

*Quieting Title to Spanish and Mexican Land  
Grants in the Trans-Nueces:  
The Bourland and Miller Commission,  
1850–1852*

GALEN D. GREASER AND JESÚS F. DE LA TEJA\*

I have traced the [land] title back to the King of Spain, who got it by right of discovery and conquest, and since he ruled by Divine Right, that takes it back to God Almighty himself, and that is as far as I can go.

—Attributed to the old abstractors of the Rio Grande Valley<sup>1</sup>

THE HISTORY OF ALL NATIONS BEGINS WITH THE STORY OF HOW THE land was explored, occupied, and tamed. In the Texas case, the process lasted two hundred years, from the late seventeenth-century Spanish explorations of central and eastern Texas, to the late nineteenth-century opening of the high plains to irrigated agriculture. As the most valuable and exploitable natural resource during that span, land became integral to Texas's development and, as with all valuable natural resources, a principal object of cultural, economic, and political contention. The story of these conflicts could fill volumes, yet much of it remains untold.

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\*Galen D. Greaser holds an M.A. in Latin American studies from the University of Texas at Austin. Since 1984 he has been Spanish translator in the Archives and Records Division of the Texas General Land Office. Among his research projects, he presented a paper titled "Surveying in Mexican Texas" at the 1990 Texas Society of Professional Surveyors' annual short course. Currently, he is working on a systematic translation of all Spanish-language Texas land titles in the Land Office.

Jesús F. de la Teja is assistant professor of history at Southwest Texas State University. In 1991 he published *A Revolution Remembered: The Memoirs and Selected Correspondence of Juan N. Seguín* and had two essays appear in *Tejano Origins in Eighteenth-Century San Antonio*, including one that first appeared in the *Southwestern Historical Quarterly* in 1985. He is currently working on a project titled "The Colonization and Independence of Texas" with Josefina Z. Vázquez and on revising his dissertation, "Land and Society in 18th-Century San Antonio de Béxar: A Community on New Spain's Northern Frontier," for publication.

<sup>1</sup>Max Dreyer, "San Juan de Carricitos Land Grant as Given to José Narciso Cavosos," *Las Porciones Genealogical Society Journal*, II (Spring, 1987), 74.

Part of that story is the process by which the trans-Nueces and far West Texas lands were legally incorporated into the state following the Mexican War. Voluminous litigation, the genealogical interests of many Rio Grande Valley Hispanic families, and the lore of big-time South Texas ranching have all contributed to our knowledge of land history in this area, but none in a systematic or scholarly way. Far from a mad free-for-all or a well-planned conspiracy, the assimilation of the trans-Nueces into the state's land system was accomplished by political and institutional processes that merit study and understanding.<sup>2</sup> In peculiarly Texan fashion, the question of what happened to the trans-Nueces Spanish and Mexican land grants must, for the most part, be studied within the context of Texas government actions rather than those of the federal government. While the Treaty of Guadalupe Hidalgo established United States sovereignty throughout the Southwest and generally protected property rights acquired under Spain and Mexico, the agreement did not establish a procedure for settling land claims within the ceded territories. Under the terms of Texas's annexation to the United States, however, the former retained control of its public lands while the latter recognized the Rio Grande as the new state's southwestern boundary.<sup>3</sup> Thus, in Texas, adjudicating land claims became a matter for state lawmakers.

How the claims were to be handled was a thorny question full of practical and political conundrums. Part of the difficulty derived from the incompleteness or unavailability of the records from that area of Texas. Loss or theft of private documents and the inability to locate originals in Mexican archives complicated the paper trail.<sup>4</sup> In addition to lost documentation, South Texas titles were clouded by a confusing variety in existing instruments of title, the vagueness of many field notes to grants, the overlapping of surveys, the failure to fulfill require-

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<sup>2</sup>For a general history of Spanish and Mexican settlement and land distribution in South and West Texas see: Florence Johnson Scott, *Historical Heritage of the Lower Rio Grande: A Historical Record of Spanish Exploration, Subjugation and Colonization of the Lower Rio Grande Valley* . . . (San Antonio: Naylor Co., 1937); Florence Johnson Scott, *Royal Land Grants North of the Rio Grande, 1777-1821: Early History of Large Grants Made by Spain to Families in Jurisdiction of Reynosa* . . . (Rio Grande City: La Retama Press, 1969); and J. J. Bowden, *Spanish and Mexican Land Grants in the Chihuahuan Acquisition* (El Paso: Texas Western Press, 1971). Discussions of the issue of land transfers from Mexican Americans to Anglo-Americans are found in: Paul Schuster Taylor, *An American-Mexican Frontier: Nueces County Texas* (Chapel Hill, N.C.: University of North Carolina Press, 1934); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987); and Leroy P. Graf, "The Economic History of the Lower Rio Grande Valley, 1820-1875" (Ph.D. diss., Harvard University, 1942).

<sup>3</sup>T. R. Fehrenbach, *Low Star: A History of Texas and the Texans* (New York: Collier Books, 1980), 265-266; Victor Westphall, *Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region* (Albuquerque: University of New Mexico Press, 1983), 67-83.

<sup>4</sup>Taylor, *An American-Mexican Frontier, 182-184*. See also Montejano, *Anglos and Mexicans in the Making of Texas*, 50-53, 70-74.

ments set down in the original grants, and the complications of collective family ownership.<sup>5</sup>

Politically, validation of the Spanish and Mexican grants required balancing the rights of old holders with the interests of new arrivals seeking to locate land. The state government needed to open vacant land to settlement without spooking existing landowners already suspicious that the government was motivated by the greedy demands of speculators. It was a dilemma that on more than one occasion came close to producing a rebellion against the state.

Confusion about land titles in the area between the Nueces River and the Rio Grande was greatest between 1848 and 1852. Although by the Boundary Act of December 19, 1836, the new republic claimed boundaries extending to the Rio Grande, Texas's attempts to occupy and assert de facto control in the trans-Nueces were largely unsuccessful.<sup>6</sup> The Mexican State of Tamaulipas continued to issue land titles in the area and land transactions continued to be recorded there.<sup>7</sup> When Texas finally exerted its political control in the area in 1846, on the heels of the American military occupation of the region, it encountered a baffling mass of claims, including many new ones made by settlers holding Republic of Texas headright certificates.<sup>8</sup> These Texas headright claims were located and reported to the Texas General Land Office without much possibility of proper evaluation since that office had little knowledge of preexisting claims.

