

PARA NADA The War Over the Baca and Estancia Land Grants

By Mark Thompson

To get a flavor of New Mexico during territorial and early statehood days, try the collection of nine short stories by Albuquerque author Erna Fergusson, published under the title *Murder & Mystery in New Mexico*.¹ As the title suggests, law and order, and lawyers, play a big part; but it was her account of protracted civil litigation involving a Spanish land grant and a Mexican land grant covering some of the same property which caught my eye.²

In 1819, a grant of land on the east side of the Manzano Mountains, estimated at between 500,000 to 1.5 million acres, was made in the name of the Spanish king to Captain Bartolomé Baca of Tomé.³ In 1845, the last governor of the Mexican period, Manuel Armijo, awarded the Estancia Grant (allegedly 415,000 acres) to Antonio Sandoval. The Estancia Grant covered a portion of the Baca grant, including the *Ojo de Verrendo* (Antelope Springs), identified by Don Bernardo de Miera Y Pacheco in his 1779 map and claimed by one of the parties to be capable of watering 10,000 head of cattle.⁴ Thus was set the stage for something perhaps only lawyers can enjoy—litigation involving a conflict of laws.

The first case to reach the New Mexico Supreme Court was brought by the successor in interest to Antonio Sandoval in an effort to eject a rancher claiming under the federal homestead law.⁵ That case was easily disposed of by the court in July 1883. A claim to confirm the Mexican grant had been filed with the United States surveyor general for New Mexico, received a favorable report from his office, but had not yet been acted upon by Congress. The act creating the survey, etc, specifically provided that the land could not be disposed by the government until Congress determined the validity of the grant.⁶

The second case, also brought by the successor to Sandoval, was against the owners of the Baca Grant. Fergusson says it was pending in 1883, but it was not decided by the New Mexico Supreme Court until 1888. The court had to back off from dicta in its 1883 decision, which had asserted that the court must defer to the surveyor general, and then it reversed a judgment against the Baca successors. Although the court noted that Congress had disapproved the Baca grant in 1881, a new trial was ordered because the Estancia Grant had never been acted upon by Congress, requiring the district court to determine if the Sandoval successors had grounds for ejecting the Baca successors.⁷

Congress gave the parties a second bite at the apple by creating the court of private land claims in 1891.⁸ The question of the validity of the Baca Grant reached the United States Supreme Court in 1897, and the court held that the grant was not completed according to Spanish colonial law and could not be confirmed.⁹ In 1901, the United States Supreme Court held that the Mexican-era governor had no authority to issue a land grant to Sandoval, and the Estancia Grant was declared invalid.¹⁰ Thus the litigation ended with neither the successors of Bartolomé Baca nor the successors of Antonio Sandoval in possession of the land in the Estancia Valley.

A litigation battle over conflict of laws will never sell books, but Erna Fergusson described a gun battle, two deaths and the involvement of three families who arguably had an impact on the development of the American West. That made for a great story. She called it *The Ballad of Manuel B.*

The Baca Grant had been purchased by Manuel Antonio Otero and in 1883 was being managed by Manuel's son, Manuel B. Otero. The Oteros were an established New Mexico family; one of Manuel B.'s cousins, Miguel Otero of Las Vegas, was appointed territorial governor by President McKinley and served for nine years. In the tradition of the Hapsburgs, Manuel B. also made a fortunate marriage—his wife Eloisa being a member of the Luna family for whom the town of *Los Lunas* (the Luna Brothers) is named.

The Estancia Grant was claimed in 1883 by Joel Parker Whitney, described as a Boston millionaire by Fergusson and the New Mexico press. He was born in Gardner, Massachusetts, in 1835¹¹ but he was no Brahmin. His father, George Whitney, was something of an adventurer, living in Louisiana in the early 1840s,¹² in Illinois in 1850¹³ and then in San Francisco with the family of his son James in 1880.¹⁴ Although George became a successful rancher in the Sacramento area, this was a case of the father following his sons. Joel Parker Whitney left home at seventeen to find his fortune in California gold. Although he probably had a home in Boston and other places, he was

essentially a westerner and one of the early tycoons, making his money in mining, ranching and land speculation.¹⁵

I will leave the details to the telling by Fergusson, but on Aug. 17, 1883, a gun battle on the Estancia plain resulted in the deaths of Manuel B. and Alexander Fernandez of San Francisco, the brother-in-law of James Whitney.¹⁶ Whitney was badly wounded but was charged with killing Manuel B. After a change of venue, the trial before a jury in Springer resulted in a verdict of "not guilty."¹⁷ The probate filing listed Manuel's cause of death as "murdered by James Whitney,"¹⁸ but the *Albuquerque Morning Journal* opined that anyone who sat through the two-day trial was not surprised at the acquittal.¹⁹

