title if there be no objection; or, if correction does occur, before issuing it, command them to do the things which are noted as being deficient and ordered done.

The ordinance further stipulated that officials of the Junta Superior, intendants, subdelegates, and other officials were required to apply the rules of the 1754 cédula and Book Four, Title Twelve of the *Recopilación* in all land matters. Since the Intendancy system came in for criticism by local officialdom in New Spain for a variety of reasons,[21] the land ordinance of intendants was again codified by a cédula of February 12, 1796. The king reinstated the 1754 decree by which viceroys and presidents of Audiencias had the sole power to pass on land grants, sales, or *composiciones*.[22] An exception to the 1796 order was made by Charles IV on March 23, 1798, when he empowered intendants to deal with sales of land and *composiciones* when the total value of the transactions was less than two hundred pesos, reserving the larger decisions to the central government.[23] Two cédulas of 1805 dealing with land transactions in the Intendancy of Durango and

HP23375

in the Intendancy of San Luis Potosí show that the 1796 and 1798 rules were being obeyed by the citizenry and the intendants on the brink of the Napoleonic Invasion of Spain.[24]

Unfortunately the Bourbon monarchs never completed a revised *Recopilación* planned to incorporate new ordinances and procedures enacted after 1681. Recently two incomplete works have partially filled the gap: *Disposiciones complementarias de las leyes de Indias*, published in three volumes in Madrid in 1930, and Manuel José de Ayala, *Notas a la Recopilación de Indias*, two volumes issued in Madrid during 1945-1946. For the most part, however, one must have recourse to lengthy runs of royal cédulas and juridical records of the Audiencias for the development of land policy in Bourbon Mexico and the Hispanic Southwest.

NEW MEXICO LAND TENURE UNDER THE BOURBONS

There is no comprehensive study of New Mexico land policy during the years 1700 to 1821. Ways in which Bourbon administrative reforms under the Provincias Internas (1776) and the Intendancy System (1786) affected landholding are largely unknown. Available documentation in the Spanish Archives of New Mexico and the records housed in the United States Surveyor General's office appear to indicate that Bourbon Reforms brought little or no change in New Mexico land tenure.[25] Yet the detailed study of Marc Simmons, *Spanish Government in New Mexico*, which covers the era from 1776 to 1821, clearly shows that the colony was not isolated from the rest of New Spain at this time and that commandants general and intendants did influence New Mexican developments.[26] What seems clear is that established custom and law dating from sixteenth- and seventeenth-century Spain continued to shape land policy in the late New Mexico colony. These customs, laws, and the Hapsburg *Recopilación* as they relate to land grants and transfer of title have been surveyed by William A. Keleher, "Law of the New Mexico Land Grant," and France V. Scholes in "Civil Government and Society in New

Mexico in the Seventeenth Century."[27] Marc Simmons and Myra Ellen Jenkins have traced the role of the governor of New Mexico and his eight alcaldes mayores in granting land and clearing up titles in the eighteenth century.[28]

Because instruments of founding (town charters) for eighteenth-century New Mexico towns are no longer extant, or never did exist, historians are largely ignorant of the role played by municipalities in the developing system of land tenure. Similarly, available records for Indian settlements, either confirming their holdings or granting them additional lands, have been lost. An idea of the spatial distribution of land grants over the eighteenth-century colony can be gotten from Frank D. Reeve's chapter dealing with "The Growth of Settlements" in his three-volume *History of New Mexico*.[29] Marc Simmons's "Settlement Patterns and Village Plans in Colonial New Mexico" gives a valuable overview of the "urban" side of the colony.[30] The Greenleaf analyses of documentation for the founding of Albuquerque in 1706 and land problems in Atrisco between 1722 and 1769 fill in some of the gaps in historical knowledge.[31] Translations with lengthy notes of ecclesiastical visitations of New Mexico in the 1760's and early 1770's by Eleanor B. Adams and Fray Angelico Chavez furnish crucial eyewitness accounts of both urban and rural land tenure.[32]

Because of historical circumstances and customs which are not clear, the eighteenth-century New Mexico colony was governed at the local level by provincial officers rather than municipal cabildos or ayuntamientos.[33] The scattered nature of homes and farm plots within loosely defined town boundaries made the New Mexico municipality appear more like a modern county than an urban center. Perhaps this pattern led to the ascendancy of the alcaldía mayor over the pueblo, villa or ciudad. Spanish custom defined the municipality as an urban area plus its rural environs. New Mexico settlements appear to have emphasized this characteristic in the extreme, thereby constituting municipalities in effect as a certain number of people domiciled within a vague radius of a plaza that was far removed from many of their homes.

HP23376

Given such a situation it is clear that alcaldes mayores rather than regidores (aldermen on a city council) were more appropriate administrators of town functions and of land policy.

The historical development of these "amorphous" municipalities made it difficult to apply the minute rules and regulations of Book IV, Title Seven of the *Recopilación* to New Mexico villages, as well as to demark their municipal grants (*fondo legal* or townsites) and their *ejidos* or commons. A similar circumstance prevailed among the Indian pueblos where houses and plots were scattered over a wide area.[34] Myra Ellen Jenkins has touched on this problem in her studies of Laguna and Taos, but our information on actual demarcation of boundaries (*términos*) of Indian villages is woefully incomplete. Spanish attitudes and Mexican viceregal views on *términos* of Indian villages appear to derive from policies in central Mexico, with the implicit view that those remedies were applicable throughout the Provincias Internas. In his nearly definitive treatment of Central Mexico Charles Gibson concluded:[35]

> Legally, then, a town of the late colonial period consisted of a square composed of the 600 vara measurement (known to the nineteenth century lawyers as the *fondo legal*), and an *ejido* of one league, in addition to whatever other lands the viceregal government might judge that it required. . . . But late colonial courts often regarded all property outside the 600 vara measurement, and all property not duly issued to Indians in formal viceregal grants, as available for Spanish occupation. . . . In the seventeenth and eighteenth centuries the rules regarding the 1,000 or 1,100 vara interval (between Indian pueblos and Spanish settlements) and the *ejido* of one league were in almost all cases ignored, and the 500 or 600 vara rules were reinterpreted as definitions, of the maximum limits of an Indian town.

