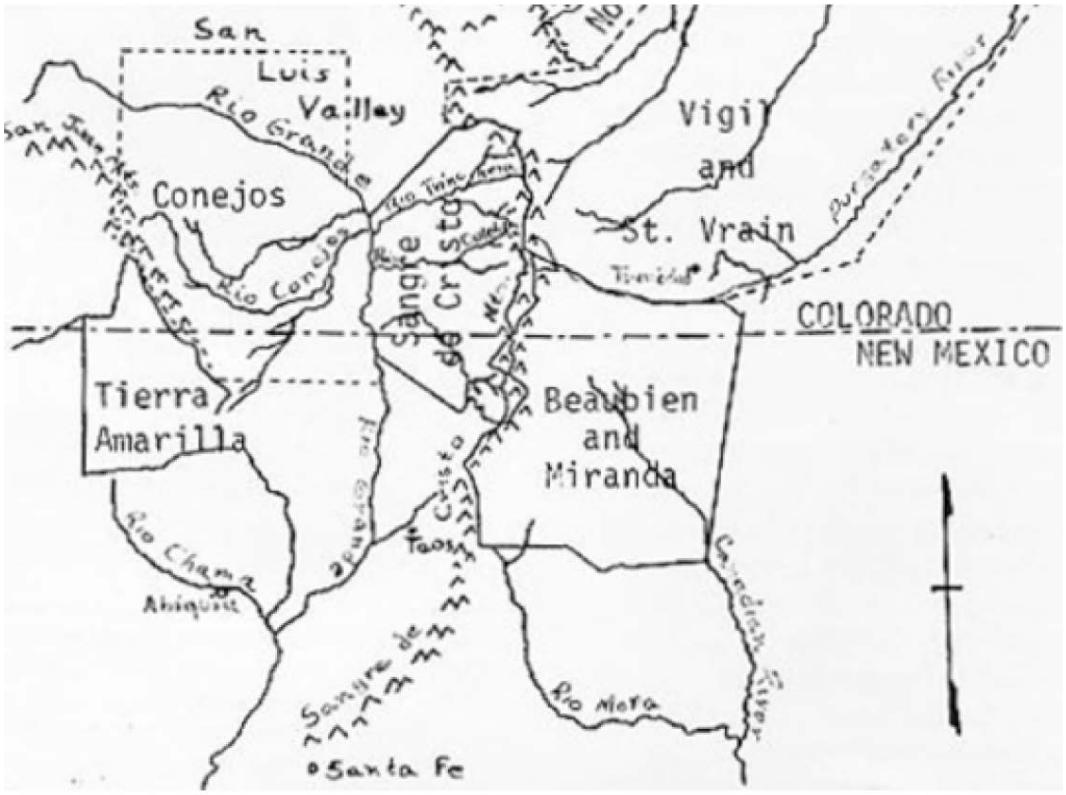
The Federal Land Rights Series Edition 16 – When federal law and state law collide – Can real property law at the state level render federal law moot?

Aside from the relatively small and isolated pockets of urban development that dot our western landscape, that vast and magnificent region has proven to be best adapted to the particular form of agriculture known as animal husbandry, and as a consequence there has perhaps been no form of land use in the western states which has generated tension and disputes more persistently than grazing rights. Of course the right to allow animals to graze upon one's own land is certainly among the more unremarkable rights which attend fee ownership of real property, but grazing that involves any substantial number of animals obviously requires substantial acreage, more acreage than a typical community member is likely to personally own, bringing the desire or need to use land lying beyond the boundaries of the animal owner's property into play. Every society around the world has recognized that each member of any given community has a legitimate need to make use of land he or she does not own, for various purposes, often on a frequent or regular basis, and in our society, like most others, the easement concept represents the primary legal mechanism supporting such activities. But in practice the seemingly simplistic easement concept has historically proven to be far more problematic than one might suppose, primarily because properly establishing land rights which take the form of an easement requires both foresight guided by wisdom and careful attention to detail, ingredients which are often not fully appreciated by those who set out to create and to document any given easement, setting the stage for potentially intense conflict. This edition takes us to southern Colorado, an especially beautiful portion of the west which has for generations been tormented by the residual vestiges of the clash of cultures that occurred when the northward expansion of Mexico encountered, and was terminated or truncated by, the more powerful westward expansion of our own nation during the Nineteenth Century, to observe one of the longest running land rights disputes anywhere upon our continent. Although recent legal developments have brought this seemingly interminable controversy to the forefront yet again, as we will later note, the outstanding educational value embodied in it can only be fully absorbed through an examination of the especially rich backstory which provides vital context to the most recent judicial proceedings. Here we embark upon a review of the historically significant events that gave rise to this epic saga, cognizant that the most essential component of our learning journey will come in the form of difficult questions, relating to highly contentious and vexing land rights issues, as we discover the immense and enduring power of the principles of law and equity, which intertwine in the resolution of those issues (FN 1).