One month after Manuel's death, Eloisa gave birth to a son she named Manuel B. In 1886, she married the English/Italian immigrant Alfred M. Bergere by whom she had nine more children.²⁰ When Congress created the court of private land claims, Eloisa (Luna) (Otero) Bergere, with the help of the land grant attorney, Thomas B. Catron of Santa Fe, carried on the fight for the Otero heirs. In his memoir, Joel Parker Whitney says nothing about the litigation or the gunfight in the Estancia Valley.²¹ For Whitney, who readily took litigation to the U.S. Supreme Court,²² it was probably just business as usual. Joel Parker Whitney died in 1913²³ and Eloisa Bergere died the following year.²⁴

continued on next page



Joel P. Whitney

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Endnotes

¹Erna Fergusson, *Murder & Mystery in New Mexico* (Albuquerque: Merle Armitage Press, 1948).

²In fact, what made me curious was her expression of surprise that a land grant had been granted in the name of Spain in 1819 because “the Republic of Mexico [was] established in 1811.” Fergusson at p.35. Although confusion on this point is common, the date of February 24, 1821, is generally accepted as the “legal” date of Mexican independence. See e.g., Stoneroad v. Beck, 16 N.M. 754, 761 (1912). This, along with other minor mistakes concerning the litigation, does not diminish her excellent story.

³Baca was later governor during the Mexican period. Ralph Emerson Twitchell, *The Leading Facts of New Mexico History* (Cedar Rapids, Iowa: The Torch Press, 1911), Vol. 1, p. 471, n. 504.

⁴J. Parker Whitney, *Reminiscences of a Sportsman* (New York: Forest and Stream Pub. Co., 1906), p. 380. The site, south of Moriarity, is at the SW corner of State Highway 41 and Marshall Road but it must take a “trained eye” to see anything that looks like a spring.

⁵Whitney v. McAfee, 3 N.M. 9 (1883).

⁶Act of July 22, 1854, § 8.

⁷Chaves v. Whitney, 4 N.M. 611 (1888).

⁸Act of March 3, 1891.

⁹Bergere v. United States, 168 U.S. 66 (1897).

¹⁰Whitney v. United States, 181 U.S. 104 (1901).

¹¹Richard A. Miller, *Fortune Built by Gun: The Joel Parker Whitney Story* (Walnut Grove, Calif.; Mansion Publishing Co.; 1969), p. 5. Miller’s book concentrates on Whitney’s California and Colorado ventures and clearly favors Whitney’s side

of the story regarding New Mexico. The book also contains numerous errors about the New Mexico controversies which could have been avoided by reading the court opinions.

¹²Whitney, note 4, *supra*, at p. 1.

¹³George Whitney household, 1850 U.S. census, Jersey County, Illinois, population schedule, Jerseyville township, page 4, dwelling 45, family 45; National Archives micropublication M432, roll 111.

¹⁴George Whitney household, 1880 U.S. census, San Francisco County, California population schedule, City of San Francisco, enumeration district 221, supervisor’s district 1, sheet 24, dwelling 923, family 212; National Archives micropublication T 9, roll 79. Miller claims George Whitney (Sr.) died in 1873; if so someone told a whopping lie to the census enumerator in 1880!

¹⁵See generally, Miller, note 11. The town of Rocklin, California covers much of Whitney’s Spring Valley Ranch. See www.rocklintoday.com.

¹⁶“A Triple Tragedy,” *The Albuquerque Morning Journal*, 19 August 1883, p. 3.

¹⁷“Whitney Acquitted,” *The Albuquerque Morning Journal*, 1 May 1884, p. 1.

¹⁸Probate Journal, 1882-1888, Valencia County, *New Mexico Genealogist* (1998), vol. 37, p. 145.

¹⁹Editorials, *The Albuquerque Morning Journal*, 2 May 1884, p. 3.