Obviously Spain's hope that all lands and waters in the colonies would be used in common by their inhabitants broke down as population and settlements grew and as large amounts of arable and irrigable land were assigned by royal grants. In New Mexico

choice land was more restricted in acreage than in central New Spain. Even though population in the north was not as great as in the valley of Mexico, the same encroachments on Indian lands took place.

Groups of documents for eighteenth-century New Mexico in the Mexican national archives confirm that customary legal procedures and principles of Book Four, Titles Seven and Twelve of the *Recopilación* were observed by alcaldes mayores and governors from 1706 to 1769, and that there were classical applications of *denuncia* and *composición* in clarifying land titles.[36] As early as 1698 the Santa Fe Cabildo and the Governor had discussed the founding of a major new Villa "in the great grove of Doña Luisa, located on the banks of the Río del Norte some twenty-two leagues" down river below Bernalillo and Alameda.[37] Sometime during November or December of 1705 Governor Francisco Cuervo y Valdez dispatched his Procurator and Sargento Mayor Juan de Ulibarrí to the Albuquerque area to determine its suitability. The governor accepted petitions of families who wanted to settle there, and he circularized the rest of the colony announcing that there was to be a new municipality in the Bosque Grande of Doña Luisa. Ulibarrí reported that the site had all of the prerequisites required by the *Recopilación*, and the Governor empowered him to lead some thirty-five families there and give them royal possession.[38] On April 24, 1706, Governor Cuervo y Valdez certified the founding of Albuquerque in the following terms: "The Villa was sworn, taking into account the things ordered by His Majesty in his royal laws of the seventh title, fourth book of the *Recopilación*."[39]

In Atrisco litigation over land titles between 1722 and 1769 there are filed two documents which show that *composición* was a standard procedure in New Mexico.[40] Lucía Ana Durán y Chávez de Romero exhibited a 1722 writ which awarded her father title to land as a result of *composición*, and Isidro Sánchez Vañares Tagle in 1769 described the actual *composición* of the Atrisco lands known as Las Ciruelas when he testified on behalf of Sra. Chávez de Romero. The procedure began on April 27, 1722,

HP23377

when Antonio Durán y Chávez petitioned Lieutenant Governor Alfonso Rael de Aguilar for help in legalizing title to land next to his own farm in Atrisco, land which he was using and which his father had owned. Antonio claimed that his father forgot to include this plot of land in his will but that he meant Antonio to have title to it. He swore that his mother, brothers and sisters were willing to sign a document to that effect. Vañares Tagle had accompanied Rael de Aguilar from Santa Fe to Atrisco to help arrange the matter. Vañares swore than Rael de Aguilar "had full powers to execute *composiciones*," and that he did this kind of adjustment of land titles "all the time (*cada día*)."[41] Having arrived in Atrisco, Rael de Aguilar gathered the family and neighbors together and examined the plot of land in question. Finding it vacant and without an owner, and with the consent of those present, Rael de Aguilar conferred title to the land on Antonio Durán y Chávez. The assembled personages marked off the boundaries and followed the ancient ceremony wherein royal possession was given, crying aloud, pulling up grass, and throwing stones.[42]

Throughout the eighteenth century New Mexico governors continued to administer the colony in their customary manner. There is scant evidence that commandants general or the intendants from Durango disturbed the procedures at the grassroots level. It is evident that customs in provincial government varied over the north Mexican provinces and in California. Yet the governors of California had many of the functions and prerogatives of their New Mexico counterparts when it came to allocation of land and founding new settlements.[43] Though California was excluded from the Intendancy system after 1786, it appeared that custom, substantive law of the *Recopilación*, and presidio code were somewhat similar to those of the rest of the Borderlands when applied to land and water problems. Several of the commandants of the Interior Provinces had also served as military governors in California; hence the tendency to try to apply California regulations and techniques to the rest of the com-

mandancy and to New Mexico in the late colonial period.[44] It is regrettable that a key document of 1800 apparently has disappeared from the Spanish Archives of New Mexico, because this "Copy of Instructions for the Formation and Management of New Settlements" might show the similarities and differences in California, Provincias Internas, and New Mexico procedures at the turn of the nineteenth century.[45] Whatever the content of these instructions, the New Mexico colony entered the last two decades of Spanish rule governed by custom and not by change in land policy. For example there is no evidence that the famous Plan of Pitic of 1789 was ever applied to New Mexico even though the Bourbon kings of Spain felt that it was a viable settlement plan.

THE PLAN OF PITIC 1789

THE PLAN OF PITIC clarified land and water law in the western Provincias Internas during the decade of the 1780's. Drawn by the office of commandant for the founding of a new town at Pitic, Sonora, the plan was given royal approval in 1789 as a blueprint for future settlements in Sonora, California, Nueva Vizcaya, and New Mexico. There were twenty-four provisions, specific instructions for government, and allocation of land and water rights. Throughout the document care was taken to distinguish between military jurisdiction and functions of the presidio commander and civil jurisdiction of the contiguous municipal government. Therefore, the Plan of Pitic was not strictly military in nature but a municipal ordinance as well, which depended heavily on principles of the *Recopilación*.[46]

Article One set forth fundamental authority for founding new settlements in the north. It stated that while Book Four, Title Eight, Law Six of the *Recopilación* prohibited viceroys, audiencias, and governors from granting titles to cities or towns, the code referred to settlements already established. Governors were free to proceed with new settlements under Book Four, Title Two, Law

HP23378

Seven, and to supervise their founding, government, allocation of lands and water, as well as to designate rank of pueblo, ciudad, villa. The instructions recapitulated Book Four, Title Five, Law Six of the *Recopilación* "relative to towns of Spaniards that may be founded by agreement or contract" and provided for the *fondo legal* or four-square-league townsite (on occasion arranged in rectangular fashion) as the town's land grant, for buildings, houses and commons. However, it was reiterated that "there shall not result injury to any private individual, nor to any Pueblo of Indians" as the laying out of the municipality proceeded.

