



---

The Texas-New Mexico Boundary Dispute along the Rio Grande

Author(s): J. J. Bowden

Source: *The Southwestern Historical Quarterly*, Vol. 63, No. 2 (Oct., 1959), pp. 221-237

Published by: [Texas State Historical Association](http://www.tsha.org)

Stable URL: <http://www.jstor.org/stable/30240862>

Accessed: 04/12/2010 13:00

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=tsha>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).



*Texas State Historical Association* is collaborating with JSTOR to digitize, preserve and extend access to *The Southwestern Historical Quarterly*.

<http://www.jstor.org>

# *The Texas-New Mexico Boundary Dispute Along the Rio Grande*

J. J. BOWDEN

BY ORDER of the nation's highest court, El Paso's Doniphan Drive leaves the state of Texas, proceeds through New Mexico for almost five hundred yards, and then re-enters Texas. There is no visible explanation for this unique intrusion, not even a curve in the road. The Texas-New Mexico boundary dispute along the Rio Grande, which is evidenced by this unusual situation, reached its climax in a decision rendered by the United States Supreme Court in December, 1927. The Court declared that the common boundary between Texas and New Mexico between  $32^{\circ}$  and  $31^{\circ}47'$  north latitude was a fixed line located in the channel of the Rio Grande as it ran on September 9, 1850.

The location of jurisdictional boundaries has played an important role in the history of the El Paso area. More than three hundred and fifty years of history are embraced in the background of the Texas-New Mexico boundary dispute. This controversy arose through the absence of well-defined boundaries separating the various Spanish, Mexican, and American political subdivisions exercising jurisdiction over the El Paso area.

Don Juan de Oñate was granted a concession by the viceroy of New Spain on August 24, 1595, for the colonization of New Mexico. The establishment of the province of New Mexico in 1598 cut off the indefinite northern jurisdiction of Nueva Vizcaya, but the location of the boundary line between the two provinces was not specified in the contract. The colonies established by Oñate served to push the hostile Indians farther north and formed a buffer zone between the savages and the interior settlements.

In order for the New Mexican colonies to grow and prosper, the Camino Real, which linked Santa Fe with Chihuahua and the interior, had to be maintained. To protect this vital line of communication, the New Mexico authorities established a settlement

in 1659 at the strategic river crossing at El Paso del Norte. These two waves of colonization activities were destined to clash along the banks of the Rio Grande and create jealous jurisdictional rivalries between Nueva Vizcaya and New Mexico. The boundaries between these two Spanish provinces were only vaguely defined because precise boundaries were unnecessary so long as the frontier settlements of the respective provinces were widely separated. Jurisdiction over the settlements in the El Paso District was formally awarded to the province of New Mexico after the Pueblo Revolt of 1680.<sup>1</sup>

Selfish and oppressive measures of the Spanish government led to ever-increasing Mexican discontent which culminated in open revolt in 1810 and independence in 1821. An empire was established in Mexico on May 18, 1822, but Emperor Agustín de Iturbide's frenzied reign was brief. He was deposed on March 8, 1823, and the Republic of Mexico was created on October 4, 1824.<sup>2</sup> The Supreme Congress of the Republic of Mexico divided the province of Nueva Vizcaya into two new provinces known as Chihuahua and Durango. By act dated January 31, 1824, the provinces of Chihuahua, Durango, and New Mexico were consolidated into the Estado Interno del Norte. Durango immediately protested. On July 6, 1824, Chihuahua and Durango were established as separate states; New Mexico was made a territory.<sup>3</sup>

Jurisdiction over the group of settlements in the El Paso District, which had been a part of New Mexico since 1680, was transferred to the state of Chihuahua on July 6, 1824. By a federal decree dated July 27, 1824, the northern boundary of the state of Chihuahua was established as "a line drawn from east to west from the town of El Paso del Norte, with the jurisdiction it has always possessed."<sup>4</sup>

On October 22, 1833, the congress of the state of Chihuahua created a geographical and topographical corps. Pedro Garcia-

---

<sup>1</sup>Anne E. Hughes, *The Beginning of the Spanish Settlements in the El Paso District* (El Paso, 1935), 389.

<sup>2</sup>George B. Anderson, *History of New Mexico* (2 vols.; Chicago, 1907), I, 56-57.

<sup>3</sup>Hubert Howe Bancroft, *History of the North Mexican States and Texas* (2 vols.; San Francisco, 1886-1889), I, 129.

<sup>4</sup>*Senate Executive Documents*, 33rd Cong., 2nd Sess. (Serial No. 752), Document No. 55, p. 48.

Condé and Esteban M. L. Staples of this corps were ordered to make an accurate survey and map of the state. According to the survey, the eastern boundary of Chihuahua struck the Rio Grande at approximately  $28^{\circ}59'$  north latitude and  $103^{\circ}8'$  longitude west of Greenwich. The east boundary continued due north from this point to the Pecos River near present Barstow, Texas. The boundary then ran up the river to  $32^{\circ}35'$  north latitude for the northeast corner of the state. The north boundary ran west along  $32^{\circ}35'$  north latitude, crossing the Rio Grande near present San Diego, New Mexico, to the Mimbres River. The north boundary then ran up the river to  $32^{\circ}57'43''$  north latitude and ran thence west to approximately  $109^{\circ}$  west longitude for the northwest corner of the state. The western boundary ran south from this point along the summit of the Sierra Madre Mountains.<sup>5</sup>

Because of French encroachment, the Spanish government commenced energetic efforts to colonize East Texas. Texas was established as a separate Spanish province in 1727,<sup>6</sup> but its boundaries were not defined. By a royal cédula of 1805, the western boundary of Texas was defined as a line running up the Nueces River from its mouth to its junction with Moros Creek; thence northeasterly to the Medina River; thence up that river to its source; thence in a direct line to the San Saba River; thence northwesterly to the point where the 32nd parallel north latitude intersects the 103rd meridian, and thence northeasterly to the point where the Red River intersects the 100th meridian.<sup>7</sup>

Texas and Coahuila were consolidated as a single state by the Mexican Federal Constitution of 1824, but the joint boundaries of the two former Spanish provinces remained unchanged.<sup>8</sup>

Two treaties were signed by *ad interim* President David G. Bur-

---

<sup>5</sup>Francisco R. Almada to J. J. B., August 9, 1957; A. Wislizenus, *A Tour to Northern Mexico* (Washington, 1848), 26; *Senate Executive Documents*, 32nd Cong., 2nd Sess. (Serial No. 665), Document No. 41, p. 8.

<sup>6</sup>Some ambiguity has existed concerning the date of the establishment of the province of Texas. Bancroft accepts 1727 with some reservations and cites evidence that supports 1720 as well as 1727 as the date of establishment.—Bancroft, *History of the North Mexican States and Texas*, I, 604.

<sup>7</sup>I. J. Cox, "The Southwest Boundary of Texas," *Quarterly of the Texas State Historical Association*, VI, 95-96.

<sup>8</sup>Z. T. Fulmore, "History of Texas Geography," *ibid.*, I, 16.

net and General Antonio López de Santa Anna after the defeat of the Mexican Army at San Jacinto. The first, or the treaty of Velasco, provided that hostilities between Mexico and Texas would cease, and the Mexican forces would withdraw beyond the Rio Grande. In the second, or secret agreement, Texas agreed to release Santa Anna on condition that he use his influence to secure Mexico's recognition of Texas' independence. Santa Anna thereby acknowledged the Rio Grande as the southern boundary of Texas.<sup>9</sup>

After the winning of independence from Mexico at the battle of San Jacinto, the Congress of the Republic of Texas on December 19, 1836, asserted that its southwestern boundary was located in the center of the principal stream of the Rio Grande.<sup>10</sup>

The Texas Boundary Act of December 19, 1836, radically changed numerous generally accepted political boundaries in the southwest. By claiming the Rio Grande as the southwestern boundary, Texas asserted *de facto* jurisdiction over a portion of the lands formerly embraced within the limits of New Mexico, Chihuahua, Coahuila, and Tamaulipas. Texas thus asserted its controversial claim to the ancient Mexican settlements lying east of the river in the Upper Rio Grande Valley, some of which had been in existence more than a century prior to the founding of Texas.