Resolution of the Mexican War in 1848 assured Texas's sovereignty over the area. The Treaty of Guadalupe Hidalgo validated Texas's claim, now taken up by the United States, to the area north and east of the Rio Grande. Consistent with established principles of international law, the treaty respected and protected the property rights of Mexicans in the ceded area.<sup>9</sup> These provisions left the United States and Texas with the problem of adjudicating the validity of land claims located in the areas obtained from Mexico.

<sup>5</sup> Evan Anders, *Bass Rule in South Texas: The Progressive Era* (Austin: University of Texas Press, 1982), x, 3.

<sup>6</sup> H. P. N. Gammel (comp.), *The Laws of Texas, 1822-1897* . . . (10 vols.; Austin: Gammel Book Co., 1898), I, 1193-1194.

<sup>7</sup> Approximately twenty titles were issued after March 2, 1836, including five or so in 1848. The last title issued by Tamaulipas went to Leonardo Longoria de la Garza on April 11, 1848, more than two months after the signing of the Treaty of Guadalupe Hidalgo! Count made from: Texas General Land Office, *Guide To Spanish and Mexican Land Grants in South Texas* (Austin: Texas General Land Office, 1988).

<sup>8</sup> The headright system, which operated between independence and the end of 1841, allowed heads of families and single males establishing themselves in the republic to obtain land certificates from county boards of land commissioners. These certificates could be located anywhere in Texas.

<sup>9</sup> Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America* (6 vols.; Washington, D.C.: U.S. Government Printing Office, 1937), V, 207-236.

In the face of confusing, contradictory, and often incomplete information, both the United States and Texas moved slowly on the question of adjudicating land claims. In California, where statehood and the Gold Rush required more urgent action, the adjudication process began with investigations by federal government agents of available California and Mexican archival records. Only in March 1851 did Congress create a board of land commissioners to examine and decide the validity of claims. The California board, active between 1851 and 1856, handled over eight hundred claims, confirming the great majority. Congress did not act in New Mexico, which was not a state and which remained relatively isolated, until 1854, and then only slowly. Legislation required the appointment of a surveyor general who would examine claims and make recommendations to Congress, which would make final determination. This system proved unwieldy in the face of heavy lobbying by land speculators, but no action to remedy the situation was taken until 1891. In that year Congress created a Court of Private Land Claims to adjudicate all outstanding New Mexican claims. By the time the court finished its work in 1904, it had rejected an overwhelming proportion of claims, thus reserving most of New Mexico for the federal government.<sup>10</sup>

In Texas no action was taken for a year following the treaty, but the increasing confusion about Spanish and Mexican titles and pressure from several quarters finally forced the issue to a head. Part of the pressure was brought to bear by the commissioner of the Texas General Land Office. In his "Report of the Commissioner of the General Land Office" for 1849, George W. Smyth informed the governor and the legislature that he had refused to receive and register in the Land Office any documents purporting to be titles originating under the former governments of Spain and Mexico. In August 1848, Smyth had requested an attorney general opinion on the propriety of receiving and archiving such documents, some of them originals, some first copies, and others copies of copies. The constitution and laws of the state, he observed, contemplated that the General Land Office should be the repository of land titles, but he did not think the laws intended that every unauthenticated document presented should be accepted.<sup>11</sup>

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<sup>10</sup>Malcolm Ebricht, "New Mexican Land Grants: The Legal Background," in *Land, Water, and Culture: New Perspectives on Hispanic Land Grants*, ed. Charles L. Briggs and John R. Van Ness (Albuquerque: University of New Mexico, 1987); Westphall, *Mercedes Reales*, chapters 5 and 11; Henry Putney Beers, *Spanish and Mexican Records of the American Southwest: A Bibliographical Guide to Archive and Manuscript Sources* (Tucson: University of Arizona Press, 1979), 44-58, 247-268.

<sup>11</sup>Texas General Land Office, "Report of Commissioners, Jan. 15, 1845 to Jan. 19, 1891," p. 215 (cited hereafter as "Report of Commissioners").

The attorney general concurred that nothing in the laws set out how the documents should be authenticated for registry and that some legislative action on the subject was required.<sup>12</sup>

The county clerks in the area of the Tamaulipan cession were also uncertain how to proceed in recording Spanish and Mexican titles. Hamilton P. Bee, county clerk for Webb County, requested instructions from Commissioner Smyth in December 1848. He inquired whether the law required titles to be recorded in the Land Office or merely registered before they were recorded by the county clerk. Bee had informed the citizenry that they were required to send their titles to the General Land Office, but many objected to sending these documents across dangerous Indian territory.<sup>13</sup>

Individuals who located their Republic or state of Texas land certificates in the trans-Nueces also applied pressure to resolve the validation matter. The number of locations, many of them in conflict with pre-existing Spanish and Mexican grants, increased significantly after 1846, and demands that the state issue patent on these lands grew accordingly. In the report to the legislature already alluded to, Commissioner Smyth indicated that he had refused to patent lands in the settled portions of the Rio Grande:

The situation of these [original] settlers is Peculiar; for while they were clearly within our limits[,] they have been compelled by the force of circumstances to submit to the jurisdiction of a foreign government and have not had an opportunity of complying with our laws in relation to their lands[.] [T]heir surveys are consequently not represented on the maps[.] I was not willing therefore to take the responsibility of patenting over settlements and rights of long standing until the Legislature could have an opportunity of taking some action on the subject.<sup>14</sup>

He informed legislators, however, that if they failed to act on the matter during the session he would consider it his imperative duty to patent the land located by virtue of Texas land certificates.<sup>15</sup>

Pressure was also forthcoming from those interested in buying and selling lands held under Spanish and Mexican titles. As long as the titles remained clouded by lack of recognition from Texas, legitimate buyers risked expropriation and sellers were subjected to depressed prices. Indian hostilities added to the problem in no small way by keeping many of the Mexican owners off the land and thus even more ex-

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<sup>12</sup> Texas General Land Office, Attorney General's Opinions, Sept. 5, 1848, p. 69.