Article Three of the Plan recounted the move to the locality of Pitic of the Presidio of San Miguel de Horcasitas under Title Eleven, articles One and Two of the New Regulations for Presidios September 10, 1772 and pursuant to Article Fifty of the Marqués de Casafuerte Regulations (April 20, 1729) as sanctioned by a new royal cédula of May 15, 1779. The function of the presidio was to offer security to the new town.[47] It was specified that military and civil jurisdictions remain separate and that either the governor, his lieutenant governor, or the alcalde mayor "make distribution of building lots, lands and water privileges," but that as soon as the number of settlers reached thirty, a municipal government was to be established comprising a cabildo, alcaldes ordinarios, and a mayordomo de proprios (city manager) to see to necessary town functions.

Specific reiteration of principles of the *Recopilación* for use of the *fondo legal* (four square leagues) were included in Article Six of the Plan of Pitic. For example:

> after the four league grant to the new town has been laid out and its boundaries have been marked off, its pastures, woods, waters, game, stone quarries, fruit trees, fish, etc. shall be for the common use and benefit of the Spaniards and Indians residing therein.

Furthermore it was stipulated in Article Seven that:

> The residents and natives shall enjoy equally the woods, pastures and waters and other features of royal and vacant lands outside of those

> assigned to the new settlement in common with the residents and natives of adjoining and neighboring pueblos as long as His Majesty does not reassign them.

Careful consideration was given in the Plan of Pitic to the method used in distributing town lots for the building of residences as prescribed in the *Recopilación*'s Book Four, Title Seven, Law Eleven. Provision was made for population growth and for future settlers by establishing an *ejido* (a commons) and a common pasture area, in addition to the *fondo legal*, suitable for subdivision at a later time. Plots of irrigable land for farming were to be distributed after a survey was made of how to build and construct main ditches and feeder ditches. The available land and water was to be distributed by the cabildo to families on the basis of need, family size, desire and resources to cultivate the land—with a limit of three grants per family under ordinary circumstances. The town officials were encouraged to arrange contiguous plots rather than scattered ones for a single family so that intensive cultivation could take place. Eight lots were to be reserved for municipal enterprise and the proceeds were to be deposited in a community fund.

It was to be understood by Article Eighteen that recipients of land initially gained only an inchoate right to title. Having cultivated, improved and occupied the plots for four years they were to be confirmed in their dominium, and only then were they empowered to sell the land. This principle depended upon provisions of the *Recopilación*, Book Four, Title Twelve, Law One. In addition the Plan of Pitic required the responsible officials, be they provincial or municipal, who founded new settlements to keep customary records required under the law. Article Seventeen prescribed that distribution of lands and town lots be entered into an official book or register "in which shall appear the original steps of distribution that were taken," and further the "book shall be kept in the archives of the ayuntamiento of the new settlement." Each settler was to be given

HP23379

> an attestation or certificate, explaining with brevity, distinctness, and clearness, the extent and boundaries of lots and land assigned to him which instrument shall serve as a title in fee for themselves, their children, and descendants.

Each title holder was to be informed, moreover, that should his copy of the title be lost, another copy could be obtained from the ayuntamiento archives.

Particular attention was paid to the distribution of waters and the administration of irrigation matters in Articles Nineteen through Twenty-three. The founding official was charged to

> distribute waters so that all the land that may be irrigable might partake of them, especially during the spring and summer. He shall divide the territory into districts, marking out to each one a trench or ditch starting from the main source. Each settler shall know the *acequia* from which his plot shall be irrigated, and he cannot and shall not take the water of another or in a greater quantity than his share.

A regular irrigation constabulary was prescribed in the Plan for future distribution of waters and for maintenance of the system, a model for governing the community acequia which drew its basic ideas from Spanish medieval and renaissance procedures and practices as they were transferred to the arid areas of New Spain by the colonizers.

Specifications for the new settlement at Pitic as drawn up by Engineer Mascaró were annexed to the Plan and these were ordered used as a guide for future town planning in the Provincias Internas.[48] Again, principles of Philip II's Ordinance of 157 and of the 1681 *Recopilación* were evident in Mascaró's specifications, Pitic's Plan, and the proposed municipal ordinances. Article Twenty-four of the Plan made it clear the municipality, through its cabildo, was to decide on subsequent policies regarding land and water allocation so long as their enactments did not contravene "general laws established by the Sovereign" and so long

as they submitted laws, policies and plans for royal approval. The Plan of Pitic itself was certified as having been approved by his Majesty and "ordered to be adopted by the other new projected settlements and by those that may be established in the district of the Commandancy General" as of November 14, 1789. It was issued in Chihuahua by the office of the Commandant under the signature of Juan Gasiot y Miralles.

