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Memory and Pluralism on a Property Law Frontier
The Contested Landscape of New Mexico’s Costilla Valley

by GREGORY A. HICKS*

This article describes the decades-long dispute between Hispano settlers of the Costilla Valley in northern New Mexico’s Sangre de Cristo Land Grant and the succession of entrepreneurial owners of the grant during the late nineteenth and early twentieth centuries. Through the U.S. Freehold Land and Emigration Company and its successors, the new Dutch and American owners sought to replace patterns of land and resource use developed during the Mexican period with patterns of use intended to support Anglo colonial settlement and intense development of the region’s natural resources. The Dutch and American owners faced continuing resistance from the area’s Hispano settlers, which limited Anglo control over the Costilla lands.

The conflict emerged at the first meeting between the settlers and representatives of U.S. Freehold in 1871. From the beginning, the company’s agents unsuccessfully offered compromises, such as limited recognition of settler land rights and negotiated resource use, to diminish opposition to its plans for development, all the while refusing to acknowledge or preserve Hispanics’ historic ownership and use rights.1 The dispute flared periodically from the 1870s to the 1920s.

The early stages of the dispute between the Costilla Valley’s Hispano residents and U.S. Freehold are well chronicled by Herbert O. Brayer in William Blackmore: The Spanish-Mexican Land Grants of New Mexico and Colorado, 1863–1878. Brayer describes the settlers’ resistance to the Company’s ownership and plans for development and the Company’s unsuccessful efforts to placate the settlers. The important latter phases of the dispute, however, from 1878 until approximately 1922, have not received scholarly attention. The pivotal event of that later period was a lawsuit tried in Santa Fe in 1905. In that lawsuit, descendants of

*The author thanks Malcolm Ebright, Jose A. Rivera, Hugh Spitzer, and Jacinta Palerm Viqueira for their valuable comments on earlier drafts of this article. The author is especially indebted to the special collections librarians of the Center of Southwest Studies, Fort Lewis College, Durango, Colorado; the New Mexico State Records Center and Archives, Santa Fe; and the Tutt Memorial Library, Colorado College, Colorado Springs for their assistance with elusive archival materials. Gregory Hicks is Professor of Law at the University of Washington School of Law in Seattle.

the first Hispano settlers sought to invalidate U.S. Freehold’s ownership of the Sangre de Cristo Land Grant and to establish their own claims both to private farmsteads and to communal grazing lands. To legitimize their claim, Hispano residents cited their long occupancy and the original terms of settlement, saying that “their fathers” had been “given their holdings, [including] privileges in the surrounding grazing land.” Few of them, however, could produce deeds to their farmsteads, and the documentary evidence of their claimed commons rights was scant.\(^2\) They lost that lawsuit. Judge John McFie confirmed the unqualified ownership of the Sangre de Cristo Land Grant by U.S. Freehold and enjoined the Hispano residents against further interference with the company’s occupancy.\(^3\)

From that point forward, the dispute between U.S. Freehold and the Costilla settlement took an unusual turn.\(^4\) The residents, faced with termination of their titles and customary rights to grazing and woodlands, refused to yield, mounting a legal resistance that frustrated the efforts of the entrepreneurs to develop the land as they preferred. Although U.S. Freehold and its successors won every legal challenge to their ownership, the residents’ continuing resistance stifled the companies’ effective control over the land and resources to which they held formal title.

Histories of Hispano resistance in New Mexico have documented the legal defeats of Hispano claims to land and resources and residents’ consequent action. In some cases, legal defeat was followed by continued resistance, both legal and extra-legal, but typically that resistance failed to preserve land or resource rights.\(^5\) This article details another variation in

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2. Complaint, p. 3, Application for Pluries Writ of Assistance, 2 November 1915, in Fernando Meyer, Jr. et al. v. Thomas Keely et al., First Judicial District Court, Santa Fe County, Case No. 4741, folder 95, box 15, Renehan-Gilbert Papers, New Mexico State Records Center and Archives [hereafter RGP-NMSRCA]. The settlers were unable to take advantage of a New Mexico statute from the period that allowed long-established residents on recognized Mexican or Spanish land grants to obtain valid title if they could produce documents to establish color of title (that is, documents which on their face purport to convey title, even though, in reality, they might falls short of doing so). See Verle R. Seed, “Adverse Possession in New Mexico, Part Two,” Natural Resources Journal 5 (May 1965): 96, 104-5. See also my discussion below in note 111 on the goals of New Mexico’s color-of-title statute.

3. Complaint, p. 3, Application for Pluries Writ of Assistance, RGP-NMSRCA.


5. Ebright, Land Grants; Montoya, Translating Property, 195–202; Westphall, Hispanic Land Grants, 147–58, 175–91, 237–74; and Robert J. Rosenbaum, Mexicano Resistance in
the pattern of Hispano resistance, presenting a long-enduring, law-based struggle in which effective resistance did not wither away after the courts had ruled against the settlers. It also provides the first in-depth description of a defining series of battles for the land and water resources of the 1,000,000-acre Sangre de Cristo Land Grant.

The dispute between U.S. Freehold and the Costilla settlements was remarkably long. The Hispano inhabitants' insistence upon the legitimacy of their rights carried the fight forward and compelled the courts and U.S. Freehold to take account of their claims. Tension between local ideas of property rights and the rules of the external legal order can become an engine for an adaptive pluralism in which the dominant legal order absorbs and reflects some local norms and practices. In the Rio Costilla disputes, that process was imperfectly realized because the new owners had goals for the land that could not recognize the rights the settlers claimed and would not willingly abandon. In the end the settlers insisted on more than the company or the courts would concede. The effort at accommodation failed. The title of this article is offered as a summation of those two key elements of the story: the strength of the settlers' commitment to historic rights and the vexed problem, for a legal system hostile to their claims, of conceding enough to the settlers' sense of justice to win their acceptance of fundamental changes to their property rights.

The Costilla settlements were established at the invitation of Charles Beaubien in the years following the Mexican War. Beaubien, a leading citizen of Taos, New Mexico, owned the Sangre de Cristo Land Grant from 1847 until his death in 1864. Although the grant was fully confirmed by Mexican authorities in 1847, Beaubien needed the presence of settlers to minimize the property's vulnerability to interlopers. The invited settlements, occupying the best and most arable lands along the Rio Costilla, held the land against the onrush of trespassers and squatters in

the Southwest (Austin: University of Texas Press, 1981). For discussions of the strategies and manifestations of Hispano resistance, see, e.g., Ebright, Land Grants; and Zeleny, Relations between the Spanish-Americans and Anglo-Americans.


8. The confirmation history of the Sangre de Cristo Land Grant appears in Tameling v. U.S. Freehold Land and Emigration Co., 93 U.S. 644, 647 (1877), affirmed by 2 Colo. 411, 416 (1874). The validity of the grant was put at issue in that case and decided in favor of Beaubien and his successors in interest.
the years after the Mexican War.9 The presence of permanent settlements on the land also demonstrated to U.S. authorities Beaubien’s full compliance with the expectations of Mexican law, strengthening the case for confirmation of his grant by the United States.10 In short, if the settlers benefited from Beaubien’s offer of free land and permanent settlement rights, Beaubien also benefited from and, in fact, needed the settlers.

Documentation of Beaubien’s arrangements with the Costilla settlers is suggestive rather than definitive. The grant petition to the Mexican government indicates Beaubien’s intention to bring settlers to the land.11 The specifics of the settlement terms, however, must be inferred from a covenant exacted on behalf of the Costilla settlers when William Gilpin bought Beaubien’s holdings in 1864, and from the general history of northern New Mexico land grants. The covenant reveals that Gilpin and his successors promised to honor certain, though unspecified, commitments made by Beaubien to the Costilla settlers.12 The rights the Costilla settlers later claimed on the basis of the covenant—land for farmsteads, communal rights of access to the waters of local streams for irrigation, and access to the surrounding prairies and high country for timber, fuel wood, grazing, and hunting—happen to coincide with rights that Beaubien granted through more exact statement to other settlers on the grant.13 The Costilla settlers’ claims were also consistent with settlement rights typical for northern New Mexico grant lands of the time, and indispensable for successful settlement.14

12. Covenant of William Gilpin to Frederick Muller and Jesus Abreu, Executors of Charles Beaubien, deceased, of Taos County, 7 April 1864, Taos County Deed Records, Book 1: 241, Office of the County Clerk, Taos County Courthouse, Taos, New Mexico [hereafter Deed Book number, TCC]. The Covenant recites the existence of a list—“List A”—of the parties entitled to settlement rights, but neither the list nor any other specific statement of the settlement rights granted to the Costilla settlers has survived in the public record.
commons rights in particular were necessary to provide critical resources not available on individual farmsteads; Beaubien, in all likelihood, promised the settlers these rights. The settlements consisted of groupings of house lots and allotments of arable lands arrayed along community irrigation ditches that were built by the settlers to ensure community members equal access to water. The farmsteads were granted as vara strips, prodigiously long strips of land, each with access to community irrigation systems but stretching away from the water courses for great distances. The company attempted to eliminate this structure of land allocation wherever possible. Indeed, the dispute over the vara extensiones offers a concentrated demonstration of the irreconcilability of the Hispano model of settlement and the company’s plans for development of the lands. A letter written by one of the company’s agents expresses the depth of the impasse:

[T]he Beaubien deeds themselves were given to cover all these items [the extensiones], in as much as they extended from a creek North or South to the half distance to the next creek, thereby including all the bottom land adjoining the creek, from which a claim starts, upland beyond for pasture, and still further on a portion of the pinion hills for wood. If any of these rights extend to any now, they would be absolutely without control, and for one little right given them they would ask a dozen and trespass in a most objectionable manner. The Company would seriously impair the value of its property by conceding either of these things. I would say, without the slightest question, sue rather than give them anything.