Mexico refused to recognize the Texas claim to the disputed area on the grounds that the secret agreement of Velasco had been extracted from Santa Anna under duress. This boundary controversy was destined to be settled only by force of arms.

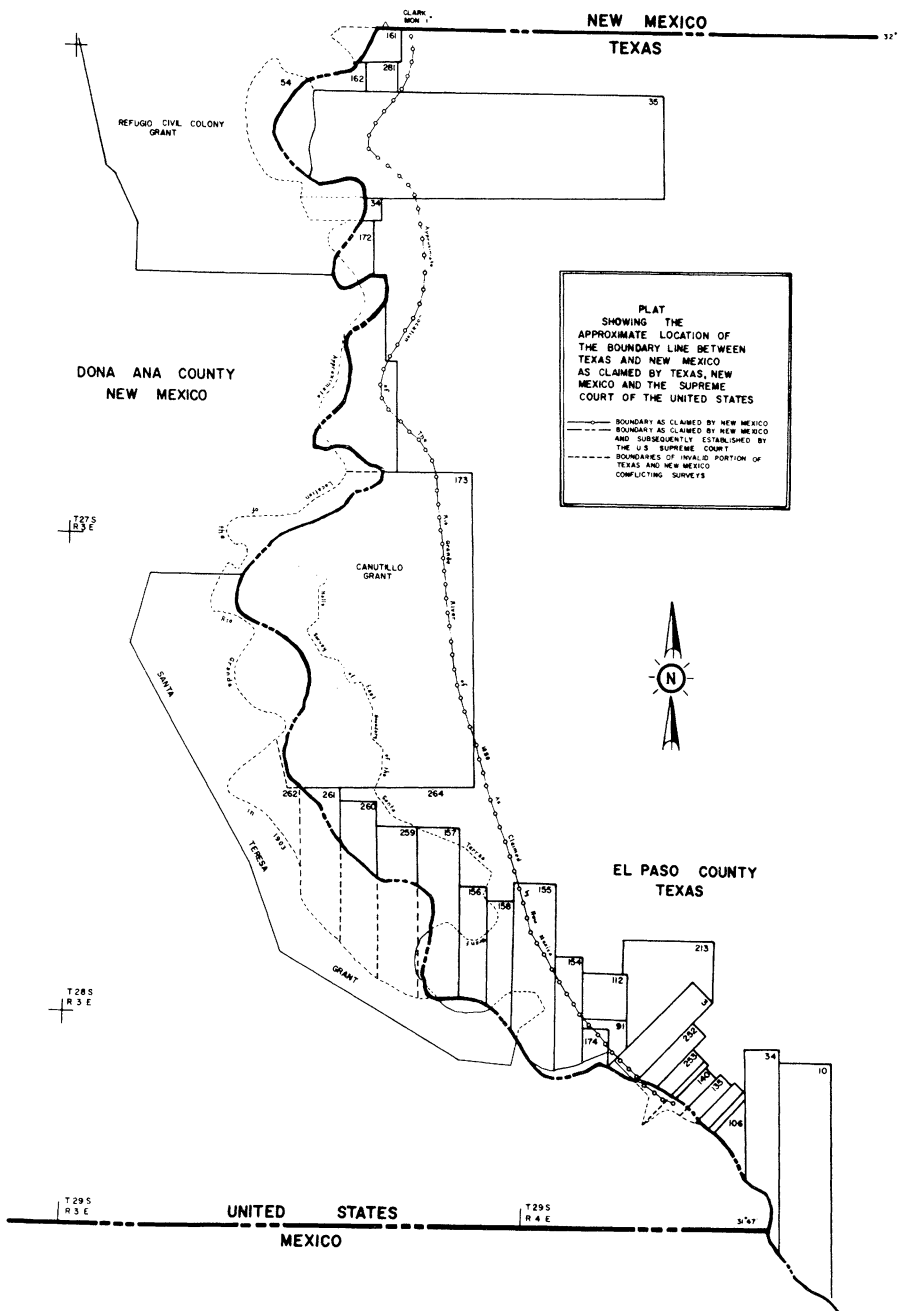
A state constitution for Texas was accepted by the United States Congress on December 29, 1845, although authority was not transferred from the Republic to the state until February 19, 1846. Unlike her sister states, Texas reserved all of the unappropriated public domain located within her boundaries as defined on December 19, 1836.<sup>11</sup> Mexico continued to oppose Texas' claim to the lands lying south and west of the Nueces River after the state

---

<sup>9</sup>Treaty of Velasco, May 14, 1836, Public Agreement, in Henderson Yoakum, *History of Texas from Its First Settlement in 1685 to Its Annexation to the United States in 1846* (2 vols.; New York, 1855), II, 526-527; Treaty of Velasco, May 14, 1836, Secret Agreement, *ibid.*, 528.

<sup>10</sup>H. P. N. Gammel (comp.), *The Laws of Texas* (10 vols.; Austin, 1898), I, 1193.

<sup>11</sup>*United States Statutes at Large* (Boston, 1851), IX, 108.