1840 to 1843 - At this time, just 2 decades after the completion of the separation of Mexico from the Spanish Empire, as tangible and effective political boundaries between nations were only beginning to emerge in the westernmost portions of the North American continent, the American presence in the southwest was steadily and rapidly growing, compelling Mexican authorities to recognize the need to prioritize actual population of the land situated in the northern part of the territory claimed by Mexico, if they were to retain their authority over that remote region. Therefore, the pace at which land grants to private parties were being issued by Mexico accelerated, more or less proportionally to increasing American intervention, as it became clear that introducing a large number of Mexican settlers to the northernmost reaches of Mexican power would be necessary to give that young nation any chance of resisting the onslaught of newcomers streaming southwestward from the Missouri frontier, not far to the

northeast. As a consequence of this Mexican emphasis upon putting boots on the ground, in an effort to outnumber and thereby repel the numerous Americans arriving in the southwest, by physically demonstrating that the land was firmly under Mexican control, Mexican authorities often ignored their own legal standards governing the issuance of land grants, and basically sought to hand out land in large quantities to whoever appeared to be ready to populate the landscape. It was under these conditions, amidst an oncoming and intensifying clash of cultures, with war on the horizon and growing nearer, that an application for a huge land grant, submitted by 2 young men, named Beaubien and Lee, was received and viewed with favor by the Mexican government, as the waning days of 1843, a year of especially momentous American migration, expired (FN 2).

1844 – Less than a month after their request for a massive amount of acreage, far beyond what they could ever personally utilize, was filed, it was formally granted by the government of Mexico, making Beaubien and Lee the owners in fee of about one million acres, situated primarily in what was later to become Costilla County, Colorado. Thus a highly problematic tract of truly titanic size, known as the Sangre de Cristo land grant (SDC) which was destined to play a major role in shaping the development of this majestic but deeply troubled region, came into existence. Through the completion of a ceremonial delivery of possession of the land unto them, which was orchestrated in accord with Mexican tradition, pursuant to instructions issued by the governor of Mexico, the SDC grantees were formally vested with title to the SDC tract, effectively completing their acquisition just as they had envisioned it. Fate was unkind to these 2 young men however, as dramatic events were already unfolding, which would allow them only 3 years to enjoy whatever fruits they hoped to extract from their enormous estate (FN 3).



1845 - In accord with the desire of the Mexican government to populate its northern frontier as a matter of national defense, and attempting to fulfill the purpose for which the SDC had been created, settlers from the Taos area ventured northward and began to occupy portions of the SDC, but they were effectively repelled and promptly ousted from their initial habitations along the upper Rio Grande by the Utes, Native Americans who quite understandably regarded the SDC as a part of their homeland. Although the control that was exerted by the Utes over the area containing the SDC was in its waning days, their presence was still sufficient at this time to block the only serious effort to establish a Mexican community within the SDC that was ever made during the lifetime of the SDC grantees.

1846 to 1847 - Not surprisingly, when the Mexican-American War broke out, the SDC grantees soon became deeply immersed in, and in fact literally surrounded by, conflict laced with treachery, and early in 1847 they found themselves in the wrong place at the wrong time. Beaubien and Lee were among the 6 individuals, including Governor Bent, who were killed when Bent's home in Taos was attacked by a band of Mexicans and Native Americans, who were determined to resist the American intrusion into the southwest, or at least exact a measure of revenge upon Americans and their allies, knowingly sacrificing their own lives in a futile last ditch effort to do so. Predictably, the severe backlash precipitated by this brazen assault was both swift and fearsome, as American forces soon arrived, prepared to suppress the uprising with unforgiving brutality, leading to the event historically known as the Taos Massacre, but it was the murderous rampage that occurred in Bent's house which decapitated the expansive SDC estate, by ending the lives of both of its unfortunate owners. Mexico would never get another chance to establish control over the SDC by placing Mexican settlers in possession of that land, as the communities which subsequently developed therein were all founded upon American ground, newly obtained by conquest.