Significant irrigation in the Costilla communities began in 1852, through the Acequia Madre, or mother ditch. By 1860 the number of


15. Sangre de Cristo: Land Petition, 1842, LGC-NMSRCA.


people who had settled in and around the town of Costilla and its outlying communities reached over eight hundred. At that time, four plazas had been established: Plaza de Arriba, comprising the communities of Guadalupe del Cerro and Piña (later Amalia); Plaza de Media, corresponding to the town of Costilla; Plaza de los Manzanares, corresponding to the community of Garcia; and Plaza de Poleo, an outlier of Garcia. The U.S. census for 1860 suggests that settler families invested a good deal of effort in cultivating land, improving pastures, and establishing irrigation. Very few of these early settlers seem to have received deeds to their properties, whether from Charles Beaubien or from his immediate successors.

In addition to the original Beaubien settlers, many other Hispanos migrated to the Costilla lands in the years following first settlement. It was altogether typical of Hispano settlement in the upper Rio Grande region that relatives and residents of the settlers' communities of origin would come to a newly opened area, settling near earlier arrivals to whom they had ties.


21. Taos County, New Mexico, 1860, r. 715, M653D, RG29, NA.

22. Determining the number of deeds issued by Beaubien and the executors of his estate to Costilla Valley settlers is difficult. There are no Beaubien deeds in deed books or grantor-grantee indices from Taos County before 1864, the year Beaubien's executors conveyed the grant to Gilpin. The records of the newly created Costilla County, Colorado Territory—where the town of Costilla lay until it was restored to New Mexico by a redrawing of the boundary line between New Mexico and Colorado in 1867—show only twelve conveyances from Beaubien to Costilla settlers, all made between 1 August and 20 August 1863. See Deed Book 1, CCC. The available deed records for Taos County show forty-six deed conveyances from Beaubien or his immediate successors to settlers in the Costilla area, but none of those deeds was recorded until Ferdinand Meyer of Costilla began purchasing the lands from their original grantors some years after the Beaubien conveyances. It is possible that some of the Beaubien deeds were recorded in Taos County Deed Book A3 (1873–1876); the book was already missing from the Taos County Court House when the territorial records were transferred to the New Mexico State Archives in September 1970. Most of the grants recorded range from 50 to 150 varas in width, typical of the pattern of household grants of the time and place. The two exceptions are Jesus Maria Sanchez's 350-yards-wide parcel along Costilla Creek, and Thomas Tobens's [Tobin] 220 varas. The Meyer Testimony in the *Meyer v. Acequia Madre*, TC-NMSRCA, indicates a total of fifty-six Beaubien conveyances made to Costilla area settlers. In any case, the number of settler households with land claims in the Costilla Valley far exceeded the number of Beaubien deeds. Histories of the community emphasize the infrequency of deed conveyances, and even Meyer, buying land in the area to increase his holdings in the years 1867–1890, frequently accepted quitclaim deeds from persons he described as squatters. Preliminary Proposal, "History of Community," p. 5, folder 267, box 8, Special Reports and Issues Series VI, Gov. John E. Miles Papers 1939–1942, NMSRCA [hereafter JEM-NMSRCA].


This settlement pattern was misunderstood by William Gilpin and the other entrepreneurial owners of the grant who followed Charles Beaubien. The new owners, hoping to direct organized settlement to well-watered and arable lands, were eager to limit the land and resource claims of the earlier Hispano settlers. Their strategy was to recognize the land claims only of Beaubien deed holders and to require squatters in the settlements to buy their land. They mistakenly supposed that the distinction between invited Beaubien settlers and those who had come without formal invitation mattered to the settlers and could be used to divide them. The reaction of the settlers was quite the opposite because of the structure of their communities, grounded in settlement practices from the Mexican period.

In the period of Mexican dominion, the owner of a private land grant responsible for the orderly settlement of his land often would not have insisted that a settler family receive an express invitation. It was more important that newcomers be part of the community of labor and mutual aid on which the success of the settlement depended. Although the grant owner would naturally want to protect his position as patron by preserving the power to grant or deny settlement rights, he might also have counted on the continual influx of settlers' family members and friends as a vehicle for settlement and assuring cooperation in the difficult work of building and defending the settlement.

Mexican governmental policy, familiar to the Costilla settlers even though it was no longer the law after 1848, was also tolerant of squatter claims. Although Mexican law required measurement and demarcation of even the smallest holdings in order to secure title, a type of squatter sovereignty arose through local custom and common consent for small holdings. This was a result of encouraging the use and cultivation of unoccupied lands to secure frontier regions and the practical absence of a system for regulating land occupancy in those regions. Small holders simply “took up” land with the expectation of ultimately securing rights. The validity of title based on such settlement was assumed, perhaps because it was so congenial to local practices. Legal legacy and ties to region and

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29. These policies and practices were well established, having origins in the resettlement of Spain in the years following the reconquest. Westphall, Hispanic Land Grants, 9–10, 124–25, 194.

family among the Costilla settlers created a sense of common origin and common cause, frustrating the efforts of U.S. Freehold and its successors to divide deed holder from squatter.

The effort to limit the claims of the Mexican settlers began in earnest in 1871 as a result of the establishment of U.S. Freehold. The purpose of the company was to attract investment and organize settlement for the southern half of the Sangre de Cristo Land Grant, the Costilla Estate. The company meant to develop the estate as a settlement colony for immigrants from Holland and England, and it could not proceed until it had defined and contained the extensive claims of the Hispano settlers to water, farm lands, and grazing lands.

In an effort to resolve the claims of the Costilla settlers, Gilpin and other representatives of U.S. Freehold met with a committee of the settlers on 4 October 1871. The only member of the settlers' committee who understood and spoke English well, Ferdinand Meyer, a local merchant, was absent from that meeting. The four remaining members of the committee signed an agreement limiting the land and resource rights of the original settlers. The agreement confirmed the titles of persons who could demonstrate that they were invited Beaubien settlers, and, in addition, gave all owners and occupiers of lands the right to purchase open lands on which they grazed livestock.


U.S. Freehold owned the Costilla Estate until 1902. Bankruptcy then forced it to convey the property to a corporate successor, the Costilla Land and Investment Company, which in its turn failed in 1908 and transferred the property to yet another successor, the Costilla Development Company. For the history of the grant, including its creation and confirmation, recruitment of settlers, and its various owners, see Brayer, *Spanish-Mexican Land Grants*, 62–65, 70–81; and Karnes, *William Gilpin*, 301–31.


33. Minutes of Meeting between Settlers and U.S. Freehold Land and Emigration Co., WBLR-NMSRCA. A summary account of this meeting appears in Brayer, *Spanish-Mexican Land Grants*, 109–10; and Karnes, *William Gilpin*, 323–24. William Blackmore, the company’s chief organizer, wrote about the meeting, “Squarey [U.S. Freehold’s company agent] has had many difficulties to contend with, . . . the principle one that with the Mexicans has been fortunately settled whilst I was at Costilla and San Louis and all will I trust go on smoothly in the future,” in William Blackmore to Morton Coates Fisher, 7 October 1871, folder 376, box 130, WBLR-NMSRCA.

34. Minutes of Meeting between Settlers and U.S. Freehold Land and Emigration Co., WBLR-NMSRCA.
claims of occupiers who were not Beaubien deed holders, but offered to sell squatters the land they occupied. The company insisted that it would not view squatters and invited Beaubien settlers on an equal footing, it would not grant either class of occupiers the commons rights they claimed for grazing their livestock, and it would not grant free rights to cut firewood and building timber on grant lands. The company meant to define titles and end the practice of general, free access to the commons of grass, wood, and water.35

This first attempt to limit settler rights though negotiation did not hold. In December Ferdinand Meyer, the absent member of the committee, returned and rallied the Costilla residents to repudiate the agreement because it forfeited the community’s rights in common lands and relinquished the extensiones of the settlers’ individual vara strips.36 At a later meeting with the company’s agents that winter, the settlers’ representatives formally rejected the October arrangement. Newell Squarey, the company’s agent, described the collapse of the agreement:

My interview with Meyer and the commissioners was very unsatisfactory. Everything is undone. They repudiate the original agreement . . . and will agree to accept deeds and give up the Beaubien lines only on receiving a tract from 40 to 60 square miles taking in about half of the vega for the especial and sole use for pasturage for the Costilla people. . . . I am well nigh worn out and quite disgusted with the Mexicans and still more disgusted with Meyer [the fifth and until now absent commissioner]. He has come out dead against us and made a speech which showed plainly that he wishes things to remain as they had been in years past.37

The company, frustrated, but still needing resolution of the settler claims, made a fresh overture in 1873. Its chairman, Albert C. Rupe, wrote to the settlers.38 The letter adopted a conciliatory tone. It explained that the company could offer long-term settlers the lands they held under cultivation for nominal prices scaled to the length of their occupancy. Rupe wrote that the company’s commitments to its creditors and stockholders prevented it from offering more, explaining that the company’s plans for development foreclosed the old regime of free and open access to range, forest, and water. He noted that some in the company had urged legal action to sweep away settler claims, but that he still wished to arrive at an accommodation.