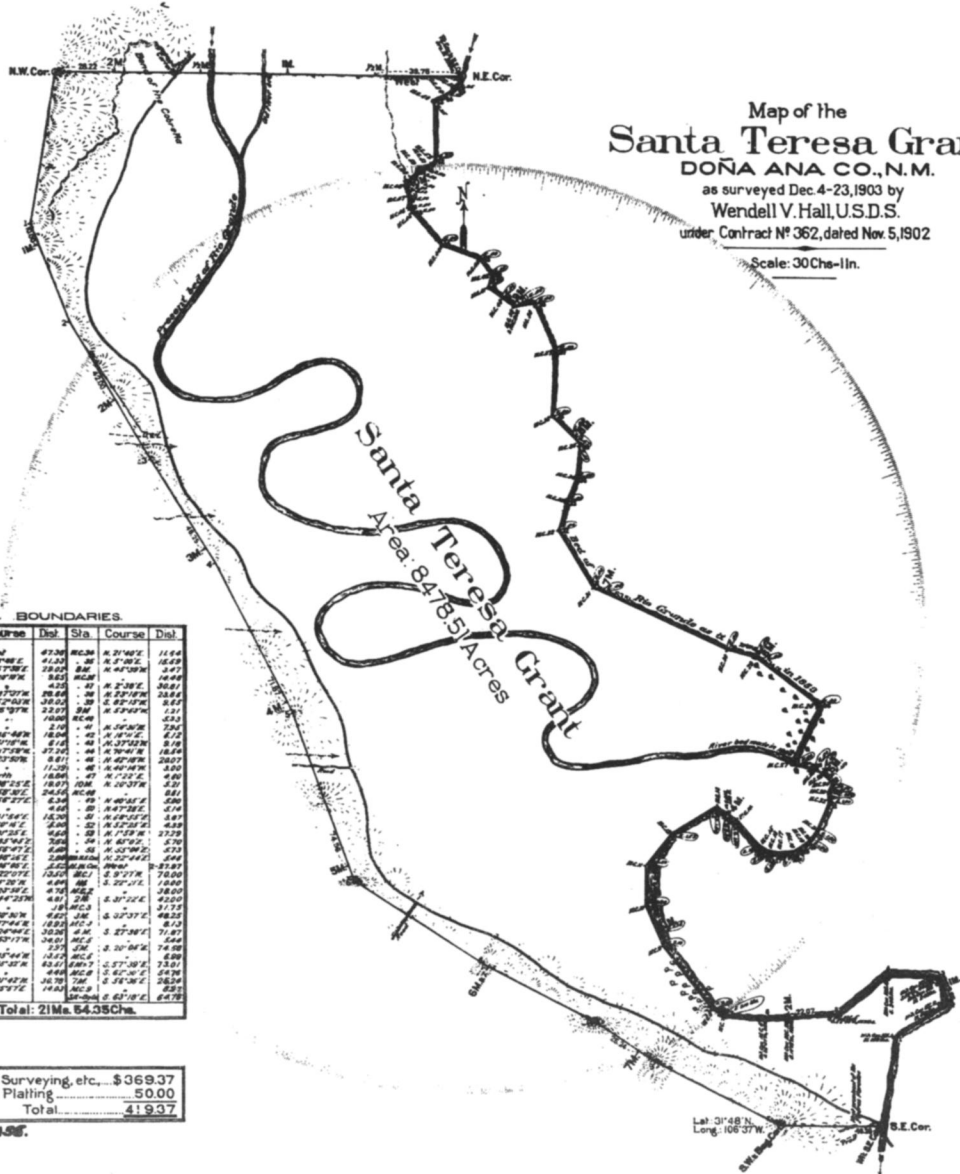


# Map of the Santa Teresa Grant

DOÑA ANA CO., N.M.

as surveyed Dec. 4-23, 1903 by  
Wendell V. Hall, U.S.D.S.  
under Contract No. 362, dated Nov. 5, 1902

Scale: 30 Chs. = 1 in.



## BOUNDARIES.

Sta.	Course	Dist.	Sta.	Course	Dist.
1	East	47.30	10	N. 21° 16' E.	11.64
2	S. 8° 00' E.	41.32	11	N. 5° 10' E.	16.49
3	N. 57° 10' E.	28.67	12	N. 47° 10' W.	5.47
4	N. 57° 10' E.	5.52	13	N. 57° 10' W.	14.49
5	N. 57° 10' E.	20.84	14	N. 57° 10' W.	23.64
6	N. 57° 10' E.	20.84	15	N. 57° 10' W.	5.67
7	N. 57° 10' E.	20.84	16	N. 57° 10' W.	1.31
8	N. 57° 10' E.	20.84	17	N. 57° 10' W.	2.62
9	N. 57° 10' E.	20.84	18	N. 57° 10' W.	5.18
10	N. 57° 10' E.	20.84	19	N. 57° 10' W.	18.84
11	N. 57° 10' E.	20.84	20	N. 57° 10' W.	28.07
12	N. 57° 10' E.	20.84	21	N. 57° 10' W.	4.00
13	N. 57° 10' E.	20.84	22	N. 57° 10' W.	5.81
14	N. 57° 10' E.	20.84	23	N. 57° 10' W.	5.19
15	N. 57° 10' E.	20.84	24	N. 57° 10' W.	4.89
16	N. 57° 10' E.	20.84	25	N. 57° 10' W.	2.79
17	N. 57° 10' E.	20.84	26	N. 57° 10' W.	2.70
18	N. 57° 10' E.	20.84	27	N. 57° 10' W.	2.70
19	N. 57° 10' E.	20.84	28	N. 57° 10' W.	2.70
20	N. 57° 10' E.	20.84	29	N. 57° 10' W.	2.70
21	N. 57° 10' E.	20.84	30	N. 57° 10' W.	2.70
22	N. 57° 10' E.	20.84	31	N. 57° 10' W.	2.70
23	N. 57° 10' E.	20.84	32	N. 57° 10' W.	2.70
24	N. 57° 10' E.	20.84	33	N. 57° 10' W.	2.70
25	N. 57° 10' E.	20.84	34	N. 57° 10' W.	2.70
26	N. 57° 10' E.	20.84	35	N. 57° 10' W.	2.70
27	N. 57° 10' E.	20.84	36	N. 57° 10' W.	2.70
28	N. 57° 10' E.	20.84	37	N. 57° 10' W.	2.70
29	N. 57° 10' E.	20.84	38	N. 57° 10' W.	2.70
30	N. 57° 10' E.	20.84	39	N. 57° 10' W.	2.70
31	N. 57° 10' E.	20.84	40	N. 57° 10' W.	2.70
32	N. 57° 10' E.	20.84	41	N. 57° 10' W.	2.70
33	N. 57° 10' E.	20.84	42	N. 57° 10' W.	2.70
34	N. 57° 10' E.	20.84	43	N. 57° 10' W.	2.70
35	N. 57° 10' E.	20.84	44	N. 57° 10' W.	2.70
36	N. 57° 10' E.	20.84	45	N. 57° 10' W.	2.70
37	N. 57° 10' E.	20.84	46	N. 57° 10' W.	2.70
38	N. 57° 10' E.	20.84	47	N. 57° 10' W.	2.70
39	N. 57° 10' E.	20.84	48	N. 57° 10' W.	2.70
40	N. 57° 10' E.	20.84	49	N. 57° 10' W.	2.70
41	N. 57° 10' E.	20.84	50	N. 57° 10' W.	2.70
42	N. 57° 10' E.	20.84	51	N. 57° 10' W.	2.70
43	N. 57° 10' E.	20.84	52	N. 57° 10' W.	2.70
44	N. 57° 10' E.	20.84	53	N. 57° 10' W.	2.70
45	N. 57° 10' E.	20.84	54	N. 57° 10' W.	2.70
46	N. 57° 10' E.	20.84	55	N. 57° 10' W.	2.70
47	N. 57° 10' E.	20.84	56	N. 57° 10' W.	2.70
48	N. 57° 10' E.	20.84	57	N. 57° 10' W.	2.70
49	N. 57° 10' E.	20.84	58	N. 57° 10' W.	2.70
50	N. 57° 10' E.	20.84	59	N. 57° 10' W.	2.70
51	N. 57° 10' E.	20.84	60	N. 57° 10' W.	2.70
52	N. 57° 10' E.	20.84	61	N. 57° 10' W.	2.70
53	N. 57° 10' E.	20.84	62	N. 57° 10' W.	2.70
54	N. 57° 10' E.	20.84	63	N. 57° 10' W.	2.70
55	N. 57° 10' E.	20.84	64	N. 57° 10' W.	2.70
56	N. 57° 10' E.	20.84	65	N. 57° 10' W.	2.70
57	N. 57° 10' E.	20.84	66	N. 57° 10' W.	2.70
58	N. 57° 10' E.	20.84	67	N. 57° 10' W.	2.70
59	N. 57° 10' E.	20.84	68	N. 57° 10' W.	2.70
60	N. 57° 10' E.	20.84	69	N. 57° 10' W.	2.70
61	N. 57° 10' E.	20.84	70	N. 57° 10' W.	2.70
62	N. 57° 10' E.	20.84	71	N. 57° 10' W.	2.70
63	N. 57° 10' E.	20.84	72	N. 57° 10' W.	2.70
64	N. 57° 10' E.	20.84	73	N. 57° 10' W.	2.70
65	N. 57° 10' E.	20.84	74	N. 57° 10' W.	2.70
66	N. 57° 10' E.	20.84	75	N. 57° 10' W.	2.70
67	N. 57° 10' E.	20.84	76	N. 57° 10' W.	2.70
68	N. 57° 10' E.	20.84	77	N. 57° 10' W.	2.70
69	N. 57° 10' E.	20.84	78	N. 57° 10' W.	2.70
70	N. 57° 10' E.	20.84	79	N. 57° 10' W.	2.70
71	N. 57° 10' E.	20.84	80	N. 57° 10' W.	2.70
72	N. 57° 10' E.	20.84	81	N. 57° 10' W.	2.70
73	N. 57° 10' E.	20.84	82	N. 57° 10' W.	2.70
74	N. 57° 10' E.	20.84	83	N. 57° 10' W.	2.70
75	N. 57° 10' E.	20.84	84	N. 57° 10' W.	2.70
76	N. 57° 10' E.	20.84	85	N. 57° 10' W.	2.70
77	N. 57° 10' E.	20.84	86	N. 57° 10' W.	2.70
78	N. 57° 10' E.	20.84	87	N. 57° 10' W.	2.70
79	N. 57° 10' E.	20.84	88	N. 57° 10' W.	2.70
80	N. 57° 10' E.	20.84	89	N. 57° 10' W.	2.70
81	N. 57° 10' E.	20.84	90	N. 57° 10' W.	2.70
82	N. 57° 10' E.	20.84	91	N. 57° 10' W.	2.70
83	N. 57° 10' E.	20.84	92	N. 57° 10' W.	2.70
84	N. 57° 10' E.	20.84	93	N. 57° 10' W.	2.70
85	N. 57° 10' E.	20.84	94	N. 57° 10' W.	2.70
86	N. 57° 10' E.	20.84	95	N. 57° 10' W.	2.70
87	N. 57° 10' E.	20.84	96	N. 57° 10' W.	2.70
88	N. 57° 10' E.	20.84	97	N. 57° 10' W.	2.70
89	N. 57° 10' E.	20.84	98	N. 57° 10' W.	2.70
90	N. 57° 10' E.	20.84	99	N. 57° 10' W.	2.70
91	N. 57° 10' E.	20.84	100	N. 57° 10' W.	2.70