Because the Plan of Pitic concentrated so heavily on the civil side of settlement patterns, Commandant Pedro de Nava felt the need to give further instructions to presidio commanders on land grants in solely presidial domain or in settlements that were organized out of actual presidios, especially since the Ordinance of Intendants issued in 1786 left this jurisdiction somewhat in question. On October 22, 1791, Captain Joseph Antonio Romeu circularized Nava's order to captains and commandants of presidios.[49] In it he proclaimed that legal advisers of the Commandancy had determined that Article Eighty-one of the Ordinance of Intendants, which reserved the right to grant title to land exclusively to intendants, did not apply to the *fondo legal* (two leagues in every direction) of the Presidio, and therefore "captains of presidios are authorized to grant and distribute house-lots and lands to soldiers and citizens who may solicit them." However, Nava continued his instructions:

> I have likewise determined, in order to avoid doubts and disputes in the future, that the captains restrict themselves henceforward to the quantity of houselots and lands within the four leagues already mentioned, without exceeding in any manner said limits, leaving free and open the exclusive jurisdiction belonging to the Intendants of Real Hacienda respecting the sale, composition and distribution of the remainder of the land in their respective districts.

By issuing this Order of 1791 the Commandant forced the government to re-study land grant jurisdictions. Initially the viceroy ratified Nava's Order, but when faced with objections from the Intendants, he revoked it on January 19, 1793. Copies of the

HP23380

revocation were circulated throughout the Provincias Internas, stating that henceforth only intendants had the jurisdiction over sale, allotment and *composición* of crown lands in their particular provinces.[50] It appears that no parallel order of revocation was given vis-à-vis civil authorities who founded new settlements under the Plan of Pitic.

In recent years some question has arisen over the date of the Plan since the Villa de San Pedro de la Conquista del Pitic was formally established in 1783.[51] Records in the Sevillian sections of the Audiencia de Guadalajara archives indicate that plans were made for establishing the Villa of Pitic years before the actual royal decree that elevated the prior settlement to the status of villa on August 29, 1783.[52] The documents include opinion of legal counsel on whether the title of "Villa" ought to be conferred, as well as a February 24, 1783, report which reviewed plans made for the founding. In his August 29, 1783, order, José de Gálvez gave Commandant General of the Provincias Internas Teodoro de Croix, permission to relocate other settlements in Pitic, and he commissioned Intendant Governor Pedro Corvalán to constitute the new Villa. On September 4, 1783, the Council of the Indies was instructed to draw up the necessary papers.

There is no doubt that a list of detailed instructions for founding the Villa of Pitic authored by Intendant Governor Corvalán or one of his subordinates accompanied these transactions. Whether there was a six-year delay while the crown approved the regulations as models for future settlements or whether the Chihuahua office of the Commandancy of the Provincias Internas assigned the date 1789 to the Plan of Pitic is a matter for conjecture. In any event, such a delay was in no way unusual, nor would it have been unusual for the Chihuahua authorities, looking to future application of the Pitic regulations, to assign a date when those regulations were refined and elaborated, perhaps because the crown and the Council of the Indies sent them back to the commandancy for final revisions in line with royal dictates.

What is more important for the land and water law of the Southwest today is not whether the Plan of Pitic was a genuine

document, or resolution of the question of its date, or its applicability to Arizona or New Mexico—but what the Plan contained. Actually there was little that was new or innovative. It presented a restatement, a reworking of Spanish colonial law already in effect in most areas of New Spain—principles that antedated the *Recopilación* of 1681 and many sixteenth- and seventeenth-century laws that were incorporated into the *Recopilación*. In effect, the individual provisions of the Plan of Pitic might have been the law of New Mexico in the seventeenth century a hundred or more years before the Villa of Pitic was founded. Those principles could well have comprised a "Plan of Santa Fe" in the seventeenth century or a "Plan of Albuquerque" in the eighteenth century, local customs notwithstanding.

The Plan of Pitic was a recognized legal code when land and water disputes arose in American California after 1849 and cities and individuals cited the Plan to substantiate their claims. First use of the Pitic documents was made by José Y. Limantour in the 1850's when he attempted to gain control over choice land in downtown San Francisco, entering into evidence at the same time Mexican Government documents that were later pronounced spurious.[53] Along with the *Recopilación* and several sets of ordinances for California presidios the Plan of Pitic became the legal basis for the California Pueblo Rights Doctrine, which began to evolve in the decade of the 1860's, when attorneys for the City of San Francisco started to defend land and water rights under the Plan of Pitic.[54] In April 1860 Justice J. Baldwin, delivering the majority decision of the Supreme Court of California in *Hart v. Burnett*, analyzed the California Pueblo Rights Doctrine in a lengthy commentary and referred to the Plan of Pitic in some detail.[55] As of that time a certified copy of the Plan, perhaps even the original, was filed "in the archives of California, now under the charge of the United States Surveyor General."[56]

While land litigation within the San Francisco township continued, John W. Dwinelle, attorney for the city, published an English translation of the Plan in 1863, and entered it into evidence in *San Francisco v. The United States* in 1864.[57] Other

HP23381

California cities, notably San Diego, have since 1924 called upon the Plan of Pitic to undergird their claims.[58] Other states of the Union formerly part of the Spanish Borderlands have recognized principles of the Plan of Pitic in litigation and in framing legislation. On December 12, 1958, the Supreme Court of the State of New Mexico decided that the law of pueblo rights, as known and recognized in California, was the law of New Mexico.[59] The New Mexico high court's decision encouraged the City of Albuquerque to press the pueblo rights doctrine in 1959 and 1960 as it contested with the State Engineer of New Mexico over the use of water.[60]

AGRARIAN REFORM 1754-1821

As THE GREAT landed estates began to form in the sixteenth century, partially owing to population decimation, a General Indian Court established in the 1570's tried to ensure that Indian lands be protected from usurpation.[61] Many of the Court's admonishments were incorporated in the *Recopilación* of 1681. The Spanish monarchy pronounced a whole series of regulatory cédulas designed to counteract growing latifundary holdings of the Church.[62] Hapsburg kings came to feel that large landholding was inimical to colonial progress and they initiated several schemes to redivide the land to induce small- and medium-size land tenure.[63] The Bourbon monarchs continued to issue regulatory cédulas stressing land reform, integrity of Indian lands, and protection of minifundia in the decrees of 1735 and 1754.