<sup>13</sup> Hamilton P. Bee to George W. Smyth, Dec. 10, 1848, Letter Received No. 3897, Texas General Land Office Correspondence, Texas General Land Office, Austin.

<sup>14</sup> "Report of Commissioners," 215-216.

<sup>15</sup> *Ibid.*

posed to title forfeiture.<sup>16</sup> The degree to which mounting insecurity induced lower prices and opened the doors to die-hard speculators willing to gamble on the yet to be adjudicated titles has been demonstrated by Paul S. Taylor in his *An American-Mexican Frontier: Nueces County Texas*. In 1842, Henry Kinney paid 56.6 cents per acre for the one league (4,428.4 acres) tract containing Corpus Christi, but just three years later, at Texas's annexation to the United States, William Lee paid 1.6 cents per acre for seven leagues in the area.<sup>17</sup>

Recognizing the urgent need to regularize the status of these titles, on December 26, 1849, Governor P. H. Bell suggested to the legislature, "There is no subject which addresses itself more forcibly and directly to the mature consideration of the Legislature than that of settling upon a secure and permanent basis the land titles of the country. . . ."<sup>18</sup> Drawing on the experience of the federal government in adjusting land claims in the territories obtained from Spain and France, Bell recommended establishing a tribunal or board of commissioners to investigate titles and claims emanating from Spain and Mexico. The investigation was to be confined to claims in the territory recently ceded by Mexico.<sup>19</sup>

Governor Bell's recommendations, to his surprise, received a hostile reception among certain sectors of Rio Grande Valley residents. A mass meeting was convened at Brownsville on February 2, 1850, with the expressed intent of creating the Rio Grande Territory and appealing to the federal government for territorial organization. The central grievance of the Territorialists, who included both Mexican and Anglo adherents, revolved around land titles in the region and the manner in which the authorities of Texas proposed to investigate them. In the handbill announcing an organizational meeting, the Territorialists made clear their fears of Texas government motives:

The authorities of Texas seek to annul the titles in real estate between the Nueces and the Rio Grande—it is a fatal blow to our future prosperity, and will involve the country in litigation, ruinous and endless. This scheme of flagrant injustice proves that we have nothing in future to expect from the State of Texas but vindictive and illiberal legislation.

. . . If you desire the prosperity of this valley—a rapid development of its agricultural resources, and the quiet enjoyment of your property, which you have acquired by years of industrious toil, you must look to the United States

<sup>16</sup> James B. Miller to Gov. P. H. Bell, Nov. 28, 1850, Texas State Archives, Governors' Papers; Peter H. Bell (Archives Division, Texas State Library, Austin; cited hereafter as Governors' Papers: Bell); Graf, "The Economic History of the Lower Rio Grande Valley," 255–256.

<sup>17</sup> Taylor, *An American-Mexican Frontier*, 181.

<sup>18</sup> *Texas State Gazette* (Austin), Dec. 29, 1849, "Governor Bell's Message," 150.

<sup>19</sup> *Ibid.*

for a disinterested government and independent judiciary. With a [U.S.] territorial government, land titles would at once be quieted, and the country settled and improved by a producing population.<sup>20</sup>

The separatists favored title confirmation through a judicial process, presumably because they felt local judges would be sympathetic to their interests. They feared the creation of a board of commissioners that might be prejudiced against their cause. Furthermore, those holding under Spanish and Mexican titles felt that Texas might give preeminence to individuals holding state land certificates. Governor Bell's suggestion that the investigation be limited to claims for which the evidence of title was already in Texas or the claimant had been a resident of the state since March 2, 1836, was taken as a challenge to titles of long-standing in the area. Titleholders believed that their inability to produce original records would be used by the state to expropriate their lands. The Territorialists also suggested that Article 8 of the Constitution of the Republic would be enforced against Mexican titleholders. Article 8 provided that anyone leaving the country to avoid participation in the struggle for independence or refusing to participate in it, or anyone aiding and assisting the enemy would forfeit the lands they held in the republic. The Territorialists claimed the government of Texas could use these provisions to confiscate land from Mexican claimants.<sup>21</sup>

Whether they knew it or not, only a few days earlier the House of Representatives had debated this issue at length in their deliberations "On the bill to quiet land titles [west of the Nueces]." During the debate, Representative Benjamin E. Tarver, citing constitutional stipulations, offered an amendment to the effect that claimants seeking recognition of their titles should be required to present affidavits stating that they or the grantees under whom they claimed title had not borne arms against the Republic or state of Texas nor given aid to the enemies of the republic or state. Those in favor of the amendment argued that the same had been required of other Texas citizens who sought to obtain land grants. These men left little doubt as to their attitudes toward Mexicans. James C. Wilson, for instance, asserted "that the mixed race of Mexico will disappear before the white man, is certain, and no means that can be adopted, will avoid or delay the fulfillment of that

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<sup>20</sup> Frank H. Dugan, "The 1850 Affair of the Brownsville Separatists," *Southwestern Historical Quarterly*, LXI (Oct., 1957), 270-271.