Total: 21 Mls. 84.35 Chs.

Cost of Surveying, etc.,	\$369.37
Plating	50.00
Total	419.37

WOL. 0456.

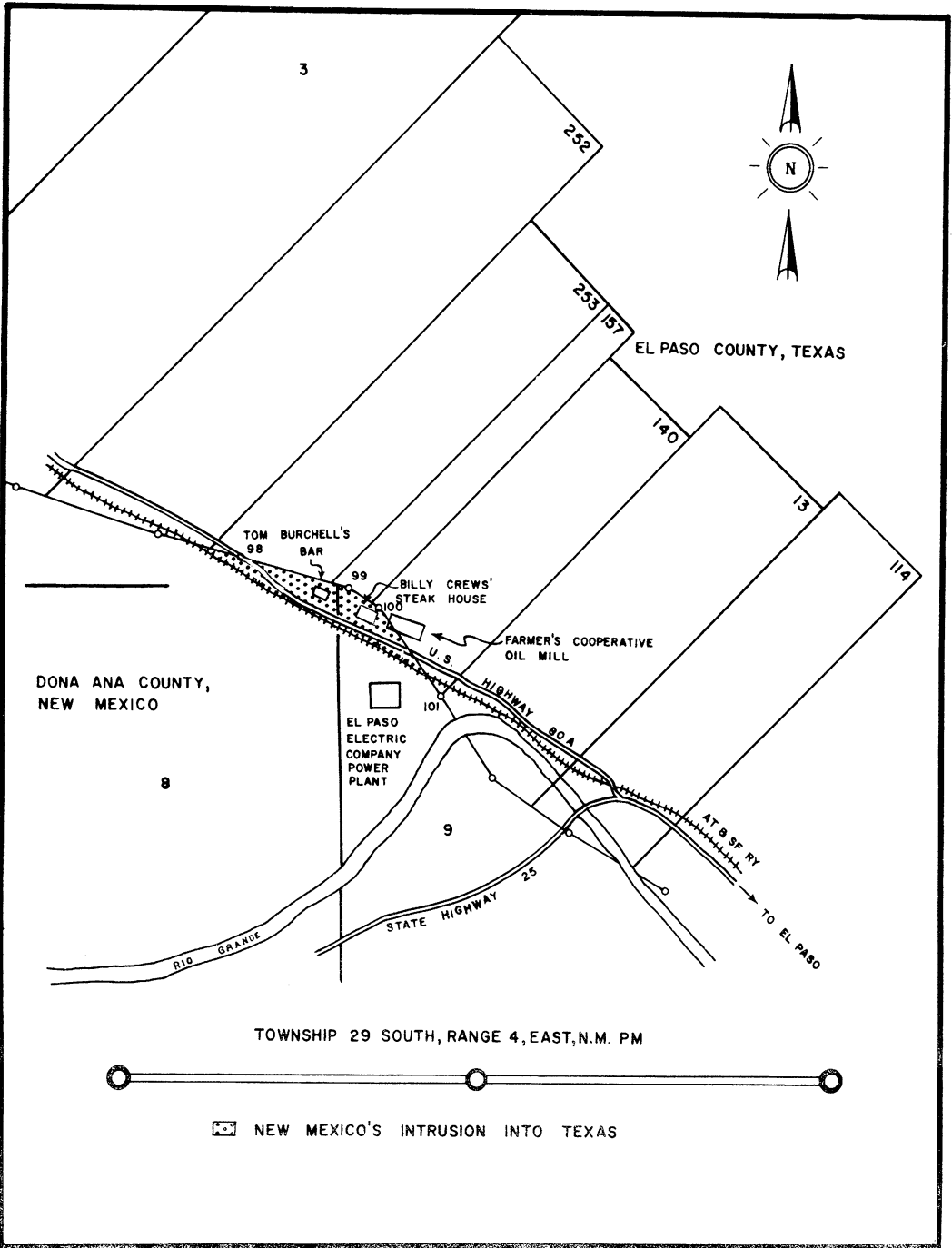
United States of America  
James L. Charles, Clerk of the U.S. Court of Private Land Claims, do hereby certify that this plat together with the survey on which it is based, was approved by said Court by its order dated Santa Fe, N.M., June 16, 1904, with the reservations contained in said order.

James L. Charles.  
Clerk.

## CERTIFICATE.

The field notes of the survey of the Santa Teresa Grant, which this plat is a sketchy conformable, have been examined and approved and are on file in this office.

Wendell V. Hall, U.S.D.S.  
U.S. Surveyor General's Office.  
Santa Fe, N.M., June 16, 1904.