The Bourbon reforms envisaged land reform as essential to economic growth and mass betterment, and they listened seriously to critics of Mexican land tenure policies in the later eighteenth century.[64] The Franciscan friar Juan Agustín de Morfi, who toured the north Mexican provinces during 1777-1778, kept a diary in which he wrote about concentration of property in the hands of a small segment of the populace. Morfi complained about absentee land owners, miserable Indian villages without

adequate land to sustain them, and he opined it was the evils of hacienda that had caused depopulation of the area.[65] Viceroy Revillagigedo wrote an exposé of the hacienda system in 1791, charging that hacendados were usurping royal lands and strangling Indian villages with their encroachments. In 1793 he continued:[66]

> the unequal distribution of land is an obstacle to agricultural progress and commerce in these realms, and even more so when the lands are concentrated in entailed estates with absentee owners.

By 1799 the Bishop of Michoacán, Fray Antonio de San Miguel, and his protegé, Manuel Abad y Queipo, had written a treatise on land reform and social stability in New Spain, arguing that division of land was necessary for minimal economic growth and political stability.[67] In 1804, Bishop San Miguel proposed sweeping land redistribution and free allocation of remaining "royal land to Indians, mestizos and poor Spaniards."[68]

Groups of royal cédulas between 1805 and 1820 reflect the monarchy's determination to redistribute land in New Spain, the Provincias Internas included. Charles IV complained that his policies vis-à-vis land were not being followed in the Intendancy of San Luis Potosí by the Governors of Nuevo Santander, Nuevo León, Coahuila, and Texas. On February 14, 1805, he charged that large tracts of land had been sold to hacendados in these areas, tracts that remained under-populated and uncultivated.[69] Furthermore he stated that owners paid only a pittance for the new lands, inferring that prices were too high for humble folk but ridiculously cheap for the propertied classes. Charles IV demanded that these sales stop and he revoked several of the grants already made. The king indicated that the whole San Luis Potosí land tenure pattern reflected the misuse of *denuncia* and *composición* procedures, and he set limits on the amount of land that could be obtained in this manner. Similarly on August 12, 1805, Charles IV took large landholders in the Intendancy of Durango to task.[70] He disapproved of previously granted lands in remote areas of Nueva Vizcaya where hacienda owners raised cattle

HP23382

rather than crucially needed food for local consumption. The cédula commanded the Mexican viceroy to see that these lands were auctioned off to small farmers. A further reflection of royal concern for Indian and mestizo groups and their land is seen in the lengthy Taos litigations in New Mexico in 1815, when the governor went to great lengths to defend Indian rights.[71]

After Napoleon Bonaparte deposed Charles IV in 1808, and when the Mexican Independence movements began in September of 1810, the regency of the monarchy continued its attack on latifundary holdings. A cédula of November 5, 1812, issued in the name of the deposed king by the Cortes at Cádiz, commanded provincial officials in New Spain to proceed with land distribution to the Indians and to make use of Indian community funds to plant and harvest the land.[72] On January 4, 1813, the Cortes ordered in the king's name that all vacant royal lands in the Empire be transformed into private holdings. Lands were to be distributed as a bonus to loyalist defenders of the monarchy and to citizens of the Empire who did not possess any property.[73] Intent of the Cortes and the Constitution of 1812 was clear: the creation of a new class of small landholders. Details of how this order was received in New Mexico are lacking but documentation exists showing that the cédulas and ordinances of the Spanish Cortes were proclaimed in the Provincias Internas and in New Mexico.[74] A cédula of June 3, 1814, addressed to Viceroy Calleja in Mexico provided that land distribution take place according to the 1754 instructions,[75] and on November 23, 1820, the Minister of Gobernación of Spain gave detailed instructions to the Mexican viceroy on how to distribute royal lands, how to delineate boundaries, and how to issue title to the new properties.[76] By this time, however, the Mexican Independence movements were near success, and the new nation had to adopt its own rules for agrarian reform.

The foregoing survey of royal policies regarding land reform in the late Bourbon colony raises the interesting question of who was more liberal and enlightened when it came to Indian lands in Mexico and New Mexico, the Spanish monarchy or the liberal

insurgents? The implications of this question need to be studied in all of their ramifications by modern activists who concern themselves with Spanish land grant policy.

NOTES

1. *Recopilación de Leyes de los Reynos de las Indias* (Madrid, 1681). Perhaps the best edition is Madrid: Boix, 1841, 4 vols. Especially valuable for commentaries on the *Recopilación* are: Mariano Galván Rivera, *Ordenanzas de tierras y aguas: O sea formulario geométrico—judicial para la designación, establecimiento, mensura . . . de las poblaciones y todas clases de tierras, sitios, caballerías y criaderos de ganados mayores y menores y mercedes de agua,* 5th ed., revised (Paris, 1868); Joaquín y Martín Escriche, *Diccionario Razonado de Legislación y Jurisprudencia,* 4 vols. (Madrid, 1874-1876); Fabián Fonseca and Carlos de Urrutia, *Historia General de Real Hacienda,* 6 vols. (México, 1845-1853).

2. Vasco de Puga, *Provisiones, cédulas, instrucciones de su Magestad, ordenanças . . . para el buen tratamiento y conservación de los indios desde el año de 1525 hasta el presente 1563* (México, 1878); Diego de Encinas, *Cedulario Indiano,* 4 vols. (Madrid, 1945).

