

# The New Mexico Constitution Meets the “Facts On The Ground”

By Mark Thompson

The next time you are heading up U.S. 84 to Chromo, Colorado, stop at the state line and with your trusty GPS see what it says for the degree of latitude north of the Equator. Then compare that with the “legal description” in Article I of the pocket edition of the *Constitution of the State of New Mexico*, which you always carry for the purpose of instantly settling disputes. Or perhaps when you are heading for Texline, Texas, on U.S. 87, stop at the state line to compare your GPS reading of the meridian, i.e. the degrees of longitude west of Greenwich, England, with the Constitution’s legal description of the eastern border. What gives?

The delegates to the Constitutional Convention of 1910 did not make up the state boundaries out of “whole cloth.” Each of the eight boundary lines described in the *Constitution* came from preexisting legal documents: (1) the “Organic Act” establishing the Territory of New Mexico in 1850;<sup>1</sup> (2) the “Gadsden Treaty” signed December 30, 1853; (3) the act creating the temporary government for the Territory of Colorado;<sup>2</sup> and, (4) the act providing for the temporary government of the Territory of Arizona.<sup>3</sup> Half of these borders present interesting problems for the “casual” reader of the Constitution.

Section one of the Organic Act reflects the compromise whereby Texas gave up its claim of territory from the 103rd meridian to the Rio Grande River for a \$10 million bond issued by the United States. Section two then used the 103rd as the eastern boundary of New Mexico, from, at that time, the 32nd to the 38th parallel north of the Equator. But the so-called “Clark Survey” of 1859 deviated from the 103rd at the southwest corner of what is now the Oklahoma panhandle, resulting in the boundary moving west and a loss of approximately 600,000 acres to Texas.<sup>4</sup>

To add insult to injury, Congress passed Senate Joint Resolution 124 on Feb. 16, 1911, three months after the adjournment of the New Mexico Constitutional Convention, declaring that the Clark Survey was conclusive and settled the boundary. Eight months after ratification of the proposed constitution by the voters, Congress adopted the act admitting New Mexico to statehood with a declaration that “admission shall be subject to the terms and conditions” of the February resolution.<sup>5</sup> It would now take an amendment to Article One to change the legal description, but it has long been argued that the “subject to” clause was an unlawful condition of admission.<sup>6</sup>

That part of the southern boundary in the Organic Act using 32° N was part of the Texas compromise and it went west to the “main channel” of the Rio Grande. From there, however, it was a guessing game, the result of the mess created by the Treaty of Guadalupe Hidalgo, a whole other story. One result of the Gadsden Treaty was to set a point in the river at 31° 47' N and then extend the boundary west from that point.<sup>7</sup> But that meant following the channel from those two parallels and, surprise, the river changed course. The solution, expressed in the *Constitution*, was to modify the description to use the main channel “as it existed” on Sept. 9, 1850, the date of adoption of the Organic Act. It eventually took a survey ordered by the U.S. Supreme Court to settle that ambiguity.<sup>8</sup>

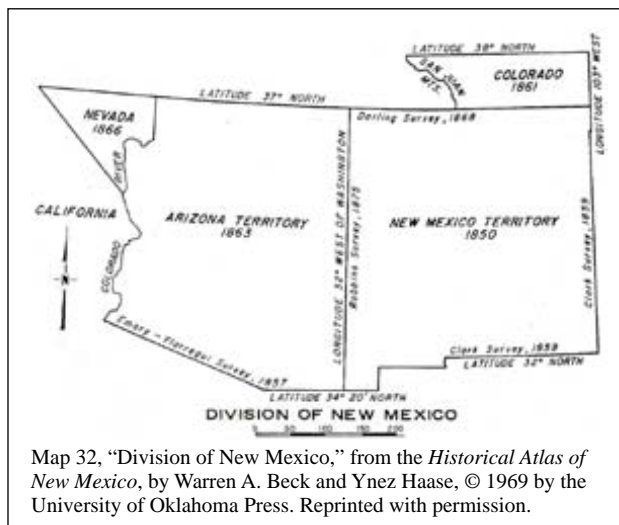
On its face, the northern boundary with Colorado should be “straightforward.” New Mexico lost some territory with the creation of the territory of Colorado in 1861, but the entire boundary was set at 37° N from east to west, the boundary incorporated into the constitutional legal description. Alas, the so-called “Darling

Survey” of 1868 created a line south of that parallel from roughly a point east of where State Road 551 (Union County) crosses the border to a point about five miles west of U.S. 84 in Rio Arriba County. Congress and the President could never seem to agree on a solution to the problem, and when it finally got to the U.S. Supreme Court, the court held that New Mexico had acquiesced in the survey.<sup>9</sup> Thus the actual boundary on the north does not follow the legal description in the *Constitution*.

The western boundary set by the statute creating the Arizona Territory in 1863 is not “wrong” but, of course, it requires yet another

history lesson. The boundary, incorporated into the constitutional legal description, is set at the “thirty-second meridian of longitude west from Washington.” Before the 1894 agreement which recognized Greenwich, every nation worth its salt thought the 0 meridian should run through its own capital, and the United States was no exception. Why the Constitutional Convention did not just use 109° 2' 12" West of Greenwich in 1910 is not known, but clearly that was the least of the problems the convention had when creating a legal description for New Mexico.

In its 1925 opinion, the U.S. Supreme Court does not indicate the amount of the territory lost to Colorado, but does say that it was a “large strip” and included, after Colorado had exercised control,



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“one town and two villages, and five post offices.”<sup>10</sup> The loss to Texas is probably more substantial, estimated at 600,000 acres, including the towns of Farwell and Texline.<sup>11</sup> New Mexico officials from time to time express dissatisfaction with the loss of territory to Texas. As early as 1911 a legal argument was suggested,<sup>12</sup> but whether or not an action to reclaim the property would be successful is anyone’s guess.

(Endnotes)

<sup>1</sup> Act of September 9, 1850, §§ 1 & 2.

<sup>2</sup> Act of February 28, 1861, § 1.

<sup>3</sup> Act of February 24, 1863, § 1.

<sup>4</sup> Arthur G. Whittier, compiler, *Annotated Constitution and Enabling Act of the State of New Mexico* (Santa Fe: 1911), pp. 10 & 11.

<sup>5</sup> Act of August 21, 1911, § 502.

<sup>6</sup> See e.g., Whittier, note 4 *supra*, at p. 11.

<sup>7</sup> Although a curious shape, probably worthy of another story, the remainder of the southern boundary set by the treaty was incorporated into the constitution and is not in question.

<sup>8</sup> *New Mexico v. Texas*, 276 U.S. 558 (1928).

<sup>9</sup> *New Mexico v. Colorado*, 267 U.S. 30 (1925). The final decree appears at 268 U.S. 108 (1925).

<sup>10</sup> *New Mexico v. Colorado*, 267 U.S. at 37.

<sup>11</sup> Note 6, *supra*.

<sup>12</sup> *Ibid*.

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