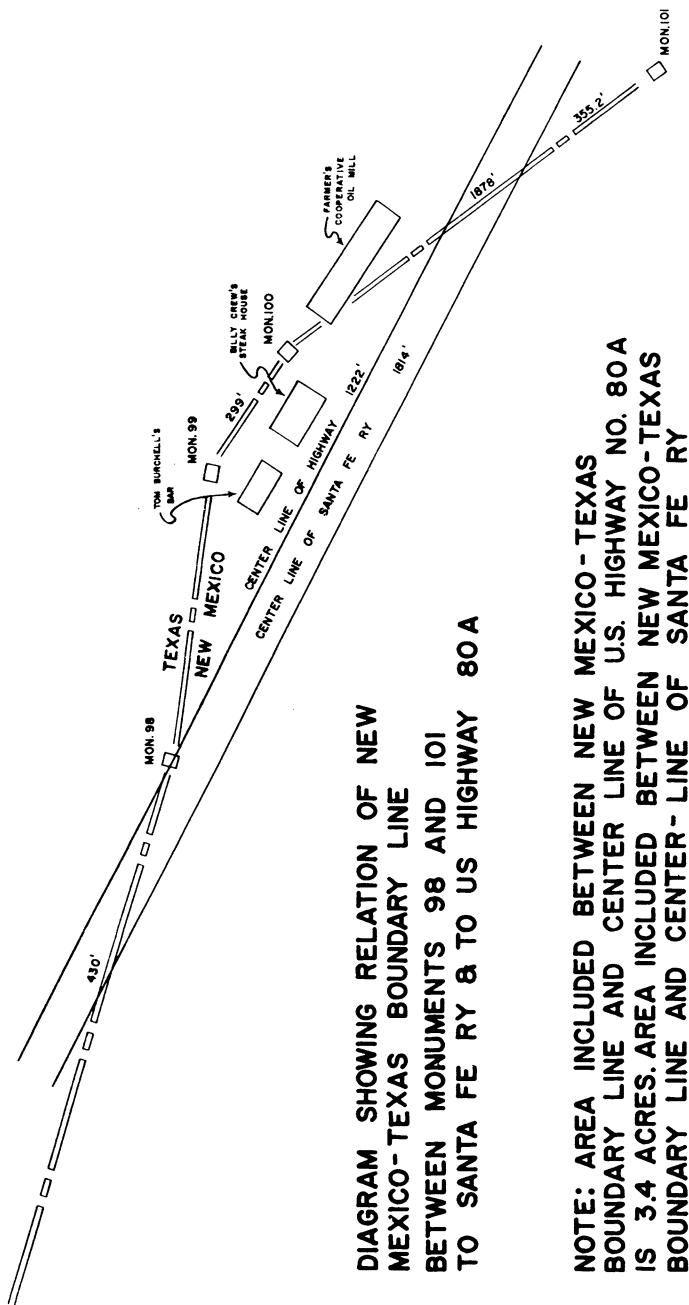


DIAGRAM SHOWING RELATION OF NEW MEXICO-TEXAS BOUNDARY LINE BETWEEN MONUMENTS 98 AND 101 TO SANTA FE RY & TO US HIGHWAY 80A

NOTE: AREA INCLUDED BETWEEN NEW MEXICO-TEXAS BOUNDARY LINE AND CENTER LINE OF U.S. HIGHWAY NO. 80A IS 3.4 ACRES. AREA INCLUDED BETWEEN NEW MEXICO-TEXAS BOUNDARY LINE AND CENTER-LINE OF SANTA FE RY TRACK IS 6.2 ACRES

SCALE 500 FT.



joined the Union. When Mexico attempted to block General Zachary Taylor's efforts to occupy the disputed area, a small Mexican force clashed with an American patrol near Brownsville, thus precipitating the first engagement of the Mexican War on April 25, 1846. Less than three weeks later, on May 12, 1846, the conflict was formalized when President James K. Polk signed a resolution of the American Congress declaring a state of war to exist between the United States and Mexico. The declaration of war was based on the grounds that Mexico had crossed the southern boundary of the United States and "shed American blood upon American soil." War, therefore, existed "by act of Mexico herself."<sup>12</sup>

War with Mexico terminated on February 2, 1848, with the signing of the treaty of Guadalupe Hidalgo. Article V of the treaty fixed the boundary between the United States and Mexico:

The boundary line between the two republics shall commence in the Gulf of Mexico three leagues from land, opposite the mouth of the Rio Grande, otherwise called the Rio Bravo del Norte, or opposite the mouth of its deepest branch emptying directly into the sea; from thence up the middle of the river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the West line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "Map of the United Mexican States as organized and defined by various acts of Congress of said Republic, and construed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell . . ." <sup>13</sup>

---

<sup>12</sup>George Lockhart Rives, *The United States and Mexico* (2 vols.; New York, 1913), II, 158-159; *House Executive Documents*, 30th Cong., 1st Sess. (Serial No. 520), Document No. 60, pp. 8-9.

<sup>13</sup>*House Executive Documents*, 30th Cong., 1st Sess. (Serial No. 521), Document No. 69, pp. 13-14.

Acting under the provisions of the treaty, each nation appointed a commissioner and a surveyor to survey and mark the international boundary line between the United States and Mexico. After the appointment and removal of one commissioner, and the failure of another to qualify, John R. Bartlett was appointed as the United States commissioner in June, 1850. A. B. Gray was appointed United States surveyor. Mexico appointed Pedro Garcia-Condé as its commissioner and José Salazar y Larregui as its surveyor.

The joint commission, except for the United States surveyor who did not arrive because of illness, met at El Paso del Norte, Mexico, on December 3, 1850. After discovering that the Disturnell map had placed El Paso approximately thirty-seven minutes too far north, the commissioners decided to fix the southern boundary of New Mexico in strict accordance with the grid pattern of longitude and latitude as shown on the map. This placed the initial boundary point on the Rio Grande at 32°22' north latitude, over forty miles north of the town of El Paso del Norte, Mexico, instead of approximately eight miles to the north as shown on the map.<sup>14</sup>

After establishing the initial point on the Rio Grande, the commissioners agreed that a survey of the river from the initial point south to Presidio del Norte should be made under the direction of Colonel J. D. Graham, United States chief astronomer. Colonel Graham made the survey, but it was subsequently rejected as unsatisfactory by Major W. H. Emory, who had succeeded both Graham and Gray. Emory then ordered Charles Radziminski to make a resurvey of the boundary between the initial point and Frontera, Texas. Commissioner Bartlett reported that the Radziminski survey had been executed in a highly satisfactory manner, and he accepted it as the official survey of that section of the boundary.<sup>15</sup> Meanwhile, a survey of the west side

---

<sup>14</sup>*Senate Executive Documents*, 32nd Cong., 2nd Sess. (Serial No. 665), Document No. 41, pp. 2-3.

<sup>15</sup>John Russell Bartlett, *Personal Narrative of Explorations and Incidents in Texas, New Mexico, California, Sonora, and Chihuahua, connected with the United States and Mexican Boundary Commission during the Years, 1850, '51, '52, and '53* (2 vols.; London, 1854), II, 546.

of the Rio Grande had been made by a Mexican engineer named Diaz under the direction of José Salazar y Larregui.

Events then arose which terminated further surveying activities by the joint commission. A. B. Gray, the United States surveyor, charged that Commissioner Bartlett had made an inexcusable blunder by agreeing to fix the initial point at  $32^{\circ}22'$ . Surveyor Gray asserted that the United States would forfeit its rights to the only practicable southern railroad route west of the Rio Grande if it recognized the Bartlett-Condé agreement. Gray alleged that the line should have been established approximately eight miles north of El Paso del Norte, Mexico, as shown on the Disturnell map.<sup>16</sup> The controversy resulted in the refusal by Congress to appropriate further funds for the completion of the international boundary survey, and the United States commission was disbanded on December 22, 1852.<sup>17</sup>

In order to rectify Commissioner Bartlett's alleged mistake, and secure the additional territory necessary to construct a trans-continental railroad along the southern route, negotiations were begun to purchase the Mexican territory located between the initial point and  $31^{\circ}47'$  north latitude. The Gadsden Treaty of December 30, 1853, provided the solution to the controversies arising out of the treaty of Guadalupe Hidalgo by moving the international boundary south to  $31^{\circ}47'$  north latitude.<sup>18</sup>

Subsequent to the execution of the treaty of Guadalupe Hidalgo, but prior to the Bartlett-Condé agreement, a dispute arose between Texas and the United States pertaining to Texas' claim to all the territory located in the Upper Rio Grande Valley lying east of the river.