3. Charles W. Hackett, ed., *Historical Documents Relating to New Mexico, Nueva Vizcaya, and Approaches Thereto, to 1773,* 3 vols. (Washington, D.C., 1923), vol. 1, pp. 175-89; Charles Gibson, *The Spanish Tradition in America* (New York, 1968), pp. 128-34.

4. John A. Rockwell, *A Compilation of Spanish and Mexican Law, in Relation to Mines and Titles to Real Estate, in Force in California, Texas and New Mexico* (New York, 1851), p. 664. Pages 653-63 contain an excellent glossary of terms.

5. William H. Dusenberry, *The Mexican Mesta: Administration of Ranching in Colonial Mexico* (Urbana, Ill., 1963).

6. Helen Phipps, *Some Aspects of the Agrarian Question in Mexico. A Historical Study* (Austin, 1925), pp. 21-42.

7. Betty E. Dobkins, *The Texas Element in Spanish Water Law* (Austin, 1959), pp. 89-101, *et passim.*

8. Wells A. Hutchins, "The Community Acequia: Its Origin and Development," *Southwestern Historical Quarterly,* vol. 31 (1928), pp. 261-84.

HP23383

9. José Marí Ots Capedquí, *El régimen de la tierra en la Amér española durante el período colonial* (Ciudad Trujillo, 1946). The pr jected study by Richard E. Greenleaf, "The Proprietorship of Land a Water in the Hispanic Southwest," will follow the Ots model using inste of New Granada documentation employed by Ots a complete New Spa New Mexico series of manuscript sources.

10. See the whole series of Rafael Altamira y Crevea *et al., Histor Municipal de América* (México, 1951).

11. See G. Micheal Riley, "Land in Spanish Enterprise: Colon Morelos 1522-1547," *The Americas: A Quarterly Review of Inter-Amer can Cultural History*, vol. 27 (1971), pp. 233-49, which helps to revise on a sub-national basis the thesis of François Chevalier, *La Formación de l latifundios en México* (México, 1956).

12. Charles Gibson, *The Aztecs Under Spanish Rule. A History o the Indians of the Valley of Mexico, 1519-1810* (Stanford, 1964); Woo row Borah, *New Spain's Century of Depression* (Berkeley, 1951).

13. The Spanish noun *composición* (*componer* is the verb) is a leg term that should not be translated. It should not be rendered by th English cognate "composition." *Composición* was the judicial process o legalizing or adjusting defective land titles. In cases where it must b translated, the meaning *composición* conveys is "legalization" or "adjus ment." For the printed documentation on the ancient process of *compos ción* see Fonseca and Urrutia, *Real Hacienda*, vol. 4, pp. 399-400.

14. Archivo General de la Nación, México (AGN), Bienes Nacionale leg. 117, exp. 3.

15. Phipps, *Agrarian Question*, p. 32; and *Recopilación*, Book Fou Title 12, Laws 18, 19, 20, 21; Book Two, Title Twelve, Laws 16, 17, 1

16. AGN, Tierras, vol. 188, exp. 5.

17. AGN, Reales Cédulas Originales, vol. 74, exp. 80, fols. 1, 2.

18. See an excellent rendering of the *cédula* with copious explanator notes in Ots, *Régimen de la tierra*, Documento Uno, pp. 167-74. There a Mexican copy of the 1754 cédula in AGN, Reales Cédulas Originale vol. 74, exp. 80.

19. Presidio codes in the eighteenth century evolved from El Re lamento de Presidios del Marqués de Casafuerte, April 20, 1729, an solidified in a comprehensive ordinance of September 10, 1772, entitle Reglamento é instrucción para los Presidios. See Marc Simmons, *Spa ish Government in New Mexico* (Albuquerque, 1968), pp. 3-24, *et passi* for development of presidial codes in the Provincias Internas before an after 1776.

20. Lillian E. Fisher, "Translation of the Ordinances of Intendant

New Spain," in *The Intendant System in Spanish America* (Berkeley, 9), p. 153.

21. *Ibid.*, pp. 71-73, 75-82, 85-87.

22. AGN, Reales Cédulas Originales, vol. 163, exp. 73. This cédula es criticisms of subdelegados and other agents of intendants who dled land matters.

23. AGN, Reales Cédulas Originales, vol. 195, exp. 68.

24. AGN, Reales Cédulas Originales, vol. 196, exp. 81; vol. 195, p. 68.

25. See the twenty-two rolls of microfilm organized and indexed by Myra Ellen Jenkins *et al., Calendar of the Microfilm Edition of the Span- Archives of New Mexico 1621-1821* (Santa Fe, 1969) and Albert J. z, *A Guide to the Microfilm of Papers Relating to New Mexico Land* Grants (Albuquerque, 1960) for the Surveyor General's record. Ralph E. Twitchell, *The Spanish Archives of New Mexico*, 2 vols. (Cedar Rapids, 4), though dated, is still an important guide to the Calendar cited above.

26. Simmons, *Spanish Government*, pp. 25-41, 214-16, *et passim.*

27. William A. Keleher, "Law of the New Mexico Land Grant," MHR, vol. 4 (1929), pp. 350-71; France V. Scholes, "Civil Government nd Society in New Mexico in the Seventeenth Century," NMHR, vol. 10 5), pp. 71-111.

28. Simmons, *Spanish Government*, pp. 53-87, discusses the office of vernor; Myra Ellen Jenkins, "The Baltasar Baca 'Grant': History of an croachment," *El Palacio*, vol. 68 (1961), p. 50, discusses alcaldes mayores.