The letter’s discussion of water rights is intriguing. It asserted that in the future, rights to irrigation water in the valley would correspond to the seniority of land conveyances from the company. There was a clear threat: settle quickly and accept the company’s deeds in compromise of land claims or run the risk that water rights would be lost. The premise underlying the threat, that the company’s water rights were the only possi-

37. Squarey to William Blackmore, n.d., 1871, folder 424, box 130, WBLR-NMSRCA. Meyer’s name was written in and then scratched out in the original document.
38. Rupe to Ferdinand Meyer, Pedro Rafael Trujillo, and Jesus Bernal, 15 October 1873, folder 9, box 49, series 4.8, MEJ-CSSA.
ble source of water rights and that the established uses of the Costilla acequias did not constitute rights of priority, was, and still is, utterly without foundation under New Mexico law.  

The use of compromise and thinly veiled threat in the Rupe letter is characteristic of the company’s efforts to secure its position. The company seems sincere in its desires to avoid litigation and to persuade the settlers to accept a limitation of their rights. But on the points that were critical to the settlers—ownership of their land, assurance of their water rights, and access to grazing, fuel wood, and timber on the unsettled lands of the grant—Rupe offered no more than Gilpin and Squarey had offered two years earlier. The settlers seem not to have accepted his terms, though we must infer this from the fact that there is no evidence of a large-scale issuance of company deeds to the settlers in the wake of the offer.

The settlers had refused to concede the duty to pay for their land or for commons access they viewed as theirs as a matter of right. They recognized that once they had conceded the duty to pay for land and rights to grazing and wood, they would be dependent in the future on whatever access rights the company might choose to grant. Indeed, the company’s stated development plans made it clear that the Mexican settlers were in the way, except as a possible source of inexpensive labor. Company minutes and memoranda reveal a program of mines, reservoirs, and irrigation ditches to support larger-scale farms and planned communities. All these plans required both the limitation of Hispano claims to land and water, and the availability of Hispano labor. The underlying reason for the settler resistance was the threat of expropriation, and this they fought.

The company turned to lawsuits as a way of dealing with settler claims. It won a judgment confirming its title against trespassing settlers in

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40. Deed Records, TCC (I examined all deed books through 1920 and found no settler deeds recorded). Malcolm Ebright, in his study of the Las Trampas Land Grant, notes that one practice used to destroy the land and resource rights of land grant settlers was to give them nonrecordable deeds in compromise of their claims. The use of that practice in the case of the Las Trampas Land Grant raises the possibility that it may have been used elsewhere, suggesting another possible reason why the public record of deeds to the Costilla settlers is so scant. Ebright, *Land Grants*, 160–62.

41. U.S. Freehold’s management and agents often expressed the hope that the local Hispano people would prove to be a tractable labor force. Blackmore, *Southern Colorado and its Resources*, 3, WBLR-NMSRCA. The letters and promotional materials prepared by a Brown University academic, Nathaniel P. Hill, commissioned by William Gilpin to endorse the grant’s potential, also call for a Hispano labor force. See “Nathaniel P. Hill Inspects Colorado,” *The Colorado Magazine* 33 (October 1956), 241. Hill’s work for Gilpin is more generally described in Karnes, *William Gilpin*, 306–09.

1873 but did not follow up on its victory with active efforts to eject the many squatters in the Costilla and Culebra watersheds. Then, in 1887, it brought a case targeted at the Costilla settlers, *U.S. Freehold Land and Emigration Co. v. Arrellano*, which named fifty-four defendants in an ejectment proceeding. The case languished for reasons now obscure. The question of settler rights thus remained unresolved, lying dormant until the turn of the century. By that time, the company’s financial distress forced it to abandon the idea of colony settlement of the Sangre de Cristo lands.

The next eruption of conflict between the company and the Costilla settlers occurred in 1902. U.S. Freehold’s managers had abandoned the idea of colony settlement and were instead pursuing a less demanding program to exploit the grant’s grazing, timber, water, and mining resources. They organized a new company, Costilla Land and Investment Company, to promote mining and timber development and to build dams and canals to support the sale of irrigated farmlands and the supply of electric power. On the eve of transfer of the Costilla Estate to the new company, U.S. Freehold leased eight thousand acres in the upper Costilla watershed as a sheep range, in part to reverse a history of financial losses, but also to assert its control over land the Costilla settlers claimed as a grazing commons. The effect was to galvanize anew the opposition of...

44. *U.S. Freehold Land and Emigration Co. v. Arrellano*, Taos County District Court No. 350 (November Term 1887), Civil Cases 1853–1913 Series VI, TC-NMSRCA. Records of proceedings in the case appear sporadically on the Taos County District Court Docket and in the Record of the District Court until 4 December 1899. There seems never to have been substantive proceedings in the case. It is possible that the managers of the Sangre de Cristo Grant had already decided to adopt a less confrontational approach to the settlers. One intriguing possibility is that the violent confrontations on the Maxwell Grant played a role in shaping a different policy for the Sangre de Cristo Grant. In August 1887, Edmond C. van Diest, the manager of the grant from 1886–1903, while helping with a survey of the Maxwell grant, was followed “by sixteen masked Mexicanos” who prevented him from laying out an irrigation ditch. Rosenbaum, *Mexicano Resistance*, 85. Van Diest’s experience may have had an effect on the future management of the Sangre de Cristo Grant.

46. U.S. Freehold first sold its interest in the Costilla Estate to U.S. Freehold Land and Investment Company for $1 in cash and $1,036,000 in bonds, followed by transfer to a newly formed company, the Costilla Land and Investment Company. Brayer, *Spanish-Mexican Land Grants*, 123; “Facts Relative to Sale of Sangre De Cristo Grant Tax Deed 102 and 103, Taos County (September 1941),” Sangre de Cristo Grant, folder 267, box 8, Special Reports and Issues Series VI, JEM-NMSRCA.

The shift in development objectives after the failure of the colony project is especially evident in the periodic reports on the timber, water, and mining resources of the grant prepared by Edmond C. van Diest. See Report on the Irrigation of the Costilla Estate (1890), and Report on Irrigation of Part of the Costilla Prairie, 27 July 1888, copy book 2, pp. 11–29, 69–76, 135–42, box 74; Statement Regarding the Timber Area of the Costilla Estate, 26 January 1905, copy book A, pp. 148–51, box 76; and The Articles of Incorporation and Bylaws of the San Luis Power and Water Company, folder 127, box 25, all in DC-TLCC.

47. Complaint, *United States Freehold Land and Emigration Co. v. The Defensive Association of the Land Settlers of the Río de Costilla*, 22 April 1903, Taos County District Court, Civil Case No. 685, folder 728, box 23, Civil Cases 1853–1913 Series VII, TC-NMSRCA.
the Hispano settlers.

The settlers' immediate response to the company's grazing lease was to hire lawyers and to establish a not-for-profit corporation that could act for them collectively, the Defensive Association of the Land Settlers of the Rio de Costilla. The Constitution of the Association outlines the group's objectives:

The purpose of this Association will be the united defence [sic], and mutual protection, of those associated therein, of their homes, rights, property and domain, which the settlers herein have acquired in the lands of the Rio de Costilla . . . by more than thirty years of quiet, and peaceful possession, residing thereon, with their families, cultivating the lands, constructing dams and ditches for irrigation purposes, building houses, raising animals, . . . and in this manner occupying said lands, with its woods pastures, water rights, in common benefit.

The Defensive Association filed an ejectment action in Taos County District Court against U.S. Freehold and its lessees, alleging trespass on their community common lands, and shortly thereafter, in early April 1903, its members gathered on horseback to bar the way as the company's lessees attempted to drive their sheep to the leased range. A letter the

48. Certificate of Incorporation of the Defensive Association of the Land Settlers of the Rio de Costilla, State Corporation Certificate No. 0030809, incorporation date 12 April 1902, New Mexico Public Regulation Commission, Santa Fe [hereafter NMPRG]. The Defensive Association's primary legal counsel during the period were Octaviano A. Larrazola and Charles Speiss of Las Vegas, New Mexico. Larrazola became the first Hispano governor of New Mexico (1919–1921) and its first Hispano U.S. Senator (1927–1928). Speiss was the law partner of Thomas Catron. Biographical Note, Octaviano A. Larrazolo Papers, 1841–1981, NMSRCA.