<sup>21</sup> *Western Texan* (San Antonio), Feb. 28, 1850, "Address of Territorialists to Fellow Citizens of the Valley and Territory of the Rio Grande" (Meeting of February 2); also Dugan, "The 1850 Affair of the Brownsville Separatists," 273-274. Article 7, section 20 of the Texas State Constitution of 1845 left in place the loyalty requirements for land ownership found in the republic constitution. Gammel (comp.), *The Laws of Texas*, 11, 1293-1294.

destiny.”<sup>22</sup> A number of prominent members, including Hamilton Bee and James S. Gillett, did, however, present arguments for protecting the property rights of “Mexican” landowners in this debate surrounding creation of the board of commissioners. They successfully objected that it would be grossly unfair to demand the allegiance of a people to whom no protection had been offered by the Republic or state of Texas. The amendment was defeated by the narrow margin of twenty-three to nineteen.<sup>23</sup>

The Territorialists sent two petitions to the United States Congress in February 1850. Of the 106 signatures on the first petition, over 100 came from residents of Mexican origin, including Juan Nepomuceno Cortina.<sup>24</sup> A second memorial bore the signatures of individuals destined to play a prominent role in the Rio Grande Valley’s economy and politics for many years, men such as Richard King, Stephen Powers, Elisha Basse, Robert H. Hord, and Sam Beldon. Neither memorial prospered in Congress, however, and the Territorialist movement was of short duration. Yet the suspicions aroused among residents of Mexican origin regarding Texas government intentions, heightened and manipulated by lawyers and speculators, were guaranteed to complicate the investigation and adjustment of claims in the area.<sup>25</sup>

It should be noted that not everyone in the Rio Grande Valley opposed Governor Bell’s suggestions. On February 5, 1850, three days after the Territorialists held their mass meeting, a second group of valley residents met in Brownsville to pledge their loyalty to the state of Texas. They also supported creating a tribunal to investigate titles in the trans-Nueces. In a clear reference to some of the participants in the Territorialist movement, they vowed to oppose “every attempt that has been made, and may now be making, to throw into the hands of speculators large bodies of the best lands in the valley of the Rio Grande, under pretended titles that will not stand the test of scrutiny.”<sup>26</sup>

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<sup>22</sup> *Debates in the House of Representatives 1849/1850* (Austin: DeCordova and Co., 1850), 88 (2nd quotation). This same James C. Wilson, for whom Wilson County is named, was chosen by the legislature as the first commissioner of the Texas Court of Claims in 1856. He continued to manifest his bias by requiring claimants or witnesses of Mexican origin who appeared before the court to have their good character vouched for by an Anglo-American. See John L. Haynes, “The Rio Grande Commissioners” in *The Intelligencer* (Austin), n.d., scrapbook, pp. 14–18, John L. Haynes Papers (Eugene C. Barker Texas History Center, University of Texas at Austin).

<sup>23</sup> *Debates in the House of Representatives 1849/1850*, 85–95.

<sup>24</sup> Heir to a large ranch in the Brownsville, Texas, area, Cortina fought for Mexico during the war with the United States, challenged Texas authorities in the Rio Grande Valley during 1859–1860 (the so-called Cortina Wars), played both sides during the American Civil War, served as governor of Tamaulipas for a time, and was continually involved in cattle raids in the United States.

<sup>25</sup> Dugan, “The 1850 Affair of the Brownsville Separatists,” 277–281, 286–287.

<sup>26</sup> *Ibid.*, 283.



Several explanations were offered at the time to account for the Territorialist movement. Some saw in the movement the hand of northern abolitionists seeking to secure a stronghold in the South or the interests of land speculators attempting to profit from the confusion by enticing Mexican titleholders to sell out cheaply.<sup>27</sup> A writer in the *Texas State Gazette*, noting that a large proportion of those participating in the movement were of Mexican origin, offered the following insight: "Mexicans . . . from habit, always favor revolutions, and suppose, as was the case under the Government of Mexico, that anything that is wanted can be got by a *pronunciamiento*."<sup>28</sup> John L. Haynes, a Rio Grande City merchant, land agent, and politician, suggested a different motive. He claimed that certain Territorialists would "suffer in the flesh" if the board of commissioners was created. According to his account, these speculators had obligated themselves to perfect the titles for Mexican titleholders for a *quid pro quo* ranging from half the lands in question down to a small consideration per league. These individuals' idea of perfecting titles was limited, in Haynes's words, to obtaining the corresponding certified documents and recording them in the county where the land was located, at which time the fee for perfecting was collected. These agents panicked at the possibility that their clients faced the substantial fees (including surveying costs) contemplated in the legislation creating a board of commissioners. Compromised by the government's actions, they sought to poison the populace against the Board of Commissioners and the state of Texas.<sup>29</sup>

Governor Bell responded to the criticisms leveled at his proposals by the Territorialists in an address to the people of the Rio Grande on February 22, 1850. The object of recommending a board of commissioners rather than a process of judicial confirmation of these titles was, he stated, to afford claimants greater latitude in the type of claims that could be investigated. Lawmakers intended the Board of Commissioners to investigate and recommend not only those cases where the titles were perfect, but claims of all descriptions that had their origin in equity and fairness.<sup>30</sup>

By the time the governor made his address a board of land commissioners had already been authorized through an act approved Febru-

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<sup>27</sup> *Texas State Gazette* (Austin), Mar. 23, 1850, "The Rio Grande Territory"; *Ibid.*, Mar. 30, 1850.

<sup>28</sup> *Ibid.*, Feb. 23, 1850, p. 200.

<sup>29</sup> Haynes, "The Rio Grande Commissioners."

<sup>30</sup> *Texas State Gazette* (Austin), Mar. 9, 1850, "Governor Bell's Address to the People of the Rio Grande," Feb. 22, 1850, p. 218.

ary 8, 1850.<sup>31</sup> The law provided that the governor appoint, with the senate's consent, two commissioners to constitute the board and an attorney to safeguard the state's interest. Convening at the seat of each county named in the act, the board was to "take cognizance of all claims to lands within the county in which they are sitting . . . provided such claim had its origin in good faith prior to the second day of March, in the year eighteen hundred and thirty-six."<sup>32</sup> (In the last respect, the law sowed the seeds of future litigation by excluding all grants made after the declaration of Texas independence.) The legislation required claimants to present to the board a full, written description of the land claimed, along with all evidence of titles or rights under which the land was claimed. The law also required claimants to provide an affidavit that the documents submitted for investigation were not forged or antedated and that the facts set forth in the petition were true. The commissioners could summon witnesses to corroborate testimony. The act further required the commissioners to report the claims for confirmation when the titles were perfect. If imperfect, the board was to recommend them if it judged all the requirements for perfecting the titles would have been met had there not been a change of sovereignty. The legislature also instructed the board to prepare an abstract with supporting evidence for every claim along with its recommendation for or against confirmation. Upon submission to him, the governor was to pass the abstracts and evidence to the legislature for consideration.<sup>33</sup>