After accomplishing a remarkably bloodless conquest of New Mexico, General Stephen W. Kearny proceeded with the establishment of a civil government over the region. By proclamation dated August 22, 1846, he unlawfully attempted to create the territory of New Mexico with jurisdiction over all lands within

---

<sup>16</sup>J. Fred Rippey, "The Boundary of Mexico and the Gadsden Treaty," *Hispanic American Historical Review*, IV, 724.

<sup>17</sup>Bartlett, *Personal Narrative*, II, 517.

<sup>18</sup>*House Executive Documents*, 33rd Cong., 1st Sess. (Serial No. 726), Document No. 109, p. 2.

its original boundaries. Kearny's proclamation was issued despite Texas' claim to the area located east of the river.<sup>19</sup>

After the treaty of Guadalupe Hidalgo, every effort by the state of Texas to establish its jurisdiction over eastern New Mexico met with opposition from the people of the Santa Fe area and the United States government.

The controversy over the disputed area soon developed into a North-South sectional issue. On August 6, 1850, President Millard Fillmore called the Texas boundary controversy to the attention of Congress and proposed that the boundary question be settled by compact between the United States and Texas or by judicial decision in order to avoid armed conflict in New Mexico. The President strongly recommended that Congress, with the consent of Texas, settle the boundary question as soon as possible.<sup>20</sup>

The United States Congress passed the Texas Boundary Act providing for purchase of Texas' claim to the disputed territory for \$10,000,000. The Act was approved by the President on September 9, 1850, and was accepted by the Texas Legislature on November 25, 1850.<sup>21</sup> A presidential proclamation of December 12, 1850, declared the Act of September 9, 1850, in "full force and operation."<sup>22</sup>

The newly ratified boundary commenced by declaration at the intersection of the 100th meridian and the 36°30' parallel and ran due west to the 103rd meridian. The line then turned due

---

<sup>19</sup>William Campbell Binkley, *The Expansionist Movement in Texas* (Berkley, 1925), 143-149. The Ordinance of 1787 gave the exclusive authority of establishing new territories to Congress. Kearny, however, under the Law of Nations had the right to establish a civil government in the conquered territory even though the territory could not be considered as permanently annexed to the United States as long as the war continued.

<sup>20</sup>*House Executive Documents*, 31st Cong., 1st Sess. (Serial No. 579), Document No. 82, pp. 4-5; Kenneth F. Neighbours, "The Taylor-Neighbors Struggle over the Upper Rio Grande Region of Texas in 1850," *Southwestern Historical Quarterly*, LXI, 431-463.

<sup>21</sup>Bancroft, *History of the North Mexican States and Texas*, II, 399-401. The settlement of the Texas boundary dispute was one facet of the Compromise of 1850. Also of great importance was the fact that the sum offered to Texas was somewhat near the amount needed to cancel the state's public debt.—William C. Binkley, "The Question of Texan Jurisdiction in New Mexico under the United States," *Southwestern Historical Quarterly*, XXIV, 38.

<sup>22</sup>*House Executive Documents*, 46th Cong., 3rd Sess. (Serial No. 1976), Document No. 47, pp. 1099-1100.

south to the 32nd parallel, following the parallel to the channel of the Rio Bravo del Norte. The Texas boundary then followed the deepest channel of the river to the Gulf of Mexico.<sup>23</sup>

The Act of September 9, 1850, also created the territory of New Mexico.<sup>24</sup> The territory included the southeastern portion of the Mexican cession under the treaty of Guadalupe Hidalgo plus acreage ceded to the United States by the state of Texas. The territory was further enlarged on August 4, 1854, by the addition of lands conveyed by the Gadsden Purchase.<sup>25</sup>

The Texas Act of 1836, the treaty of Guadalupe Hidalgo, and the Gadsden Treaty all established the Texas boundary in the middle of the channel of the Rio Grande. The United States and Mexico applied the doctrine of accretion and avulsion to the international boundary line south of 31°47' north latitude.<sup>26</sup> Since the Texas boundary prior to 1850 coincided with the international boundary south of 32°22' north latitude, it would be logical to assume that the doctrine of accretion and avulsion would be applied to all portions of the Rio Grande boundary. Where parties to a boundary agreement wish to make a river boundary a final and invariable line, it is customary to set out expressly such intention in the agreement. Otherwise, the boundary line would fluctuate and follow changes in the river bed caused by accretion. It is noted that the Legislative Compact of 1850 contained no express language establishing the Texas boundary as a fixed line.

In accord with the Compact of 1850, Texas passed the Act of February 11, 1854, authorizing the appointment of a commissioner to run and mark the boundary of Texas "from the point where it leaves the Red River to the point where it intersects the Rio Grande."<sup>27</sup>

On June 5, 1858, the Congress of the United States authorized a survey of the boundary to be made jointly with Texas.<sup>28</sup> Com-

<sup>23</sup>*Ibid.*, 940.

<sup>24</sup>*Ibid.*

<sup>25</sup>*United States Statutes at Large* (Boston, 1855), X, 575.

<sup>26</sup>Charles A. Timm, *The International Boundary Commission United States and Mexico* (Austin, 1941), 151.

<sup>27</sup>Gammel (comp.), *Laws of Texas*, III, 1525.

<sup>28</sup>*United States Statutes at Large* (Boston, 1867), XI, 310.

missioners were appointed by the United States and Texas. The boundary survey began at the point where the Rio Grande intersected the 32nd parallel. A monument was erected near this fixed point. The Texas commissioner withdrew for personal reasons and the survey was eventually completed in 1860 by John H. Clark, the United States commissioner. The intervention of the Civil War delayed the ratification of the survey, and the Clark line was not finally confirmed by the United States and Texas as the true Texas-New Mexico boundary until 1891.

On January 21, 1911, when the people of New Mexico adopted a tentative constitution, it described the boundaries of the proposed state as follows:

Beginning at the point where the 37th parallel of North Latitude intersects the 103rd meridian west of Greenwich; thence along the said 103rd meridian to the 32nd parallel of North Latitude; thence along said 32nd parallel to the Rio Grande, also known as the Rio Bravo del Norte, as it existed on the 9th day of September, 1850; thence following the main channel of said river, as it existed on the 9th day of September, 1850, to the parallel of 31°47' North Latitude. . . .<sup>29</sup>

The territorial claim as set forth in New Mexico's constitution ignored the Clark line, indicating that the state boundaries followed the 103rd meridian and the 32nd parallel. Congress, in a joint resolution dated February 16, 1911, declared that the boundaries of New Mexico must conform to the Clark survey.<sup>30</sup> The resolution had the effect of fixing the point where the 32nd parallel intersects the Rio Grande. The United States and the state of Texas jointly approved the appointment of the Scott-Cockrell Commission to re-establish the original Clark line because of the destruction of some of the Clark monuments. The resurvey was approved by executive order dated February 25, 1913.<sup>31</sup> The New Mexican constitution expressly recognized that the boundary with Texas along the Rio Grande followed the channel of the river as it existed on September 9, 1850. Insofar as New Mexico was concerned, this constitutional provision firm-

---

<sup>29</sup>*New Mexico Statutes* (Indianapolis, 1953), I, 60.

<sup>30</sup>*United States Statutes at Large* (Washington, 1908), XXXVI, 1454.

<sup>31</sup>Executive Order No. 1716 (MSS., Records of the General Services Administration, National Archives, Washington, D. C.).

ly established the boundary along the Rio Grande as a fixed and immovable line. This was the first attempt to affix this theory to the Texas-New Mexico boundary line along the Rio Grande.