49. Defensive Association of the Land Settlers of Rio de Costilla, Const. art. I, pars. 2–3, 22 March 1902, filed with Certificate of Incorporation of the Defensive Association of the Land Settlers of the Rio de Costilla, NMPRG. The language in the Constitution closely tracks the language of the New Mexico color-of-title statute/cases for the proof of titles without documentation, and thus suggests that the advice of legal counsel may have informed the drafting of the constitution.

The settlers' argument for their ownership varied during the dispute. The constitution maintained that the settlers' rights were based on their own peaceful possession. Later, at trial, they introduced evidence intended to show that their titles and commons rights derived from settlement rights accorded them or their ancestors by Charles Beaubien as owner of the Sangre de Cristo Land Grant. See Order, p. 61, Application of Pluries Writ, RGP-NMSRCA. The settlers may have resorted to Beaubien's conveyance as the foundation of their rights once it became clear that they could not prevail on a theory of adverse possession based on possession alone. In the end, their inability to produce satisfactory written evidence of title proved as fatal to their efforts to prove title through Charles Beaubien as to their efforts to establish title by peaceable occupancy alone. On the need to satisfy color-of-title requirements in New Mexico, see Seed, "Adverse Possession," 104–5; and Armijo v. Trujillo, 4 N.M. 57, p. 63 (1887). Note that because the Costilla settlements were established after the Treaty of Guadalupe Hidalgo, the New Mexico statute for land within Mexican or Spanish land grants that allowed for title based on ten or more years of peaceable possession since U.S. dominion was unavailable as a foundation for the settlers' titles. 1897 Compiled Laws of New Mexico (Santa Fe: New Mexican Printing Co., 1897), 558.

settlers delivered to U.S. Freehold's lessees on the eve of the confrontation is pungent and clear:

Sir, if you want to avoid trouble with this corporation, you have to stay where you are, because the Deputy Sheriff will be ready and the corporation to stop you before you go to your lambing because the road to go to that place belongs to this people and not to the Company. . . . We will not allow you to make road for your sheep in our own property, all the road is occupied by the people, but if you could fly otherwise you will not find your way through.®

The case testing the validity of the grazing lease and the settlers' claims against U.S. Freehold and Costilla Land and Investment was styled The Defensive Association of the Land Settlers of the Rio de Costilla v. Thomas Keely, et al., and heard in New Mexico District Court at Santa Fe in November 1905.® The case was known as the Santa Fe Case, and it proved to be the pivotal legal dispute between the Costilla settlers and U.S. Freehold and its successors.

The trial occurred over twelve days. On the first day, the court ruled that the Defensive Association lacked legal capacity to sue.® The reasons for the ruling do not appear in the record, but it is possible the court thought the purposes for which the Defensive Association had been organized were not lawful, or perhaps that the case involved only the property interests of the several members of the association individually, so that there was no proper place for the association and its alleged representation of communal rights. In any event, the case was restyled Ferdinand Meyer Jr., et al. v. Thomas Keeley, et al., and proceeded on that basis.

Documentation of the presentation of evidence has not survived, but the thrust of the evidence can be inferred from the court's main rulings. The court confirmed U.S. Freehold's unqualified ownership of the grant and completely rejected the individual and community land claims maintained by the settlers. Those rulings probably turned on the company's offer of documentary evidence tracing its title directly and clearly to the original grantees, and on a corresponding inability of the settlers to offer compelling documentary evidence supporting their titles, either to community common lands or to private farmsteads.® Probably, the only docu-

51. Thomas Rivera to Sam Holman, 23 April 1903, The United States Freehold Land Co. et al. v. The Defensive Association, et al., Taos County District Court, Civil Case No. 685, folder 728, box 23, Civil Cases 1853–1913 Series VII, TC-NMSRCA.


53. Order, p. 5, 3 November 1905, Meyer et al. v. Keely et al., Civil Record J, Record Books Series II, SFC-NMSRCA.

54. The company, as owner of the Costilla Estate, was a successor to a Mexican
mentary evidence the settlers could produce were Gilpin's covenant to Beaubien's executors to honor unspecified settlement rights to Beaubien's grantees, and the Beaubien Document itself. Each of these documents could be readily attacked. Gilpin's covenant mentioned no grantees by name, and the Beaubien Document was concerned only with settlers in the Culebra watershed, not the Costilla. In its ruling, the court declared the Beaubien Document to be of no effect. It offered no comment of record on the vaguely worded Gilpin covenant.55

The company had proved its titles and the settlers could not, with the exception of the few of them who could produce deeds issued by Beaubien or his successors.56 The litigation thus formally repudiated the settlers' claims of individual and community title. It laid a foundation for a new structure of titles derived from the company and rejected claims of right by settlement.

Yet, in the very moment of the settlers' defeat, Judge McFie felt compelled to soften the blow. The court was concerned that there would be no peace on the ground without some concession to the settlers' sense of right, and it advised the company to offer an accommodation.57 Even before the trial began, the united front presented by the settlers seems to have troubled company officials, in spite of their confidence in the strength of their legal position. Thus, on the eve of trial, Edmond C. van Diest, U.S. Freehold's managing director, wrote the company's Denver counsel, voicing his frustration that the settlers would not come to terms, even though the company had obtained a preliminary injunction against their interference with its lessees.58 Company officials wondered whether the resistance of the Costilla settlers might be part of a larger regional movement, signaling trouble on a wider scale.59 The recent movement to the Costilla Valley of squatters evicted from the Maxwell Land Grant to the east caused particular worry.60 And now, with a trial victory in hand,
the company still could not count on peace or a quieting of resistance. So, following the trial judge’s lead, U.S. Freehold offered fixed-term leases to the settlers of certain grazing lands that the settlers viewed as part of their commons, and, in addition, offered to give deeds to long-term residents of the valley for their house lots and historically cultivated lands. The settlers would be allowed to keep their home places, and in exchange would concede the company’s ownership and rights. To fifty-five named parties residing outside the town of Costilla, it offered specific concessions of land aggregating 119 acres, corresponding to their house lots, and extended the same offer to forty other settlers who had not been parties to the lawsuit. Those small lot concessions were made subject to the company’s option to purchase the land within two years at $2 per acre and the value of any improvements. The court approved the terms of the settlement on 17 November 1905.

In a letter to his brother-in-law William F. Meyer, a prominent merchant at Costilla, van Diest explained the company’s thinking in offering the compromise:

For your own information it is not intended to work an unnecessary hardship on any of them, but to let them all realize fully, that they must recognize the Co’s rights and to it must be indebted for any favors. I felt this was a better plan than to place them on an entirely independent footing, the more as the judge told them and as their attorneys well knew, they would have lost the case entirely. Points of law were involved that would not have allowed the case to go to the jury, or would have compelled the judge to instruct the jury to find for us. As he did not want to be in that predicament from a political standpoint, and to promote good feeling I arranged the Compromise.

The main purpose of the compromise, to produce boundaries to which the settlers would agree, could not however be achieved. Having accepted the company’s offer in court, the settlers resisted it in practice.

An essential element of the court’s decree was provision for a land survey that would establish agreed boundaries consistent with the Santa Fe decree. The survey was to be administered by a group consisting of representatives of the company and the settlers. The survey work did not begin well. Paul Albright, the local agent for Costilla Land and Investment, wrote van Diest that the settlers were resisting the terms of

Territorial and New Mexico Supreme Court Records, 1846–1978, NMSRCA [hereafter SCR-NMSRCA].

61. Order, pp. 60–62, 17 November 1905, Meyer et al. v. Keely et al., Civil Record J, Record Books Series II, SFC-NMSRCA; and Stipulation, p. 2, 17 November 1905, Meyer et al. v. Keely et al., Case No. 4741, Santa Fe County District Court, Arrellano Family Papers, NMSRCA [hereafter AFP-NMSRCA]. Access to this collection was courtesy of Estevan Rael-Galvez, State Historian, NMSRCA.

62. Stipulation, pp. 1–4, Meyer et al. v. Keely et al., AFP-NMSRCA; and van Diest to William F. Meyer, 6 December 1905, copy book B, pp. 177–78, box 76, DC-TLCC.

63. Order, p. 62, Meyer et al. v. Keely et al., Civil Record J, Record Books Series II, SFC-NMSRCA.

64. van Diest to Meyer, 6 December 1905, DC-TLCC.

65. Stipulation, p. 2, Meyer et al. v. Keely et al., AFP-NMSRCA.
the settlement and refusing to proceed with the survey work. Van Diest pointed out that the settlers had no choice but to accept the result of the court’s ruling:

The people and the Corporation seem to forget that this is not a compromise, but virtually a gift from the Co, and unless they take that they have nothing. It should be made clear to them, that they lost the suit, and the Co is only giving these things for the sake of harmony and because they have lived there so long. . . .