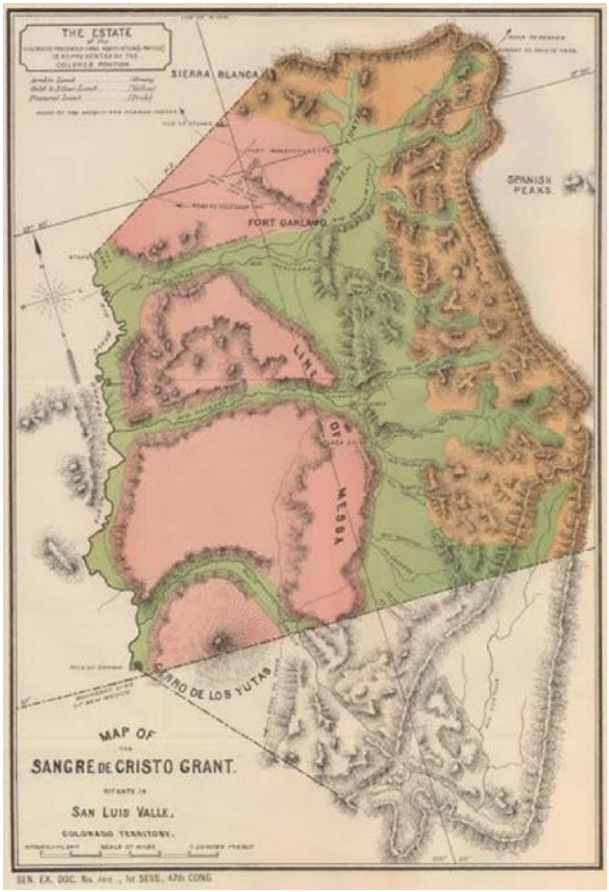
1848 - The Treaty of Guadalupe Hidalgo was signed, marking the conclusion of the war, and in that document the US, as the conqueror, formally confirmed that all existing land rights held by Mexican citizens within the conquered territory would be honored. Thus US law supplanted Mexican law throughout the region occupied by the SDC and many other Mexican land grants at this point in time, so no further rights of any kind could accrue upon that land under any laws of Mexico, but land rights could begin to accrue in all such locations, in accord with US law. All of the land thereby brought within the boundaries of the US, which was never conveyed to anyone by Mexico, became part of the federal public domain pursuant to this treaty, subject to congressional control, including administrative tasks such as surveying, platting and disposal, but Congress understood and acknowledged that much of the acquired area was already privately owned, and proceeded to simply await the arrival of patent applications from the owners thereof. About 3 months after the treaty was signed, Beaubien, the father of one of the deceased title holders, completed the acquisition of all of the interests of both SDC grantees, making him the sole owner of the entire SDC, but perhaps unaware of US law, or reluctant to embrace it, or simply unsure of how to proceed, he evidently took no steps toward obtaining a federal patent at this time (FN 4).

1849 to 1852 - As the Ute dominance over the SDC region diminished, settlers from the Taos area and other locations to the south, who may or may not have realized that the elder Beaubien had become the sole owner of all of that ground, trickled northward along the upper Rio Grande, establishing some small settlements such as San Luis within the SDC, evidently with neither any

encouragement nor any objection from Beaubien. Since urgency on the part of the Mexican government to populate the land comprising the SDC with Mexican residents no longer existed however, that area remained remote and largely vacant until the end of this period, at which time Beaubien openly invited settlers to enter the SDC for the purpose of establishing homesteads, and he began selling off various portions of the SDC, thus the parcelization of the most preferable portions of the SDC commenced.

1854 - Cognizant that division of the conquered southwestern lands would be necessary for disposal purposes, Congress authorized the creation of the Office of the Surveyor General of the New Mexico Territory (10 Stat 308) outlining the duties of the holder of that office in so doing, which included evaluation of the legitimacy of any Mexican land grants that might be submitted to that office for review. President Pierce then appointed William Pelham of Kentucky, who had formerly served as the Surveyor General of Arkansas, to be the first holder of that office, which Pelham proceeded to occupy for the next 6 years.

1856 - Beaubien notified Surveyor General Pelham of the extent of the SDC at this point, and after reviewing the information provided by Beaubien, Pelham promptly penned a letter of recommendation, informing Congress that the SDC appeared in his judgment to be a valid tract, created by means of a legitimate Mexican land grant, with adequately described and properly established boundaries, thereby enabling Beaubien to qualify for a federal patent.



1860 - Congress formally approved the SDC for patenting purposes, confirming the validity of the 1844 Mexican grant, based upon Pelham's official expression of support for Beaubien's title (12 Stat 71 - 6/21/60). All of the conveyances made by Beaubien, both previously and subsequently, were thereby officially validated, but the GLO took no action on the Beaubien patent at this time, since the completion of the survey work upon the public lands adjoining the SDC, through which its boundaries might be verified on the ground and federally documented, remained to be completed.