Governor Bell appointed as commissioners William H. Bourland and James B. Miller, and the commission itself has come to be known as the Bourland and Miller Commission. He named Robert J. Rivers attorney for the commission. All three were capable men who enjoyed a good reputation. Bourland, who involved himself in politics shortly after his arrival in Texas, served in the last two Texas Congresses and the First, Second, and Fifth legislatures. He also saw service as a major in the Mexican War. Miller, a doctor by training, settled in Texas in 1829 and practiced at San Felipe. He also quickly entered the political arena, serving in the Legislature of Coahuila and Texas, as political chief for the Department of the Brazos, as a senator in the Fifth Texas Congress, in President Sam Houston's cabinet in 1843, and as a delegate to the Convention of 1845. Rivers, who arrived in Texas in the late 1840s, was a respected attorney and judge.<sup>34</sup>

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<sup>31</sup> Gammel (comp.), *The Laws of Texas*, III, 582.

<sup>32</sup> *Ibid.*, 583-584.

<sup>33</sup> *Ibid.*

<sup>34</sup> Walter Prescott Webb, H. Bailey Carroll, and Eldon Stephen Brandt (eds.), *The Handbook of Texas* (3 vols.; Austin: Texas State Historical Association, 1952, 1976), I, 196 and II, 195, 480.

An interpreter also assisted the board in its work. Although section 1 of the act creating the Board of Commissioners required that one of them should "understand and be conversant with the Spanish language," Governor Bell found it impracticable to comply with this requirement.<sup>35</sup> He therefore authorized the board to employ an interpreter, who they initially paid from their own means, though they were eventually reimbursed for this expense.<sup>36</sup>

In the absence of a journal or day book, what little is known about the commission's work is gleaned from the general report submitted by the commissioners and from their correspondence with the governor. The law that created the commission specified that the investigation was to begin at Eagle Pass, in Kinney County, in May 1850, and to proceed from there to Laredo, Rio Grande City, Brownsville, and Corpus Christi. Bourland, always the more punctual of the two commissioners, proceeded to San Antonio but returned to Austin to await further instructions from the governor when Miller failed to arrive or to communicate his intentions. In Austin, Rivers, the commission's attorney, joined Bourland and together they left for Laredo, where they arrived June 10. After Miller finally arrived, the commission opened for business on July 15, almost two months after its scheduled opening date.<sup>37</sup>

The commissioners were not prepared for the reception they received.

When we first entered upon the discharge of our official duties we had to encounter much opposition and embarrassment, growing out of an impression which seemed to prevail in the valley of the Rio Grande that the act under which the board was held was devised to destroy, rather than to protect their rights . . . to their lands. . . . We were not prepared for that opposition and probably would have been unable to overcome it but for the influence and exerting of the Honorable H. P. Bee.<sup>38</sup>

Fifteen claimants were finally induced to present their petitions before the board in Laredo.

The commissioners originally intended to take down evidence and examine it at a later date, since the board was given at least twelve

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<sup>35</sup> Gammel (comp.), *The Laws of Texas*, 111, 582.

<sup>36</sup> Gov. P. H. Bell, "Message to the Honorable Legislature," Nov. 20, 1851, in *Message of the Governor Transmitting the Report of the Commissioners to Investigate Land Titles West of the Nueces* (Austin: Cushney and Hampton, 1851), 4.

<sup>37</sup> William H. Bourland to Gov. P. H. Bell, Aug. 24, 1850, in Texas General Land Office, Spanish Collection, "Report of W. H. Bourland and James R. Miller," 63. (cited hereafter as "Bourland and Miller Report").

<sup>38</sup> "General Report of the Board of Land Commissioners appointed by an Act of the Legislature of the State of Texas, approved February 8th, 1850, entitled 'An Act to provide for the investigation of land titles in certain counties therein mentioned,'" Nov. 11, 1851, in "Bourland and Miller Report."

months to make its report. However, considering the opposition encountered, the circulating misrepresentations regarding the commission's intentions, and a request for action from the area's legislative delegation, Commissioner Bourland decided to submit the Webb County claims for immediate confirmation. Upon his return to Austin, he submitted his list of recommended claims to Governor Bell on August 24, 1850. The legislature confirmed all the recommendations by an act approved September 4, 1850.<sup>39</sup>

The strategy of having this first set of recommendations confirmed served its purpose and saved the commission an enormous amount of difficulty in completing its assignment. Before news of these first confirmations could reach the Rio Grande Valley, however, and while Bourland was still absent from the commission, Miller and Rivers had traveled to Rio Grande City, next stop on the itinerary. The reception again was anything but friendly as residents informed Miller and Rivers that not a single title would be presented to the board. Rivers left the commission and headed home, and Miller vowed that under no circumstances would he return to Rio Grande City. The latter then proceeded to Brownsville, in Cameron County, where a letter from Bourland informed him of the legislature's action and requested him to return to Rio Grande City. In the face of Miller's refusal Bourland journeyed on to Brownsville, where he found Miller engaged in taking testimony on the claims presented there. At this point, and in consideration of the legislature's action, opposition to the commission faded. Bourland wrote to Governor Bell from Brownsville on October 6, 1850, of the turnaround in the public's opinion:

There is now an entire change in the minds of the people of the Valley, and I apprehend no more trouble in convincing of them, [*sic*] the honest intentions of the Govt. towards them. The Commission is treated at this place with all the respect desired, and I feel confident, from the manifestations of the Citizens of Rio Grande City, it will be the same there.<sup>40</sup>

The commissioners' troubles, however, were still not entirely behind them, and James Miller found himself literally at the center of a storm. Having completed the work at Brownsville, Miller decided to return to Austin and boarded the steamer *Anson* in late November. On the second day out the steamer sank in heavy seas fifteen miles from Matagorda. Miller lost his trunk containing all the original titles presented at Brownsville and \$800 in cash collected from the claimants as govern-

<sup>39</sup> Bourland to Gov. Bell, Aug. 24, 1850, in "Bourland and Miller Report"; Gammel (comp.), *The Laws of Texas*, III, 798.