Let them form or elect a committee, that all are agreed upon, and by whose actions they will abide without question and I will meet the Committee at any time, and take up the whole matter as to the claims included and not included in the settlement.66

The settlers appointed a committee of five to speak for them and to work with van Diest and the company in completing the survey. But in a formal statement to van Diest, the committee members wrote that they not only expected the survey would assure them good title, but also that the right to free timber and fire wood for personal use would be guaranteed to all members of the Defensive Association and their successors.67 This insistence on commons rights to timber and firewood represented a revival of commons claims denied in the Santa Fe settlement. It was an early signal that the people had not abandoned their claim to commons rights in spite of the results of the lawsuit.

The settlers expressed their hostility to the survey in very pointed ways. The local men hired by the company to do the work of holding stakes and stretching the survey chains demonstrated a persistent and annoying inability, or unwillingness, to do the work properly. Their failure was compounded when each day a new crew of workers arrived to replace the previous day’s crew, disrupting all continuity. U.S. Freehold’s agents attributed the poor work to the incompetence of the local men and to the community’s determination to treat the survey not as a task to be completed, but as an employment opportunity to be shared by all.68 Instead, the continual rotation of work crews and their seeming incompetence in performing basic tasks were a form of resistance to a survey that the settlers feared and did not want. The substitution of workers helped to delay the work and, not incidentally, served as a useful monitoring tool, allowing many members of the community to oversee the progress of the unwanted

66. van Diest to Albright, 18 January 1906, copy book B, pp. 251–52, box 76, DC-TLCC.
68. van Diest to Charles A. Spiess, 14 February 1906, copy book B, pp. 304–05, box 76, DC-TLCC. Van Diest wrote to Charles A. Spiess, lawyer for the settlers, “Mr. Albright is having considerable difficulty in securing the aid needed to do the work. . . . The people desire to supply him with different men every day in order to have all of them work out a portion of the time. Inasmuch as none of these men know anything about surveying or [are] even capable of reading a tape, it makes it difficult for Mr. Albright to keep track of the situation with such assistance.”
survey and its results. Community representatives complained to the company of the “cruelty” of the survey and its inconsistency with the community’s sense of its rights. In response, van Diest again reminded the people that they had lost the lawsuit and that they now depended on the goodwill of the company to recognize any rights in the land. In February he wrote Tomas Rivera, president of the committee of settlers:

It seems to me that the people still do not understand that the agreement that we made in Santa Fe was entered into by the lawyers of both sides . . . and that their conclusions were confirmed by the Judge’s order. If the people do not want to help in the survey, they will injure their own cause, not that of the Company, and if by chance they are entertaining the idea of reopening the question in court, they will waste more money than the cost of buying the land from the company, and in the end they will lose the case. . . . If, instead of imposing obstacles, the people do all they can to complete the survey and comply with our arrangement, they will deserve the consideration of the Company, and will receive it. . . . I expect to hear without delay that things are proceeding as they ought.

The survey work for lands in and near the town of Costilla was completed in May. The company immediately began to post notices throughout the valley advising squatters who had not yet settled with the company that they would be obliged either to lease or purchase their holdings from the company or quit the land. That June van Diest traveled to Costilla, intending to meet separately with the occupiers of more than two hundred tracts in and around the town, hoping that a series of private conversations would bring acceptance of the new property lines.

The response to van Diest’s effort was decidedly mixed. Some settlers accepted the proposed boundary lines. In November 1906, however, thirty-eight persons, chiefly from the Amalia area, joined as plaintiffs in an action seeking to vacate the judgment in the Santa Fe case, arguing that the attorneys for the Defensive Association had not been properly

69. Tomas Rivera’s letter is missing, but one can get a sense of its contents from van Diest’s reply. See van Diest to Rivera, 23 February 1906, copy book B, p. 315, box 76, DC-TLCC.
70. van Diest to Rivera, 27 February 1906, copy book B, pp. 325–26, box 76, DC-TLCC. Translation by author.
71. van Diest to Albert Smith, 24 May 1906, copy book B, p. 466, box 76, DC-TLCC.
72. van Diest to Albert Smith, 1 June 1906, copy book B, p. 476, box 76, DC-TLCC. Throughout the dispute about the survey, van Diest represented himself to his correspondents as adept in handling negotiations with the Hispano settlers. His tactics embodied a model of colonial administration that may be attributed to his understanding of the “Dutch way.” For example, before the start of the Santa Fe trial, he had advised a strategy of pitting the settlers against each other by offering prominent Costilla residents the deeds to house lots at nominal prices and offering some of the settlers grazing leases in lands claimed as common lands. His stated goals were to break down solidarity among the settlers and to undermine the notion of common ownership. Van Diest to Albert Smith, 8 January 1905; and E. C. van Diest to William F. Meyer, 14 October 1905, copy book B, p. 78, box 76, both in DC-TLCC. For accounts of the Dutch model of colonial administration, see Frances Gouda, Dutch Culture Overseas: Colonial Practice in the Netherlands Indies, 1900–1942 (Amsterdam: Amsterdam University Press, 1995); and Montoya, Translating Property, 126–27, for a discussion of the Dutch model’s application in the American West and Southwest. For relevant biographical information on van Diest, the son of a Dutch colonial administrator, see Hicks and Peña, “Community Acequias,” 436.
authorized to compromise settler land and resource claims.\footnote{Motion to Vacate, 16 November 1906, \textit{Meyer et al. v. Keely et al.}, Record of Proceedings, Case No. 4741, Civil Docket 6, p. 155, Docket Books Series I, SFC-NMSRCA. The text of the motion appears among the documentation filed by Costilla Land and Investment and Costilla Estates Development in 1915 in support of a writ to enforce the decree entered in the Santa Fe case. Application for Pluries Writ of Assistance, RGP-NMSRCA.}

The settlers’ resistance to the terms of the Santa Fe decree may have been sharpened by an attack on their water rights launched at this time, and which hit with full force in 1908. In that year, the company’s successor, Costilla Land and Investment Co., purchased from Ferdinand Meyer most of the water rights served by the oldest ditches on the Rio Costilla. These were rights that Meyer, a leader of the early opposition to U.S. Freehold, had purchased over the years from his neighbors. He now joined Costilla Land and Investment and its affiliate Costilla Estates Development in a lawsuit, \textit{Meyer, et al. v. La Acequia Madre, et al.}, to establish the seniority of those rights and his freedom to sell them.\footnote{Meyer \textit{v. Acequia Madre}, 27 July 1908, TC-NMSRCA. Meyer alleged that his water rights in La Acequia Madre (1853) and in the other most senior ditches of the Rio Costilla, the Acequia de la Cordillera (1853) and the Acequia de la Mesa (1854), fully absorbed most of the available flow of the Rio Costilla. Complaint, pars. 3, 8, 30, \textit{Meyer v. Acequia Madre}, TC-NMSRCA. Later that year, while the action was still pending, Meyer entered into an agreement with Costilla Estates Development to sell for $36,000 thirty of the forty cubic feet per second (cfs) of water he claimed in the as yet unadjudicated waters of the Costilla. Agreement of 26 September 1908 and Agreement of 30 December 1908, Exhibits A and B to the Amended Complaint in the \textit{Meyer v. Acequia Madre} Case File, TC-NMSRCA. Trial of the case began on 12 September 1911 and the court entered its Final Decree on 2 December 1911, sustaining Meyer’s water rights and enabling him to sell those rights to Costilla Estates Development. For an account of water rights disputes in the Costilla watershed and a description of U.S. Freehold’s strategy of attacking senior acequia water rights, see Knox, “Costilla Creek,” 453, 458; and Helton, “Garcia Water Problems.” U.S. Freehold’s attacks against Rio Costilla acequia water rights duplicated methods used to diminish acequia water rights in the Rio Culebra watershed in Colorado. See Hicks and Peña, “Community Acequias,” 425–44.}

The defendants were Meyer’s neighbors, many of whom had just lost their claims to land and commons rights in the Santa Fe litigation. They could prove longstanding irrigation of their farms, dating back to the first settlement of the valley, but the farms they irrigated were the very ones that the court in the Santa Fe litigation concluded they did not own.\footnote{Answer, \textit{Meyer v. Acequia Madre}, par. 3, 26 February 1909, TC-NMSRCA.}

In \textit{Meyer \textit{v. Acequia Madre}} the court adopted the finding in the 1905 Santa Fe case that none but persons holding valid deeds from Beaubien or U.S. Freehold would be treated as owners of Costilla lands. It went on to rule that the defendant farmers could not own water rights unless they had valid title to the land. In the court’s view, the settlers’ beneficial use of water on land they did not own had established the continuing right of the land to receive the water, but not the right of the settlers to that water. Thus, the land could continue to be irrigated, but the farmers would own neither land nor water except to the extent either was conveyed to them by the Costilla Estates Development Company.\footnote{Order, \textit{Meyer \textit{v. Acequia Madre}}, 2 December 1911, TC-NMSRCA, reproduced in Application for Pluries Writ of Assistance, pp. 60–62, RGP-NMSRCA.}
The decision in *Meyer v. Acequia Madre* effectively invalidated most senior water rights claims other than Meyer's. He was free to sell his very senior water rights to Costilla Estates Development Company. The company's purchase of Meyer's rights and its victory in the Santa Fe case established it as owner of much of the land in the Costilla Valley and as owner of the most senior water rights in the Rio Costilla.\(^7\)

In a curious turn, the company made a proposal in open court at the conclusion of the *Meyer v. Acequia Madre* case to sell the settlers who had lost their water rights the land they had historically irrigated. The only condition was that the settlers accept the terms offered in the Santa Fe case. It was a proposal that would save both the settlers' water rights and secure their land titles. The company extended a similar offer to the hold-out settlers near Piña (present-day Amalia), proposing to sell them four hundred acres of historically farmed land "in proportion to their present occupancy of agricultural and now cultivated land." The price and the payment terms for the additional land were modest, and the offer would secure the settlers the ownership of their land and create a basis for valid water rights. The company maintained that the offer was motivated by a desire to put an end to all disputes, to make the 1905 decree effective, and to make it possible for the settlers to retain their homes.\(^8\) It is quite clear, though, that the company was using the settlers' fear of losing their water as a hammer to impose the terms of the Santa Fe decree.