29. Frank D. Reeve, *History of New Mexico*, 3 vols. (New York, 1), vol. 1, pp. 311-32.

30. Marc Simmons, "Settlement Patterns and Village Plans in Colonial New Mexico," *Journal of the West*, vol. 8 (1969), pp. 7-21.

31. Richard E. Greenleaf, "The Founding of Albuquerque, 1706: An storical-Legal Problem," NMHR, vol. 39 (1964), pp. 1-15, and "Atrisco nd Las Ciruelas 1722-1769," NMHR, vol. 42 (1967), pp. 4-25.

32. Eleanor B. Adams, trans. and ed., *Bishop Tamarón's Visitation of New Mexico, 1760* (Albuquerque, 1954); Eleanor B. Adams and Angelico Chavez, trans. and eds., *The Missions of New Mexico, 1776* (Albuquer- e, 1956).

33. Simmons, *Spanish Government*, pp. 159-213, discusses local and unicipal government. See also his "Settlement Patterns and Village Plans."

34. See Jenkins, "The Baltasar Baca Grant," pp. 48-49, and "Taos Pueblo and Its Neighbors," NMHR, vol. 41 (1966), pp. 85-104.

35. Gibson, *The Aztecs Under Spanish Rule*, pp. 285-87.

HP23384

36. See Greenleaf, "The Founding of Albuquerque," pp. 6[illegible] "Atrisco and Las Ciruelas," pp. 12-14, 17-18.

37. AGN, Provincias Internas, Tomo 36, exp. 7.

38. AGN, Provincias Internas, Tomo 36, exp. 5, fols. 416-18; To[illegible] 36, exp. 8, fols. 463-68.

39. *Ibid.*, Lansing Bloom, ed., "Albuquerque and Galisteo, Certif[illegible] of their Founding, 1706," NMHR, vol. 10 (1935), p. 49.

40. "Albuquerque, San Felipe de, villa. Efigenia Durán y Ch[illegible] contra Andrés Antonio Romero y Ana Durán y Chávez, sobre posesió[illegible] los sitios nombrados Las Ciruelas y Atrisco, o Atlixco, 1722-1769," AG[illegible] Tierras, vol. 934, exp. 7.

41. *Ibid.*, exp. 7, ramo 6.

42. Keleher, pp. 350-71, reviews the various ceremonies of possess[illegible] customarily performed.

43. Technical legal analyses of land grant powers of Calif[illegible] Governors show how the *Recopilación* and presidial codes blended. S[illegible] *Hart v. Burnett*, 15 Cal. 530 (1860), pp. 548, 554, 565, *et passim*. T[illegible] projected Greenleaf study will cover in detail this case and other Californ[illegible] litigation on land grants.

44. "Extracts from the Regulations for the Government of the Provin[illegible] of California by Don Felipe de Neve, Governor, dated in the Ro[illegible] Presidio of San Carlos de Monterey, June 1, 1779, and approved by H[illegible] Majesty in a royal order, October 24, 1781," appendix two of Rockwell, *A Compilation of Spanish and Mexican Law*, pp. 445-50. See also AG[illegible] Reales Cédulas Originales, vol. 123, exp. 152, for royal authorization t[illegible] print these regulations on October 26, 1782.

45. Twitchell, *The Spanish Archives of New Mexico*, vol. 1, I[illegible] this item as number 1265: "New Settlements. Copy of instructions for t[illegible] formation and management of the same. 1800. Certified by Manu[illegible] Merino. 21 pages. Very legible." The Jenkins Microfilm Calendar does no[illegible] contain this document.

46. "Instructions approved by His Majesty, and made for the estab[illegible] lishing of the new town of Pitic, in the Province of Sonora, ordered to b[illegible] adopted by other new projected settlements (*Poblaciones*) and by those[illegible] that may be established in the district of this General Comandancy[illegible] 1789," cited from California Archives, Volume One, and translated a[illegible] John W. Dwinelle, *The Colonial History of the City of Francis[illegible]* (San Francisco, 1863), addenda VII, pp. III-X. See note 57, *infra*, fo[illegible] editions of Dwinelle.

47. Article 3, p. iii.

48. "Plan of Pitic," Articles 8, 11, pp. iv, v. Don Manuel Masca[illegible] was appointed Consulting Engineer (Ingeniero Extraordinario) in 17[illegible]

the Provincias Internas. He drew up models for *presidios* and proposed *presidio* reorganization in the early 1780's. An associate of Intendant Corbalán in Sonora, he designed buildings and helped improve irrigation technology for the new headquarters of the Commandant General at Arizpe in 1780. Mascaró built a dam at Pitic sometime in the early 1780's, where he must have worked with the Captain of Dragoons José Antonio Romeu at Pitic during 1783 when the new Villa of Pitic was planned. It is apparent that Mascaró used his "Plan for Arizpe" as a guide for the Plan of Pitic, but he was careful to distinguish military jurisdictions, which belonged to Romeu, from civil authority, which resided with Intendant Corbalán. See Archivo General de Indias, Sevilla (AGI), Audiencia de Guadalajara, legs. 517, 518, and Luis Navarro García, *Don José de Gálvez y la comandancia general de las Provincias Internas del Norte de Nueva España* (Sevilla, 1964), pp. 290, 321, 333, 359, 392-93.

49. "Order of Pedro de Nava, October 22, 1791," Rockwell, Appendix No. Three, p. 451.

50. See the order of revocation, January 19, 1793, in Twitchell, *The Spanish Archives of New Mexico*, vol. 1, pp. 367-69, which recapitulates and analyzes the Nava Order.

51. Pitic, Sonora (modern Hermosillo, Sonora) was established as a presidio in 1741. Navarro García, pp. 83-85, *et passim*. There were neighboring settlements of Indians and Spaniards, *rancherías* which are described in AGN, Provincias Internas, vol. 232; AGN, Tierras, vol. 1422, exp. 6, and in AGI, Audiencia de Guadalajara, leg. 118. The Mexican documents have data on water and irrigation in and around Pitic.