<sup>40</sup> Bourland to Gov. Bell, Oct. 6, 1850, Governors' Papers: Bell.

ment fees. Miller himself made a narrow escape. "The loss of these papers overwhelms me with regret and mortification," Miller wrote to Governor Bell, and suggested that the law be amended to make the decision of the commissioners final.<sup>41</sup>

The suggestion not taken up, the commissioners found themselves with the utterly unpleasant task of going over all the Brownsville work again; obliged to procure duplicates and other evidence of the lost titles and documents.<sup>42</sup> In the face of this setback, the commission appears to have adjourned for several months. By April 1851, however, Bourland was again in Austin, patiently awaiting the arrival of Miller and Rivers. When Miller finally arrived he informed Bourland that he could not accompany him immediately to the Rio Grande and suggested that Bourland proceed on his own. This Bourland did, working his way from Eagle Pass to Laredo and then to Rio Grande City. The commission appears to have held its last session in Nueces County in August or September 1851. The commissioners did not always hold their sessions together or at the time prescribed by the law, but the legislators who subsequently considered the facts compiled by the commissioners deemed that this departure from the law did not invalidate their work.<sup>43</sup>

In the course of its work, the Board of Commissioners investigated three types of claims: *porciones* grants, most of which fronted on the Rio Grande and were made by Spain beginning in 1767 to the settlers residing in the settlements of Mier, Camargo, Revilla, Reynosa, and Laredo; large grants for pasturage made by Spain mostly to influential citizens of Reynosa and Camargo; and grants made after 1824 by the Mexican state of Tamaulipas. Each type of grant had a different form, granting procedures, and special conditions attached to them. In making their recommendation for confirmation the commissioners were required to judge whether the grants presented to them were perfect under the laws, usages, and customs of the government under which they originated and, if not, whether they were perfectible had there not been a change of sovereignty.<sup>44</sup>

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<sup>41</sup>James B. Miller to Gov. Bell, Nov. 28, 1850, Governors' Papers: Bell.

<sup>42</sup>There is no clear information on just how large the volume of material lost on the *Anson* was. However, as Bourland had already taken the Laredo testimony to Austin for confirmation and Miller had been unsuccessful in conducting business at Rio Grande City, it is clear that most if not all of the records lost in the shipwreck were from the Brownsville session.

<sup>43</sup>"General Report of the Board of Land Commissioners . . ." in "Bourland and Miller Report"; Report of the Select Committee to whom was referred "a Bill relinquishing the right of the State to certain lands therein named," January 5, 1852, *ibid.*; Bourland to Gov. Bell, Apr. 24, 1851, Governors' Papers: Bell; "Notice" of Board's sessions, Apr. 24, 1851, *ibid.*; General Land Office file San Patricio 1-307 contains information presented to the Board of Commissioners in Nueces County on Aug. 21, 1851.

<sup>44</sup>*Ibid.*

In at least one known instance, the commissioners disagreed in their recommendation. The differences arose over the 106.5 league grant known as "San Juan de Carricitos" made by Spain to José Narciso Cabazos. Bourland recommended that this enormous 600,000 acre grant be rejected on the grounds that the conditions relative to its settlement and occupation had not been met. Miller, on the other hand, contended that the grant conveyed the land in fee simple and did not include conditions that warranted its forfeiture.<sup>45</sup> The legislature sided with Miller and confirmed the grant in 1852.

From what little remains of the evidence presented to the board, it appears that the commissioners followed a standard procedure for receiving claims based on the requirements set forth in the law creating it.<sup>46</sup> Upon arriving in the town where the board was to convene, notices were posted explaining the claims procedure; the commissioners being conscientious enough to extend the announcements to the Mexican side of the border. Claimants appeared before the board with a written petition in English, often prepared with the assistance of an Anglo attorney. The petition described when the land had been denounced and surveyed, where it was located, and when title of possession had been obtained. Any documentary evidence supporting the statements was attached to the petition. The petitions invariably also sought to prove that the land had been permanently occupied from the time it had been granted, with the exception of periods when Indian incursions made this impossible, that it had been stocked with cattle and horses, and that it had been improved through the construction of wells, corals, jacales, and so on. If the original grantee had conveyed all or part of the land, this was also set out in the petition. Some of the petitions also included evidence that the state and county taxes had been rendered since the county's organization. The petitioner then swore before a commissioner that the title or evidence of claim presented for investigation was genuine and that the facts set forth in the petition were true. The commissioners, assisted when needed by an interpreter, then heard the parol evidence presented by the petitioners' witnesses. The witnesses' sworn statements corroborated that the land had been improved and occupied, that ownership had been exercised, and that the claim to the land had not been disputed. The commissioners collected a fee of two dollars per application plus an additional fee of five

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<sup>45</sup>"Bourland and Miller Report," 37; "Message of the Governor transmitting the Report of the Commissioners to investigate land Titles West of the Nueces," in *ibid.*, 61.

<sup>46</sup>Gammel (comp.), *The Laws of Texas*, III, 582.

dollars for every league or fraction thereof greater than a labor contained in the claim and issued a receipt.<sup>47</sup>

In the case of the *porciones* grant, where titles apparently were not issued to the grantees, the commissioners obtained a copy of the *Auto de la general visita*, in which these grants are recorded.<sup>48</sup> According to a document filed with the Texas General Land Office in 1871 by James Nix, district clerk for the county of Starr, his office contained a copy of the *Auto de la general visita* of the jurisdiction of Camargo certified and signed by William H. Bourland on November 16, 1850, and which copy was used by the board in the investigation of those titles.<sup>49</sup>

Having concluded their sessions, the commissioners prepared a final report and submitted it, along with an abstract of recommendations and the evidence for the claims in each county, to Governor Bell on November 11, 1851. The governor, in turn, submitted the commission's work to the legislature nine days later for its action. The legislature named a select committee to examine the testimony compiled by the commission and to report its findings. The committee sought to determine in each case whether a title founded in good faith existed, whether the conditions of the grant had been complied with, whether continued possession of the land or abandonment for good cause could be proved, and whether fixed improvements had been erected. Those titles deemed to be perfect or perfectible were reported favorably, and the rest were passed over without any expression of opinion. The list of 234 claims finally confirmed by the Texas legislature on February 10, 1852, followed closely the recommendations of the commissioners.<sup>50</sup>

These confirmations were an important step in resolving the title difficulties in the region, though a great deal of litigation concerning

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<sup>47</sup> Bourland to Gov. Bell, May 17, 1851, Governors' Papers: Bell. The following Texas General Land Office files, Original Land Grant Collection, contain information compiled by the boards of commissioners: San Patricio 1-548, San Patricio 1-459, San Patricio 1-323, San Patricio 1-473, San Patricio 1-309, San Patricio 1-339, San Patricio 1-306, San Patricio 1-307, and Spanish Collection, Box 135, Folders 2, 4, and 7.