By joint resolution dated August 21, 1911, Congress admitted New Mexico into the Union, subject to the terms of the boundary resolution of February 16, 1911. On January 6, 1912, the President proclaimed that New Mexico had complied with the conditions of the joint resolution and was thereby admitted into the Union.<sup>32</sup>

It is a curious historical accident that the exact location of the river as it ran on September 9, 1850, had never been determined. It is indeed strange that the location of this boundary line which for six years had separated two nations, and divided two major political subdivisions for more than three-quarters of a century, had not been previously settled by an officially recognized survey. Because it had generally been accepted that the boundary between Texas and New Mexico was subject to the doctrine of accretion and avulsion, Texas had continuously claimed and exercised jurisdiction over the lands situated east of the Rio Grande. She had issued patents to all territory bordering the east bank of the Rio Grande between 32° and 31°47' north latitude. New Mexico's claim of 1913 was prompted by the final adjudication of the Santa Teresa controversy by the United States Supreme Court.

The Santa Teresa was the first of a number of land grants made by the Spanish and Mexican governments in the Mesilla Valley. Sometime prior to 1790, a four-league tract of land situated about seven miles northwest of El Paso del Norte, Mexico, was granted to Francisco Garcia by the lieutenant governor of Nueva Vizcaya. The grant was situated on the west bank of the Rio Grande and commenced at a group of prominent rocks known as Piedras Paradas, ran thence north along the west bank of the river 20,000 varas to the bend of the river known as Cobrena; thence west 5,000 varas to the brow of the hills; thence south 20,000 varas to a depression in the hills; thence east 5,000 varas to the point of beginning.<sup>33</sup>

<sup>32</sup>*United States Statutes at Large* (Washington, 1913), XXXVII, 1723.

<sup>33</sup>Santa Teresa Grant, Report No. 111 (MSS., Records of the Surveyor General's Office, Bureau of Land Management, Santa Fe, New Mexico).



The claimants of the Santa Teresa Grant proved that after the battle of Bracito the victorious American forces under Colonel Alexander Doniphan were quartered in the public buildings and certain private homes in the city of El Paso del Norte, Mexico. A portion of Doniphan's troops occupied the José Maria Garcia home. After the American Army departed, it was discovered that Garcia's copy of the Santa Teresa Grant papers was missing. The original copy of the Santa Teresa Grant which had been filed in the archives of the *ayuntamiento* of El Paso del Norte was also missing after the invading forces left the city. It is a notorious fact that the soldiers quartered in the Municipal Building destroyed a large portion of the public records filed in that building. It was, therefore, presumed that both copies of the Santa Teresa Grant were either stolen or destroyed by the American occupation forces.<sup>34</sup>

Because of the loss or destruction of all the papers pertaining to the title of the Santa Teresa Grant, it was necessary for the interested parties to institute a judicial inquiry under the laws of the Republic of Mexico to perpetuate their title to the Santa Teresa Grant and to re-establish legally its boundaries. Such an inquiry was instituted by José Maria Garcia and the other claimants of the Santa Teresa Grant on January 7, 1853. Bentura Lopez, second judge of the first instance of the canton of El Paso del Norte, after investigating the validity of the Santa Teresa Grant, issued a decree vesting legal title to the grant in the heirs of Francisco Garcia. The judge placed the heirs of Francisco Garcia in lawful possession of the grant on January 16, 1853.<sup>35</sup>

The Court of Private Land Claims recognized the validity of the grant on August 16, 1900, and confirmed the title to the following described tract of land to the heirs and assigns of Francisco Garcia:

The tract of land known as the "Santa Teresa"; bounded on the north by that bend known as "Cobrena"; on the south by the bend of the "Piedras Paradas," the same being somewhat to the north of the present location of the Southern Pacific Railroad bridge, where the same crosses the Rio Grande del Norte; on the east of

---

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

the old bed of the said Rio Grande del Norte, as the same ran and existed in the year 1853; and on the west by the brow of the ridge running parallel with said river.<sup>36</sup>

The government appealed the decision of the Court of Private Land Claims to the United States Supreme Court. The Supreme Court affirmed the judgment of the lower court on April 21, 1902.<sup>37</sup>

The grant was surveyed on December 23, 1903, by Wendell V. Hall, United States deputy surveyor. The survey disclosed that the grant contained 8,478.51 acres.<sup>38</sup>

The Santa Teresa Grant conflicted with approximately 2,704 acres of land in the Canutillo area which had previously been patented by the state of Texas. The claimants of the Canutillo Grant protested the approval of the Hall survey of the Santa Teresa on the grounds that the Santa Teresa Grant intruded into Texas.

The Court of Private Land Claims overruled the objection on

---

<sup>36</sup>M. R. Pendell *vs.* United States (MSS., Court of Private Land Claims, Records of the Bureau of Land Management, Santa Fe, New Mexico), Cause No. 168.

The treaty of Guadalupe Hidalgo embodied the principle that although sovereignty over the territory ceded by Mexico had changed, vested property rights should be fully recognized by the United States. On July 22, 1854, Congress passed an act creating the office of the surveyor general. He was instructed to investigate all land claims allegedly made by former governments and to report the results of his findings to Congress for its further action. This procedure for the recognition of private land claims proved inadequate because of the inability of the surveyor general and Congress properly to adjudicate such claims.

The unsettled status of private land titles in the territory acquired from Mexico required the establishment of a special tribunal with authority to pass judicial judgment on the validity of all unconfirmed land claims. Congress, therefore, created the Court of Private Land Claims. The sole purpose and jurisdiction of the Court was the consideration and adjudication of the title to lands claimed to have been derived by valid and complete grants from Spain and Mexico situated within the territory ceded to the United States under the treaty of Guadalupe Hidalgo and the Gadsden Purchase. The Department of Justice was to defend the interests of the United States. Decisions of the Court of Private Land Claims could be appealed to the United States Supreme Court by either party.

Two hundred and eighty-two cases were filed in the Court of Private Land Claims involving title to 35,491,020 acres of land. The Court approved the title to only 2,051,526 acres. The Court was disbanded on June 30, 1904, after completing its business. Ralph Emerson Twitchell, *The Leading Facts of New Mexican History* (2 vols.; Cedar Rapids, 1912), II, 457, 460, 465-470; *House Documents*, 58th Cong., 3rd Sess. (Serial No. 4801), Document No. 5, Miscellaneous Reports, Part II, 283-293.

<sup>37</sup>United States *vs.* M. R. Pendell, *United States Reports*, CLXXXV, 189.

<sup>38</sup>Santa Teresa Grant, Map File 111 (MSS., Records of the Cadastral Engineer's Office, Santa Fe, New Mexico).

the grounds that the claimants of the Canutillo Grant had failed to prove that the east boundary of the Santa Teresa Grant was not in fact the bed of the river as it ran in 1853. The survey was accepted and approved by the Court of Private Land Claims on June 16, 1904.<sup>39</sup>

A patent to the Santa Teresa Grant was issued to Francisco Garcia, his heirs and assigns, on August 16, 1909.<sup>40</sup>

The Court of Private Land Claims had no jurisdiction to confirm title to lands located within the boundaries of the state of Texas. Its decision confirming the Santa Teresa Grant, as surveyed by Hall, would, therefore, be invalid insofar as it conflicted with lands legally located within Texas. In order to clear the cloud cast on their title by conflicting Texas patents, it was necessary for the claimants of the Santa Teresa Grant to determine the location of the Texas-New Mexico boundary. From a private matter involving the validity of title, the case assumed interstate proportions.

The state of New Mexico on January 31, 1913, filed suit in the United States Supreme Court asking the Court to determine and define its boundary on the Rio Grande between 32° and 31°47' north latitude.<sup>41</sup> New Mexico alleged in its bill of complaint that the boundary was located in the channel of the Rio Grande

---

<sup>39</sup>Santa Teresa Grant, Report No. 111 (MSS., Records of the Surveyor General's Office, Bureau of Land Management, Santa Fe, New Mexico).