The settlers' response to the company's offer is intriguing given that

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77. A major contested issue in the case was whether Meyer's water rights could properly be considered superior to those of his neighbors. As the owner of most of the land served by the senior-most acequias, his claim to senior, and therefore superior, rights was consistent with the emerging law of prior appropriation in New Mexico. Meyer's claim was at odds, however, with established acequia norms, which followed a principle that scarcity was to be shared, and also that temporal priority was one of only several considerations relevant to an equitable sharing of water from a common source. See Hicks and Peña, "Community Acequias," 410–15. Transfer of Meyer's rights to Costilla Estates Development resulted in the loss of a large portion of the Rio Costilla's available water to the traditional band of acequia-irrigated riparian lands.

The loss of senior acequia water rights in the Rio Costilla has never ceased to be a sore point. The impact of *Meyer v. Acequia Madre*, effecting an adjudication of water rights in the Rio Costilla, was not understood by most water users at the time of that decision, and there were periodic calls that the loss of water to the community be investigated. See Sangre de Cristo: Diversion of Water from Costilla River, 1930–1941, folder 94, box 4, LGC-NMSRCA, in which are petitions and letters to Governor Larrazola complaining of the Costilla Estates' newly constructed reservoir in the Costilla canyon and the use of its impounded waters. Governor Larrazola asked the New Mexico Attorney General to look into the claims of the Rio Costilla people. For accounts of the continuing confusion and anger following the loss of water to the acequias see Helton, "Garcia Water Problems"; Knox, "Costilla Creek," 453–62, 471–72; and O. A. Larrazola to O. O. Askren, 12 July 1919, Sangre de Cristo: Diversion of Water from Costilla River, 1930–1941, folder 94, box 4, LGC-NMSRCA. For accounts of allocations of Rio Culebra water following Meyer's sale of the Acequia Madre rights, see Clark, *Water in New Mexico*, 543–46; and Knox, "Costilla Creek," 459–62, 470–73. The recent history of Costilla water management has also been troubled. See Michelle Nijhuis, "A River Becomes a Raw Nerve," *The High Country News*, 12 October 1998.

78. Application for Pluries Writ of Assistance, pp. 72, 73, RGP-NMSRCA.
they stood to lose their water unless they accepted and, without water, might well be forced from their land. Twenty-two settlers accepted, accounting for 802 of the total of 1000 acres the company offered. Of the land the settlers would own, 259 acres were irrigated and cultivated, all with water rights affected by the *Meyer v. Acequia Madre* litigation. Yet before their agreement became definitive, other settlers persuaded those who had at first accepted to renege. Thus, an offer that plainly was attractive to settlers threatened with loss of land and water was rejected. Whether simple cajoling and an appeal to solidarity were sufficient, or whether some combination of threats and harassment played a role in causing the willing settlers to change their minds, is impossible to say. The company, although it at first met this new rejection with a fresh set of ejectment actions against the settlers, quickly backed off, saying that it continued to harbor hopes that "others might accept its offer and might cease their unlawful interference with the company’s possession." The company obtained a writ against the still trespassing settlers but let its action lie dormant, choosing not to serve the writ upon any of the resisting settlers.79

It is difficult to reconstruct the exact reasons for the settlers’ rejection of the company’s offer, or for the company’s decision not to take advantage of the *Meyer v. Acequia Madre* decision to push the settlers from the land. There are, however, hints of an explanation in a second lawsuit brought in July 1906, seven months after the Santa Fe decree and styled *Costilla Land and Investment Company v. Allen*. The case was brought to enjoin trespasses on company lands and to end circulation of rumors that the company had no title to its land.80

Trial testimony in *Costilla Land Investment Co. v. Allen* reveals that many of the defendants in the case were recent arrivals in the upper Costilla Valley, and it is this influx of newcomers that suggests an explanation for the company’s offer of land in *Meyer v. Acequia Madre* and for the rejection of that offer by the established Piña and Costilla settlers.

These new arrivals had entered the upper Costilla watershed around 1905, pressed out of the Maxwell Grant immediately to the east as the owners of that grant pursued a policy of evicting squatters to develop and sell the Maxwell lands.81 The new arrivals from Maxwell settled among older residents in the area around Piña.82

The offer of water and land in *Meyer v. Acequia Madre* was likely intended by the company to secure the possession of older settlers as a bulwark of sorts against the new migrations into the valley. The evidence

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79. Ibid.
in *Costilla Land Investment Co. v. Allen* indicates that the new arrivals had brought considerable instability in their wake, and the company may have considered accommodation with the older settlers as a means to contain the new squatters. Even though the *Meyer v. Acequia Madre* case was tried two years after the evidence was taken in *Costilla Land Investment Co. v. Allen*, the company was still struggling to deal with the *Allen* defendants, and the offer of land and water to the established Piña and Costilla settlers would have been useful in securing the land against the new arrivals. But the very pressures that led the company to make the offer may have convinced the established settlers that they did not need to accept it. They may have believed that the company would tolerate them in preference to risking the instability that would result from driving them from the land or denying them water.

In the years after the *Meyer v. Keely, Costilla Land Investment Co. v. Allen*, and *Meyer v. Acequia Madre* cases, the company continued as before in its effort to contain settler land holdings in the Costilla Valley. The company brought numerous lawsuits, including actions in 1912 and 1915, to enforce the 1905 decree. It seemed, however, always unwilling to face the costs and uncertainties of new trials, instead viewing the threat of litigation as a tool to maintain pressure on the settlers. In early 1912, a suit was filed to enforce the terms of the Santa Fe decree against seventy named defendants who still refused to come to terms. Some of the defendants were people living near the town of Costilla, but most were settlers in and around the community of Piña, six miles to the east. As late as November 1915, the company was obliged to sue seventy of the defendants named in the Santa Fe case, alleging trespass on company lands and refusal to comply with the 1905 decree. Eventually, it acted to evict some thirty families residing in the upper Costilla Valley in 1919 and 1920. They seem to have been the new arrivals whose coming in the years after 1905 had triggered the *Costilla Land Investment Co. v. Allen* lawsuit, and not the longer term residents.

Among the company’s main efforts to push the settlers toward acceptance of its ownership was a direct appeal in 1915 to Bishop John Baptist Pitival of the Archdiocese of Santa Fe. The company’s lawyers called on the Archbishop to complain about Father Emile Barrat, the parish priest at Piña who had become a leader in the settler resistance and an officer in the Defensive Association, and followed up that visit with an

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83. Ibid., 51–53, 101, 114. The court (Judge McFie presiding) handed down its decision in the *Allen* case on 27 December 1909, following three days of trial during 6–8 December. After the *Costilla County Land and Investment v. Allen* ruling, unknown persons persisted in destroying monuments marking the eastern boundary of the grant.

84. *Fernando Meyer, Jr. v. Thomas Keely*, District Court of Santa Fe County, Case No. 4741, folder 95, box 15, RGP-NMSRCA.

85. Application for Pluries Writ of Assistance, pp. 21–22, RGP-NMSRCA.

86. Application for Pluries Writ of Assistance, RGP-NMSRCA.

exhaustive letter presenting the company’s perspective. The letter complained of Father Barrat’s involvement, and went on to present a full account of the history of the company’s acquisition of the grant and of the legal proceedings confirming its title. The company then explained its efforts to make peace with the Piña settlers, concluding with an appeal for intervention:

The agitators who have apparently secured Father Barrat’s cooperation are attempting to claim that some fifty of these settlers, in and around Pena, have such holdings and claims upon the lands which they occupy that they can disregard the rights of our company. Notwithstanding the fact that our company has been willing to give, without compensation, the homes that these people occupy and small tracts of land around them, and has also been willing to sell to them a title to the remainder of the land which they unlawfully occupy, these poor people have, through bad advice, for the last seven years, harassed themselves and us in unnecessary litigation and have spent needlessly, in the prosecution of it, far more than was sufficient to have bought their title and improved their lands.