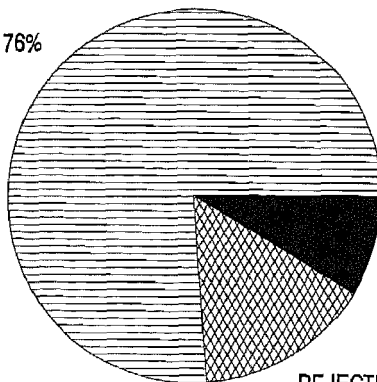
<sup>48</sup> In 1767, the Spanish government sent members of the Royal Corps of Engineers to conduct surveys and distribute lands in each of the Rio Grande Valley settlements—Camargo, Guerrero, Laredo, Mier, and Reynosa. The term *porción* derives from the long, narrow tracts (approximately  $\frac{2}{3}$  mile by 13 to 14 miles) into which the engineers surveyed the river front.

<sup>49</sup> "Report of the Select Committee . . ." in the "Bourland and Miller Report"; James Nix certificate, San Patricio 1-349, Original Land Grant Collection, Texas General Land Office, Austin.

<sup>50</sup> "General Report of the Board of Land Commissioners appointed under an Act of the Legislature of the State of Texas, approved February 8th, 1850, entitled 'An Act to provide for the investigation of land titles in certain counties therein mentioned,'" in the "Bourland and Miller Report"; "Message of the Governor transmitting the Report of the Commissioners . . ." Nov. 20, 1851, in *ibid.*; "Report of the Select Committee to whom was referred 'a Bill relinquishing the right of the State to certain lands therein named,'" in *ibid.*; Gammel (comp.), *The Laws of Texas*, III, 941.

## CLAIMS PRESENTED BEFORE THE BOURLAND AND MILLER COMMISSION

RECOMMENDED 76%



REJECTED OTHER 9%

REJECTED MAT. 15%

Total number of claims presented to the Commissions, 343. Total number of claims rejected, 78. Of these, the commissioners automatically turned down 51 located within the *ejidos* (commons) of Matamoros, judging the claimants to be tenants and not grantees. The other rejections were made for two principal reasons, lack of evidence of final title and abandonment. Source: "Report of W. H. Bourland and James R. Miller, Commissioner to Investigate Land Titles West of the Nueces," *Spanish Collection, Texas General Land Office*.

these grants continued for many years. The commission's actions and those of the legislature succeeded in convincing titleholders of the just intent of state authorities in regard to their lands. As early as November 1850 Miller reported to the governor:

Before I left Brownsville a Public Meeting was held and resolutions were passed very complimentary of the state and the commissioners[. T]his document was signed by every man in Cameron County[. T]he very best feelings exist in that quarter towards the Government of the State and Yourself particularly[. T]hey are now satisfied and convinced that you have been their best friend[.]<sup>51</sup>

However, as a result of the failure of the Bourland and Miller Commission to investigate all of the Spanish and Mexican titles in question, pressure mounted in the Texas legislature to pass an act creating another board of commissioners. A second board, similar in all essential points to the first, was created by an act of February 11, 1854.<sup>52</sup> Gover-

<sup>51</sup> Miller to Gov. Bell, Nov. 28, 1850, Governors' Papers: Bell.

<sup>52</sup> Gammel (comp.), *The Laws of Texas*, III, 1533.



nor E. M. Pease appointed Charles S. Taylor and Robert H. Lane as the two members of what came to be known as the Rio Grande Commission.

Even less is known about the activities of this commission, but records confirm that in 1854 and 1855 they investigated titles as far west as El Paso County. The commissioners submitted their report and the supporting evidence to Governor Pease in November 1855, and the same was forwarded to the legislature for its consideration. Because it included claims that the commission had not recommended for confirmation and claims that had not even been presented to the commissioners, Governor Pease vetoed the confirmation act passed by the legislature in August 1856.<sup>53</sup>

Following the second commission's failure, Texas lawmakers turned to the courts as the vehicle for handling outstanding claims, with the exception of grants handled through special laws. An Act of February 11, 1860, allowed claims to be filed for three years in the state's district courts. An 1862 amendment to this law extended the time limit to February 11, 1865. Ten years later, on August 15, 1870, another act was passed allowing for claims to be filed, this time in Travis County District Court, for a period of two years.<sup>54</sup>

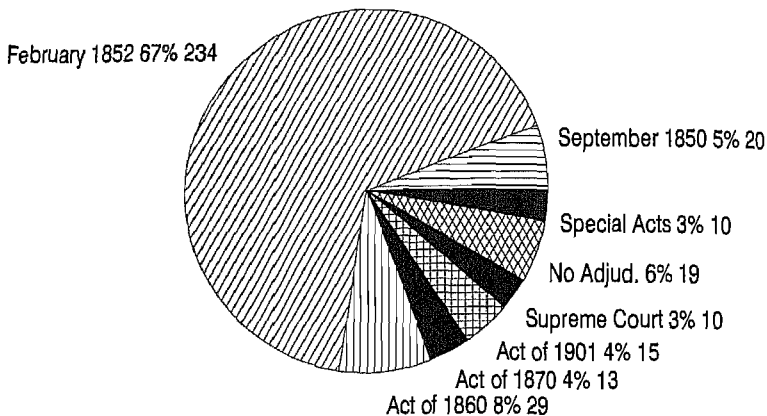
These two acts had a number of features in common, most importantly that claims had to be based on grants made before December 19, 1836, the date on which the republic's congress claimed the Rio Grande as the boundary of Texas. The most important difference between them was that the former allowed claims to be filed in the district court where the land was located while the latter allowed two years for filing in the Travis County District Court. The courts confirmed twenty-nine titles under the act of 1860, while the Travis County court confirmed thirteen. A number of rejected claims were upheld by the Texas Supreme Court, which was given appellate jurisdiction in these laws. An act of September 3, 1901, addressed the question of claims emanating from grants made subsequent to Texas independence but before the Treaty of Guadalupe Hidalgo. Under its terms, claimants had two years to file and, if successful, six months from final judgment in which to file the judgment and field notes in the Land Office. The court confirmed fifteen claims under this law.<sup>55</sup>