In fixing the east boundary of the Santa Teresa Grant, the Court of Private Land Claims relied on the premise that the east boundary of the Santa Teresa Grant and the boundary between the United States and Mexico were coincident and that both lines were located in the middle of the Rio Grande channel as it ran in 1853. It would be immaterial where the river of 1853 was located, unless the doctrine of accretion and avulsion applied to this portion of the international boundary, however, for the Rio Grande had shifted eastward by accretion between September 9, 1850, and 1853. If the doctrine of accretion and avulsion did not apply, and this portion of the boundary was a fixed immovable line, then the eastern boundary of the Santa Teresa Grant would intrude into Texas.

It is interesting to note that the decision of the Court of Private Land Claims established the east boundary of the grant as a fixed line in the channel of the Rio Grande as it ran in the year 1853. In order to be consistent it seems that the Court should have fixed the boundary in the channel of the river, thereby permitting the doctrine of accretion and avulsion to apply to all subsequent changes in the river bed caused by accretion.

<sup>40</sup>Patent to Santa Teresa Grant, August 16, 1909 (MSS., Deed Records of Dona Ana County, New Mexico), XXXV, 252.

<sup>41</sup>The State of New Mexico *vs.* The State of Texas, *United States Reports*, CCLXXV, 279.

as it ran on September 9, 1850. New Mexico further alleged that on that date the river ran in almost a straight line down the extreme east side of the Rio Grande Valley from  $32^{\circ}$  to  $31^{\circ}47'$ . This would place approximately 20,000 acres of land that had been patented by the state of Texas under the jurisdiction of New Mexico.

Texas filed an answer and cross bill on April 21, 1913, agreeing that the boundary was located in the middle of the channel of the river as it ran on September 9, 1850, but alleged that on that date the river was located near the center of the valley.

Both Texas and New Mexico admitted that the true boundary line between the two states was located in the middle of the channel of the Rio Grande as it ran on September 9, 1850. The sole issue to be determined by the Court in this case was the actual location of the river as it ran on September 9, 1850.

Testimony pertaining to the true location of the river in 1850 was taken for several years. This testimony tended to prove that the river was actually located in the position asserted by the state of Texas. Thereafter, L. M. Crawford, the owner of certain lands under the Santa Teresa Grant in the Country Club area, was permitted to intervene in the case as *amicus curiae*. Crawford asserted that the boundary was not a fixed line but was subject to the doctrine of accretion and avulsion. The Supreme Court then referred the question of the location of the boundary line to a court-appointed special master.

Special Master Charles Warren, on April 21, 1926, reported that in 1850 the river ran down the approximate center of the Mesilla Valley as contended by the state of Texas. The special master also held that the original boundary line between the two states was located in the middle of the river channel as it ran on September 9, 1850, and that he would accept the Charles Radzinski survey as the true location of the boundary. Both Texas and New Mexico were willing to accept the Radzinski survey as correctly locating the line, but no copy of the survey could be found in the records of the Department of State, the Department of War, or the Department of the Interior.

The master then ruled that the Salazar-Díaz survey of 1852, when considered with the Texas patents and surveys, the Clark

line, and other pertinent evidence, satisfactorily proved that on September 9, 1850, the river was actually located in substantially the location alleged by the state of Texas. The master further found that the boundary was not a fixed line, but was subject to the doctrine of accretion and avulsion. He concluded by ruling that the boundary had shifted eastward by accretion.<sup>42</sup>

On December 12, 1927, the United States Supreme Court held that the only proper questions in issue in the case were whether the master's findings as to the location of the river in 1850 were correct, and if so, whether the boundary had subsequently changed by accretions. The Court held that the Act of September 9, 1850, established the Texas-New Mexico boundary as a fixed line in the middle of the Rio Grande channel between 32° and 31°47' north latitude, and that the master's report as to the location of the river in 1850 was substantially correct. The Court rejected the master's finding that the boundary had changed by accretion.<sup>43</sup>

Samuel S. Gannett was appointed commissioner by the United States Supreme Court to survey and mark the fixed boundary line. Gannett's survey showed that the boundary line between 32° and 31°47' was 25.17 miles in length. The line was marked by 105 permanent monuments which are approximately .24 of a mile apart. The commissioner also established and marked 45 reference points and 6 triangulation stations. The number, elevation, and geographic position of each individual monument, reference point, and triangulation station were inscribed on a bronze tablet which was imbedded in the top of a marker which designated such site. The survey was completed on July 17, 1930, and it was subsequently approved by the Court.<sup>44</sup>

As a result of the Supreme Court's decision, patents issued by the United States government covering 4,627 acres of land in Texas were invalidated and Texas patents to 2,499 acres of land located in New Mexico were set aside.<sup>45</sup>

---

<sup>42</sup>*Report of the Special Master in the Case of The State of New Mexico vs. The State of Texas* (Washington, D. C., 1926), 6, 75, 78, 90.

<sup>43</sup>*The State of New Mexico vs. The State of Texas, United States Reports*, CCLXXV, 279.

<sup>44</sup>*Report of the Boundary Commissioner, The State of New Mexico vs. The State of Texas* (Washington, D. C., 1930), 1-9, 20, 54.

<sup>45</sup>Turney, Burges, Culwell & Pollard, *The Texas and New Mexico Boundary along the Rio Grande Valley between the 32nd Parallel of North Latitude and the*

L. M. Crawford filed a suit in the Texas District Court against Z. T. White and nine other defendants on January 25, 1928. Crawford alleged that the Supreme Court decision had fixed the boundary line as of September 9, 1850, but that the line had subsequently moved eastward by accretion. He asserted that as the owner of the adjoining lands, he had acquired all lands lying west of the river in the Country Club bend area under the doctrine of accretion. The trial court instructed a verdict in favor of the defendants on the grounds that this precise issue had previously been adjudicated by the United States Supreme Court.<sup>46</sup>

The Eighth Court of Civil Appeals affirmed the trial court's decision and held that the Texas-New Mexico boundary was a fixed line and that the title to the lands adjoining the Rio Grande was not affected by the doctrine of accretion and avulsion.<sup>47</sup>

The Rio Grande ran east of the present U. S. Highway 80A on September 9, 1850, in the vicinity of the 3600 block of Doniphan Drive. The Texas-New Mexico boundary, being a fixed line, left the small tract of New Mexico land lying east of the highway when the Rio Grande subsequently shifted its bed. This small intrusion by New Mexico into Texas with its accompanying highway signs and cocktail lounges is about the only visible evidence calling attention to this unusual fixed river boundary line. This tract is primarily utilized for the sale of mixed drinks which is illegal in Texas.

Here is an unusual case from the records of state and federal courts. The net effect of this strange decision was that the forces of nature are, in effect, declared subject to man's jurisdiction. One is dealing with a legal fiction when he considers the Court's statement that the proper legal boundary between Texas and New Mexico is a fixed line and, in addition, that the fixed line is the channel of the Rio Grande. Under the decision of the Court, the river may, and had, moved physically, but not legally. Seen through the eyes of the Court, the Rio Grande must eternally flow through its channel of 1850.

---

*Parallel of 31 Degrees 41 Minutes North Latitude—Latter Parallel Being the International Boundary Line between the United States and Mexico* (El Paso, 1930), 25.

<sup>46</sup>L. M. Crawford *vs.* Z. T. White, *et al.* (MSS., 41st Judicial District Court, El Paso, Texas), Cause No. 29011.

<sup>47</sup>Crawford *vs.* White, *Southwestern Reporter*, XXV, 629.