52. AGI, Audiencia de Guadalajara, legs. 517, 518. Brief descriptions of Pitic documents in Charles E. Chapman, *Catalogue of Materials in the Archivo General de Indias for the History of the Pacific Coast and the American Southwest* (Berkeley, 1919), pp. 545, 575, 583, 585.

53. *United States v. Limantour*, 26 F. Cas. 947 (N.D. Cal. 1858). Limantour was convicted of fraud but the conviction was overturned in *United States v. Reese*, 27 F. Cas. 746 (D. Cal. 1866).

54. *San Francisco v. United States*, 21 F. Cas. 365 (N.D. Cal. 1864).

55. *Hart v. Burnett*, pp. 541-42, *et passim*.

56. *Ibid.*, p. 538. The Archives were destroyed in 1906.

57. *San Francisco v. The United States*, pp. 367, 369. In all, John W. Dwinelle seems to have published three editions of the Plan of Pitic in 1863, 1866, 1867.

58. San Diego, 1924. Reprinted by order of the City Attorney.

59. *Cartwright et al. v. Public Service Company of New Mexico* (Dec. 1958) 66 N.M. 64, 343 P. 2d 654. See also Robert E. Clark, "The Pueblo Rights Doctrine in New Mexico," NMHR, vol. 35 (1960), pp.

HP23385

265-83, and Greenleaf, "The Founding of Albuquerque," pp. 3-4,

60. *The City of Albuquerque v. The State Engineer of New M* (August 11, 1960) District Court of Bernalillo County, No. 70800; *of Albuquerque, New Mexico v. S. E. Reynolds State Engineer of Mexico* (Dec. 14, 1962) Supreme Court of New Mexico, No. 7013.

61. The records of the Court are scattered through three great of the AGN, in Indios, Tierras, and General de Parte.

62. Clarence Haring, *The Spanish Empire in America* (New 1947), pp. 189-91 summarizes the legislation against increased C landholding.

63. See, for example, "Reparto y medida de tierra en el siglo X *Boletín del Archivo General de la Nación* (BAGN) Primera Serie, (1934), pp. 321-31, for induced minifundia.

64. Consult the excellent account by Enrique Florescano, "El prob agrario en los últimos años del virreinato, 1800-1821," *Historia Mex* vol. 20 (1971), pp. 477-510.

65. Juan Agustín de Morfi, *Viaje de indios y diario del Nuevo M* (México, 1935), pp. 46-47.

66. Eduardo Arcila Farías, *El Siglo ilustrado en América. Refo económicas del siglo XVIII en Nueva España* (Caracas, 1955), pp. 27

67. "Representación sobre la imunidad personal del clero," in J María Luis Mora, *Obras sueltas* (México, 1963), pp. 175-213.

68. Ernesto Lemoine, "Un notable escrito póstumo del obispo Michoacán, fray Antonio de San Miguel, sobre la situación social, ec ómica y eclesiástica de la Nueva España en 1804," BAGN, Segu Serie, vol. 5 (1964), pp. 33-55.

69. AGN, Reales Cédulas Originales, vol. 195, exp. 68.

70. AGN, Reales Cédulas Originales, vol. 196, exp. 81.

71. Jenkins, "Taos and Its Neighbors," pp. 100-04.

72. AGN, Reales Cédulas Originales, vol. 207, exp. 212. See BAGN, Primera Serie, vol. 13 (1942), pp. 603-09.

73. AGN, Reales Cédulas Originales, vol. 223, exp. 324, fols. 39

74. The Commandant of the Provincias Internas was sent a co the 1812 Constitution and other deliberations of the Cortes, A Historia, vol. 404, exp. 15. Public ceremonies of allegiance to the C stitución were conducted: "Documentos referentes al juramento a la C stitución en las Provincias Internas" in Rafael de Alba, *La Constitución la Nueva España* (México, 1912), pp. 82-84. For the career of P Bautista Pino, New Mexico's deputy to the Spanish Cortes, see Simm *Spanish Government*, pp. 203-04, 216, *et passim*.

75. AGN, Reales Cédulas Originales, vol. 210, exp. 121.

76. AGN, Reales Cédulas Originales, vol. 224, exp. 152.

SPANISH LAND GRANTS IN THE TEWA AREA

MYRA ELLEN JENKINS

With the effective colonization and settlement of New Mexico the Spanish colonist-soldiers under Juan de Oñate in 1598, the weight of Spanish law and imperial bureaucratic administration evolved during one hundred years of experience in the Americas came to bear upon the northern outpost of the Viceroyalty of New Spain.

The Pueblo Indians, already living in settled villages, became wards of the Crown entitled to the full protection of the innumerable royal cédulas and viceregal and *audiencia* ordinances passed for the benefit of the Indians. The intent of Spanish law and administration was both to protect the Indians in their personal and communal land-water rights, and to convert them to the Christian religion so that they would be loyal vassals of the Crown. Legally they were in a dual position, both vassals and wards.

Indian conversion, coupled with humane and equitable treatment of royal wards, however, was but one principle of Spanish colonial administration. Of comparable importance was the principle of economic exploitation of the New World for the benefit of the expanding empire. Often these principles were incompatible. The Indians were to be converted and protected, but Indian labor was an economic necessity to develop mining, industry, and agriculture, and to maintain the missions. Indian tribute was necessary to support the European ruling class. Conflicts were constant between the religious, whose chief task was conversion, but who had to be supported by their converts, and the Spanish colonials, whose motives were to settle, develop, and exploit the land.

HP23386