... It has been the policy of our company to do whatever we could to help the local settlers, and not hinder them. We would prefer that they should stay, if they would stay lawfully. Their labor is desirable and it could be made a source of profit to themselves. ...

... I have no desire to involve you in a controversy, but I think it is fair to these poor people, whose interests we really and genuinely desire to protect, that some wise counselor should at least suggest to their local leaders that they advise themselves before acting.

The Archbishop seems not to have intervened, nor to have disciplined Father Barrat. It is quite clear that Father Barrat did not desist in his efforts on behalf of the settlers.

The company at no point was able to persuade the settlers to cease their resistance. The dispute dragged on, and as late as December 1915, the correspondence between the lawyers for the company and for the

88. E. R. Wright to Pitival, 1 November 1915, folder 95, box 15, RGP-NMSRCA. The copy of the letter appearing in the Renehan-Gilbert Papers is unsigned, but Wright’s authorship is indicated through the text of another letter to Franklin E. Brooks of the Costilla Estates Development Company, which refers to Wright's letter to Pitival. E. R. Wright to Franklin E. Brooks, 4 November 1915, folder 95, box 15, RGP-NMSRCA.

Father Emile Barrat was appointed pastor at Costilla in January 1913 and remained in that post until September 1923 when he was made pastor of San Marcial, near Socorro, New Mexico. Father Barrat was born in Dugny (Verdun-sur-Meuse), Lorraine, France, on 9 July 1881. He received Bachelor of Arts and Bachelor of Philosophy degrees from the University of Nancy in France before coming to America. He was ordained a priest in Tucson on 7 December 1904 by Bishop Granjon. After serving as pastor of a new parish in Metcalf, Arizona, he was chosen by Archbishop Pitival for the post of Assistant at Saint Francis Cathedral in Santa Fe. He served there from December 1911 until his move to Costilla in 1913. He died on 2 February 1944. This biographical sketch was kindly provided by Marina Ochoa, Director and Coordinator of Preservation, Archives and Museum, Commission for the Preservation of Historic Churches in New Mexico, Archdiocese of Santa Fe.

89. E. R. Wright to Pitival, 1 November 1915, RGP-NMSRCA.

90. Barrat to Gov. O. A. Larrazola, 21 June 1919, and 24 March 1920, Sangre de Cristo: Diversion of Water from Costilla River, folder 94, box 4, LGC-NMSRCA.
settlers struggled for a compromise. In June 1916, the settlement efforts again collapsed and the company appears to have resigned itself to press ahead with fresh lawsuits against trespassing settlers. But as in the past, the company abandoned active pursuit of its cases. Alois B. Renehan, the company’s lawyer, writing to the board of directors three years later to describe his approach to the litigation, explained, “The dangers of the case... led to a strategy of playing the case along as best I could.” He went on to recall that no more than fifteen or sixteen of the settler cases were either successfully compromised or dismissed. Renehan reminded the board that a majority of the Piña settlers continued to hold out; he was pessimistic about achieving a resolution satisfactory to the company. The case was stricken from the court’s docket. The settlers were convinced that it was their refusal to vacate their farmsteads and the unwillingness of the company to chance what a trial might bring had forced the company’s retreat and its acceptance of the fact that the people would remain on the land.

There was a final episode of litigation in the summer of 1921 when the company again tried to test its title against the Piña settlers. The renewal of litigation coincided with completion of the company’s Costilla reservoir and Cerro irrigation ditch and may have been triggered by the company’s desire to control land that it could now irrigate. The company’s efforts, as in the past, were oddly irresolute and badly coordinated. The correspondence of this period reflects genuine disarray and an awareness of the growing impatience of the court with the company’s failure to press any of its challenges to settler claims. The problem, again, was whether the Piña settlers could be made subject to the Santa Fe decree or whether a fresh case would be required, exposing the company to the risk that the Piña settlers might be able to prove their titles. The 1921 case began with a request for the appointment of a special examiner to review the claims and foundations of title by the parties as a prelude to a final

91. Franklin Brooks to A[lois]. B. Renehan, 3 December 1915, folder 95, box 15, RGP-NMSRCA; and Application for Pluries Writ of Assistance, pp. 74–75, RGP-NMSRCA.
92. A. B. Renehan to General Manager of Costilla Estates Development Co., 1 June 1916, and 23 June 1916, folder 95, box 15, RGP-NMSRCA.
93. Renehan to George W. Bierbauer, 24 September 1921, folder 96, box 15, RGP-NMSRCA.
94. Stipulation in Case Nos. 1130–1193 to continue all cases over to next term of court, followed by order to strike cases from docket, 1 June 1918, folder 96, box 15, RGP-NMSRCA.
96. Costilla Estates Development Company v. Clemente Mascarenas et al., Civil Docket Nos. 1130–1193, folder 95, box 15, RGP-NMSRCA.
97. A. B. Renehan to George W. Bierbauer, 24 February 1922, folder 69, box 15, RGP-NMSRCA. Expressing growing worry about the company’s indecision, Renehan wrote, “we are getting to the place where we will go out of court head first if something is not done.”
resolution. The work of the referee was never properly begun, however, as company officials and lawyers dithered, unwilling to risk the possibility of adverse findings by the examiner and doubtful about how to proceed. They continued to believe that safety dictated a strategy of avoiding a direct test of settler rights, striving for settlements instead. Its manager, C. A. Robinson, wrote to its litigation counsel: "It is important that nothing be done which would establish any record title for the defendants in their respective lands. As long as they have no record title there is always the possibility of our making some settlement with them." By the summer of 1922, the company seems to have abandoned the thought of immediate action.

Here, the record of active legal proceedings falls away. Correspondence between company officials and the lawyers waned. A final letter from the company's general manager, Robinson, to its lawyer, Renehan, captures the sense of frustration at being unable to proceed more decisively. Robinson wrote, "The question that bothers me more than any other is whether we could dismiss these cases and leave us just where we would have been, had they never been started." The galling retreat was forced by the risks of possibly facing a hostile trial jury, the settlers producing unexpected documentary evidence of their titles, and by the costs certain to be incurred during a full-blown trial. The militancy of the settlers and their keen awareness of the company's vulnerability had killed also any hope of a negotiated deal outside the courts.

The company chose, as before, to accept the long-standing impasse with the settlers, preferring it to a decisive loss. Perhaps at this stage, the company viewed a victory over the settlers as less important than it once might have been. The successful completion of the Costilla dam and reservoir on the upper Costilla in 1920, and the completion in 1922 of the Cerro Canal, allowed the company to divert the Costilla's waters to lands near Jaroso and Mesita, Colorado, some miles from the riparian lands historically irrigated by the Rio Costilla acequias, and to turn its attention from the sharply contested question of ownership of lands in the upper

99. Order of Reference, Costilla Estates Development Co. v. Lovato et al., Taos County, New Mexico District Court Nos. 1130-1193, 18 June 1921, "Case #5082: Meyer v. Keely and Costilla Estates Development Co.,” folder 96, box 15, RGP-NMSRCA.

100. George W. Bierbauer to A. B. Renehan, 3 September 1921, and 16 September 1921; A. B. Renehan to George W. Bierbauer, 24 September 1921, and 3 October 1921; and Renehan and Gilbert to Taos Co. Clerk, 17 November 1921 (filing stipulation and order continuing the referee in office and extending time for the referee to act), all in "Case #5082: Meyer v. Keely and Costilla Estates Development Co.,” folder 96, box 15, RGP-NMSRCA.

101. C. A. Robinson to A. B. Renehan, 9 May 1922, folder 96, box 15, RGP-NMSRCA.

102. Robinson to Renehan, 10 June 1922, "Case #5082: Meyer v. Keely and Costilla Estates Development Co.,” folder 96, box 15, RGP-NMSRCA.

103. Ibid.; and Renehan to George W. Bierbauer and Jackson, 15 June 1922, "Case #5082: Meyer v. Keely and Costilla Estates Development Co.,” folder 96, box 15, RGP-NMSRCA, in which Renehan writes, "I do not think it worthwhile to anticipate [that the suit against the settlers] can be brought to fruition."
watershed to development of less contested properties elsewhere in the Costilla Valley. This shift in focus allowed them to abandon the struggle with the Piña and Costilla settlers.\textsuperscript{104}

That is how things ended—indefinitely. Indeed, a survey of the state of land titles among the residents of the Costilla and Amalia areas conducted in 1940 by the federal Farm Security Administration (FSA) offers a portrait of ownership that might have been made in 1900. The survey found that, of 176 families engaged in commercial or subsistence agriculture or stock raising of some kind, 150 families claimed ownership of the land they worked but could show no title. Of the 134 families surveyed who claimed the ownership of a house and house lot but not of agricultural or grazing land, most claimed ownership through the gift of their parents and could show no other foundation than the bare gift. Although some titles could be proved through application of New Mexico’s color-of-title statute, that step was rarely taken, and most titles remained undocumented. The survey notes that “the people now buy land from one and another, and warranty deeds are given in the exchange, but there are no records of title to back them.”\textsuperscript{105}

The settlers’ long fight with U.S. Freehold, Costilla Land and Investment, and the Costilla Estates Development Company ended with the settlers preserving their home places, though without formal land titles. The fight, as an expression of communalism and of commitment to place, helped the descendants of Costilla settlers win an unexpected late victory, obtaining a loan from the FSA to purchase tax delinquent lands of the company’s successors, thereby re-establishing a community grazing commons.\textsuperscript{106} But even though the first Costilla settlers and their descendants were able to persevere, to frustrate the companies in some measure, and ultimately to win back their grazing commons with the help of the FSA, the loss of their vara extensiones in the Santa Fe case, and more importantly the contraction of their water rights in \textit{Meyer v. Acequia Madre}, were defeats as significant as any of their victories. Nonetheless, the development project of U.S. Freehold and its successors, so dependent on capturing the commons of water, grazing, and timber that constituted the foundation of the Costilla Valley settlements, never thrived. Although the companies reduced and fragmented the historic commons of the Costilla settlers, insufficient capital, lack of resolve, and the limits of its legal victories prevented genuine success.