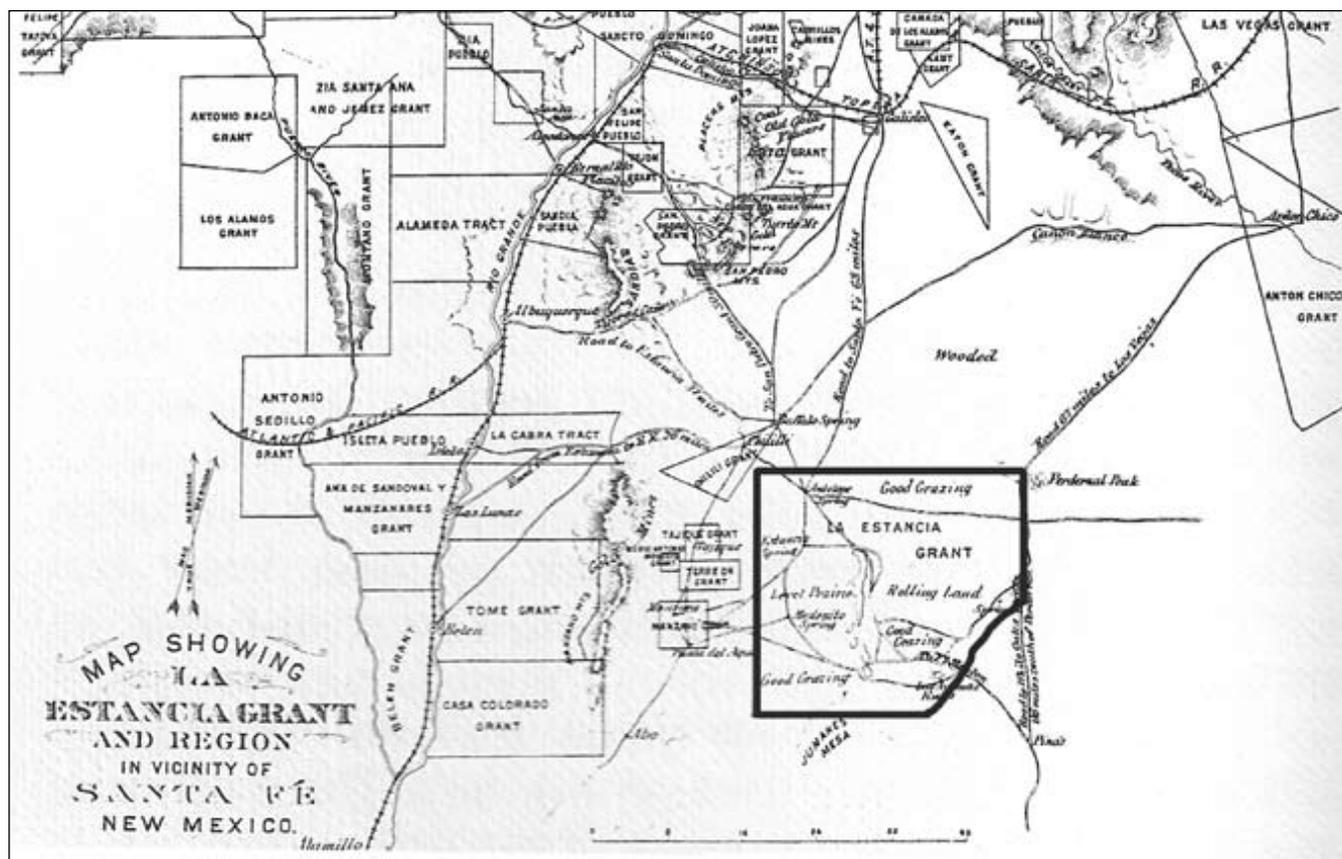
²⁰Alfred M. Bergere household, 1910 U.S. census, Santa Fe County, New Mexico, population schedule, City of Santa Fe, enumeration district 225, supervisor’s district 111, page 5B, dwelling 103, family 164; National Archives micropublication T624, roll 918.

²¹He did, however, publish a pamphlet about the Estancia Grant in January of 1883. Miller, *supra* note 11, at p. 154, note 3.

²²See Whitney v. Taylor, 158 U.S. 85 (1895) and Whitney v. United States, 167 U.S. 529 (1897). Both involved disputes over land, the latter involving the *Canada de Cochiti* Grant in New Mexico.

²³Miller, note 11 *supra* at p. 231.

²⁴“Mrs. Bergere is Claimed by Grim Reaper at Capital,” *The Albuquerque Morning Journal*, 4 September 1914, p. 2.



This map supports Joel Parker Whitney’s view of the controversy. A rough estimate of the alleged size of the Baca Grant shows Buffalo (Cibola) Spring as the northern boundary, the summit of the Manzano Mountains down to Abo Pass on the west, then east to a north-south line through Perdenal (Flint) Peak.