<sup>53</sup> Bowden, *Spanish and Mexican Land Grants in the Chihuahuan Acquisition*, 96–97.

<sup>54</sup> Gammel (comp.), *The Laws of Texas*, IV, 1471, V, 568. For the confirmation histories of the El Paso County Spanish and Mexican land grants, see: Bowden, *Spanish and Mexican Land Grants in the Chihuahuan Acquisition*. Explanations of the confirmations of the handful of other grants handled directly by the Texas legislature are found in Texas General Land Office, *Guide to Spanish and Mexican Land Grants*.

<sup>55</sup> "Spanish and Mexican Land Grants—Act to Provide for Testing Validity of," *General Laws of the State of Texas*, 27th Legis., 1st Called Sess., 1901 (Austin: Von Boeckmann, Schutze & Co., 1901), 4–7; Gammel (comp.), *The Laws of Texas*, IV, 1471, VI, 375; Totals for confirmations taken from Texas General Land Office, *Guide to Spanish and Mexican Land Grants*.

## RECOGNIZED SOUTH TEXAS LAND GRANTS ACCORDING TO LEGISLATIVE ACT



Special acts are those passed by the Texas legislature to settle specific claims. Those claims that appear on original county grantee maps and are recognized by the state but have not been confirmed are labeled "No Adjud." The Supreme Court has settled a number of disputes arising from claims, including overturning the decisions of lower courts acting under one of the adjudication acts. *Source: Guide to Spanish and Mexican Land Grants in South Texas (Austin: Texas General Land Office, 1988).*

The disposition of the records compiled by both boards of commissioners is one of the perplexing questions about their work. The Texas General Land Office eventually became repository for the "Report" of the Bourland and Miller Commission, which contains a synopsis of the evidence for each claim and the commissioners' recommendations. No clue has been found as to the whereabouts of the remaining records. Nine original land grant files in the Texas General Land Office contain evidence gathered by this board. A close examination of these records suggests quite conclusively that private individuals filed the documents in the General Land Office at different times as corroborative proof in the process of patenting these tracts.<sup>56</sup> From this, the inference can be drawn that each claimant before the Board of Commissioners received from them a copy of the evidence prepared. However, the body of evidence collected by the commissioners and presented to the legislature has apparently been lost.

<sup>56</sup>John L. Haynes to Commissioner Stephen Crosby, Aug. 28, 1854, Letter Received No. 17953, Texas General Land Office Correspondence, Texas General Land Office, Austin.

Even more mysterious is the disappearance of the report and evidence submitted by the Rio Grande Commission. Just two years after the commissioners submitted their report, C. W. Buckley, chairman of the Committee on Private Land Claims indicated: "The report of said Commission has not been seen, nor can it be found, notwithstanding the most diligent search which has been made in every place where such a document should be found."<sup>37</sup> One Texas General Land Office file includes evidence presented to this commission at Webb County in July 1855.<sup>38</sup>

The Bourland and Miller Commission was the product of the singular circumstances under which Texas joined the United States. Had the Lone Star State entered the Union in the same manner as the rest of the states its public land would have become federal property. In keeping its public lands, Texas found itself obliged to do in the trans-Nueces and in the El Paso area what Washington felt compelled to do in California and New Mexico—establish the legal foundations of all pre-existing land claims.

That the Texas case more closely resembles events in California than those in New Mexico is not surprising. As an important area of economic contact between the United States and Mexico, the Rio Grande Valley experienced a surge in growth that, though not on the scale of the Gold Rush, nonetheless put some pressure on the existing land system. Speculation in South Texas lands previous to and immediately following the Treaty of Guadalupe Hidalgo resulted in a transfer of large amounts of land into Anglo-American hands from the original Mexican owners, a process that accelerated once the bulk of the claims had been confirmed. At the same time, new arrivals in the west, claiming lands under Republic of Texas certificates or making claims under federal land programs in California, put pressure on the respective governments to identify the available public domain. It is therefore not surprising that, though the methods used in California and Texas differed, the results were similar. A large proportion of all claims filed received confirmation.

Texas needed to adjudicate claims fairly, not in order to protect the rights of Hispanic landowners—though this was an espoused goal of some—but to protect the government and all landowners from the overwhelming volume of litigation sure to stem from inaction. Also, Texas lawmakers were astute enough to realize that land interests could not be selectively protected without endangering the state's credibility.

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<sup>37</sup> Bowden, *Spanish and Mexican Land Grants in the Chihuahuan Acquisition*, 116.

<sup>38</sup> Box 135, Folder 2, Spanish Collection, Texas General Land Office, Austin.

Through the Bourland and Miller Commission and subsequent claims adjudication legislation, Texas avoided many of the difficulties the United States Congress created for itself in New Mexico by refusing to deal with the Spanish and Mexican land grant question.

Thus, the state's lawmakers recognized and gave validity (if only grudgingly) to the Spanish and Mexican legal and cultural forms that had shaped the look of the land in South Texas. Having discharged that obligation, lawmakers left Mexican American titleholders to defend themselves against the onrushing land sharks in the dangerous, and for these new Texans uncharted, realm of the Anglo-American legal system. But this is another story, one that deserves a complete and detailed analysis of its own.