The community of resistance that came into being in the Costilla Valley was not a product of abstract opposition to the American legal system by Mexican frontier settlers, but of threats to substantial land and resource rights. The settlers argued for rights derived from a set of

\textsuperscript{104} See Knox, “Costilla Creek.” 461–63.
\textsuperscript{105} Preliminary Proposal, “History of Community,” 16–18, 20, JEM-NMSRCA.
\textsuperscript{106} Preliminary Proposal for a Loan to the People of Costilla and Amalia to Acquire Title to the Sangre de Cristo Grant, and associated papers (1940), folder 267, box 8, Special Reports and Issues Series VI, JEM-NMSRCA.
practices and expectations with origins in Mexican laws for the creation of new settlements on Mexico's northern frontier, but their concerns lay closer to the ground. The Costilla settlements were organized settlements, created by people with pre-existing ties to each other, and centered on farmsteads and irrigation systems established through shared labor. The people had worked together to situate their communities, and they would not be easily pushed out. That sense of locality, and of vulnerability in the face of a changing property regime, framed the settlers' response to the long string of legal defeats they suffered. To the settlers, their legal defeats and the company's offers of compromise became rallying points and tools of further resistance.

To U.S. Freehold and its successors, the locals seemed unreasonable. The companies owned the land, and, more essentially from their point of view, could never concede to the settlers continuing and free access to the very resources the companies hoped to develop for profit. This impasse, defined by U.S. Freehold's legal victory and by the practical limits on what a court order can accomplish in an unwilling frontier community, continued for decades marked by rancor, ongoing litigation, and the stifling of economic development.

Why was the settlers' form of resistance partially successful? Why were the responses of the law and of U.S. Freehold and its successors as soft as they proved to be? There were two principal reasons for company restraint. First, the company's freedom of action was limited because it needed peace with the settlers. Especially in the early years of its ownership, when it hoped to establish organized colonies of northern European settlers on the grant, the company could not afford the active resistance of the valley's residents or the bad press their resistance would bring. Further, the company hoped that the local Hispanics would provide a willing labor pool for its colonies and for development of the grant's mineral and timber resources. The company needed the cooperation of the legally vanquished settlers and thus offered compromises that could not have been predicted from its legal victories.

The second factor was the settlers' pursuit of a law-based strategy of resistance during a period when the insecure titles of small holders on private land grants was a matter of public concern in New Mexico. Official recognition of the vulnerable position of small holders who

107. Westphall, *Hispanic Land Grants*, 3–25, 33–37. In none of the records or correspondence relating to the Costilla disputes do the settlers seem to have made explicit reference to Mexican law, nor did they argue that U.S. law was bound to recognize their rights because of obligations under the Treaty of Guadalupe Hidalgo.


lacked written documentary evidence of their land claims gave the Costilla settlers a stronger sense of the justice of their claims. The intensity of the settler resistance extracted from U.S. Freehold and its successors, and from the courts, a series of proffered compromises, which, although unsatisfactory to the settlers, represented efforts by the victors and by the legal system to address the settlers' sense of injustice and to respond to a sense of right that was part of the political discourse of the time but that the legal order would not formally acknowledge.

The outcome of the Costilla dispute was that two distinct cultures of property and landscape remained in a state of tension. The emergent American legal order overlay the older Mexican framework, containing it and supplanting it as the source of property rights without eliminating the sense of right or the capacity for effective resistance of the Mexican settlers. Two distinct frameworks of colonization and development, each a product of history and of an understanding of place, engaged each other. The interaction of the two allowed the persistence not only of the community of settlers, but also of more traditional forms of land occupancy.

The partial victory of the Costilla settlers may be usefully contrasted to recent developments in the Sangre de Cristo Land Grant's Rio Culebra watershed in Colorado. In 2002 and 2003, the Colorado Supreme Court in _Lobato v. Taylor_ reinstated the commons rights of the Culebra lands, revisiting a line of decisions that had repeatedly invalidated the grazing, timber, and fuel wood commons claims of the Culebra settlers. The rulings granted to the modern-day owners of Beaubien lands settlers' rights of access to those parts of the historic Culebra commons lying within the 77,000 acre Taylor Ranch near San Luis, Colorado. The existence of the Beaubien Document, which described the Culebra commons rights, and the Gilpin covenant, which carried forward Beaubien's promises to the settlers as commitments of his successors, were essential to the court's decision.

A similar victory for the Costilla settlements would be hindered by the fact that nothing as specific as the Beaubien Document has survived in

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110. Complaint, _Defensive Association v. Keely_, Civil Docket 6, Docket Book Series I, SFC-NMSRCA. The willingness of the law to protect small holders in some measure is plain in the 1911 decision of _Montoya v. Unknown Heirs of Vigil_, decided eight years after the Costilla settlers brought their suit against U.S. Freehold. In that case, the court addressed the common practice of settlers who lacked written evidence of their titles of conveying their land by deed or will. The practice was routine. Settlers on the land grants would freely give quitclaim and even warranty deeds to purchasers, or transfer their holdings through their wills, though they lacked written proof or legal judgment of title. The New Mexico Court held that so long as a claimant could produce written evidence of their own title, they need not show that their predecessor also had documentary evidence of title. The court's resolution of the dispute in _Meyer v. Keely_ may be an instance of a larger phenomenon of necessary accommodation, not simply the result of one trial judge's desire to preserve the peace locally, or to promote the effectiveness of court orders by making the consequences of those orders less offensive. _Montoya v. Unknown Heirs of Vigil_, 16 N.M. 349, 120 P. 676, affirmed by _Montoya v. Gonzales_, 232 U.S. 375 (1914).

111. _Lobato v. Taylor_, 71 P.3d 938 (Colo. 2002) and 70 P.3d 1152 (Colo. 2003).
the historical or legal records for the Costilla. Proof of the Costilla commons rights might depend instead on the broad statements in the Gilpin covenant, on oral history and anecdote, and on an appeal to the general history of settlement of the Sangre de Cristo Land Grant, including the history of the Culebra watershed. The identification of beneficiaries to commons rights on the Costilla might also require a different method than that used in *Lobato v. Taylor*. The Colorado court decreed that commons rights would run to all owners who could trace their titles to deeds granted by Beaubien or his immediate successor. That method would greatly constrict the holders of commons rights in the Costilla Valley, where relatively few deeds were issued. Some land grant scholars have urged that justice in our time to the successors of Spanish and Mexican land grant settlers requires that the American legal system be more willing to validate land and resource rights claims when they are true to historic patterns of settlement and to customary expectations of occupancy, taking a tolerant view of weaknesses of documentation.¹¹² Revival of the commons claims of the Costilla settlers would require just such accommodation.

Disputes between formal title holders and untitled occupiers have been common in America’s land history, and, frequently, those who possess land without formal legal title have urged the validity of their claims on the basis of long occupancy and improvement of the land. Perhaps the most famous such narrative is the story of Pike Creek, Wisconsin, recounted by the legal historian James Willard Hurst.¹¹³ Squatters on the public lands of Pike Creek organized a claimants’ union and drafted a constitution to press their case that settlement and cultivation of unoccupied lands gave them natural rights to the land. In another well-documented episode, eighteenth-century small landholders in Maine urged natural rights claims against the owners of large estates granted by the colonial government.¹¹⁴ In each case, so persuasive was the idea that labor should be the foundation of title that even persons holding valid formal deeds felt that their titles required the support of acts of “improving possession” to be altogether safe before the law.¹¹⁵

In the Costilla, as elsewhere in New Mexico, the legal system was asked both to protect rights grounded in an earlier legal order and to


vindicate the boundaries of new owners who insisted that their titles be unimpeded by the undocumented claims of earlier Hispano settlers.\textsuperscript{116} To paraphrase John Locke's observation that the American frontier lay at the murky intersection of the social compact and the state of nature, it might be said of the legal and cultural borderland defining the Costilla disputes that the frontier lay at the intersection of two warring conceptions of the foundations of ownership and of the uses of land.\textsuperscript{117}


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