1861 - The Colorado Territory was congressionally created, President Lincoln appointed Gilpin to serve as its first territorial governor, and Costilla County, within which the SDC lies, was founded (FN 5).

1863 - Disappointed that most of the land within the SDC remained unsold after more than 10 years on the market, and hoping to attract additional settlers to occupy and acquire the remainder of his estate, while attending a public assembly Beaubien verbally announced his intention to dedicate a substantial portion thereof as common ground, to be kept available for use by all successors of the SDC grantees for a set of specified purposes, quite logically supporting the agrarian needs of any typical settler. Although Beaubien made no effort to delineate the boundaries of this communal area with specificity, his words, spoken to a crowd comprised mainly of residents of the several small communities which had already formed by this time within the SDC, were written down by a scrivener, accepted for recordation, and thereby documented for posterity in the county records, with Beaubien's approval. Thus the key document that would eventually serve as the basis for decades of litigation, widely known as the Beaubien Grant, became a matter of public record at this point in time, while its grantor was still awaiting the ultimate confirmation of American recognition of his Mexican title to the SDC, which a federal patent would deliver unto him (FN 6).

1864 - Beaubien died and title to the remaining unconveyed SDC land was acquired by Gilpin, who agreed to accept the property subject to any and all rights within that area which may be held or established by those who own the many SDC parcels that had been sold off by Beaubien. Gilpin's acceptance of the position taken by the grantees of Beaubien at this time, who were convinced that Beaubien had intended to bestow broad land rights of a communal nature upon each of them, extending far beyond their individual parcel boundaries, left them free to use the unconveyed portions of the SDC that provided them with ample water sources, forest resources and mountain meadows suitable for grazing, as long as those lands remained open to them. Thus the pattern of communal land use, which Beaubien's informal approach to land conveyance, rooted as it was in Mexican values and traditions, had put in place, remained in effect after his passing, in accord with his apparent wishes, effectively perpetuated by Gilpin, who evidently took no successful steps to curtail use of the vacant portions of the SDC by Beaubien's grantees.

1869 to 1870 - The peaceful pastoral conditions within the SDC which were fostered by Beaubien, and then perpetuated during Gilpin's relatively brief ownership of the SDC, were not destined to remain in place for long however, because Gilpin was prepared to sell the attractive land within the SDC and he proceeded to do so. United States Freehold & Emigration (USFE) acquired a substantial portion of the SDC at this time, known as the Costilla Estate, but the initial controversy over the legitimacy of the SDC as a valid Mexican land grant did not involve the grantees of Beaubien, it was triggered instead by the arrival of an individual settler who

believed that he could not be legally required to honor the existence of the SDC.

1872 - Tameling, presumably a typical settler, knowingly situated himself upon land lying within the boundaries of that portion of the SDC which had been acquired by USFE, insisting that he had the right to acquire that land himself, directly from the US, under the existing settlement laws of the US, and maintaining that he could not be required to honor the title held by USFE, because the SDC was not a valid Mexican land grant. The basis for Tameling's position was the size of the SDC, as he correctly observed, the acreage of the SDC greatly exceeded the maximum acreage limit which had been placed upon land grants by Mexican law well before the boundaries of the SDC were proposed. Thus Tameling asserted that the SDC was never a valid land grant, because its establishment in 1844 represented a direct violation of the Mexican law which dictated the legal parameters that governed its creation, committed by the Mexican authorities who had approved that grant.

1874 - The Supreme Court of the Colorado Territory was not in agreement with Tameling however, despite the correctness of his observation regarding the clearly excessive size of the SDC, decreeing at this time that both the SDC itself and the title held by USFE were entirely legitimate. In so holding, the territorial justices emphasized that any concern or dismay over the fact that the 1844 creation of the SDC clearly represented a violation of Mexican law, as Tameling had accurately pointed out, was both misguided and futile, because congressional approval had subsequently been formally bestowed upon the SDC, in accord with the laws of the US, and it was that approval which controlled and mandated the legitimacy of the SDC as a valid tract under federal law. The acceptance and confirmation of the SDC announced by Congress in 1860, a decade prior to Tameling's arrival, the territorial panel found, "*must be regarded as an unconditional ratification of the grant as previously made, and as such, equivalent in law to an original authorization ... a legislative ratification of an act done without previous authority ... It is said however* (by Tameling's legal team) *that there is nothing in a void estate upon which a confirmation can act, for there is nothing to confirm. This overlooks the distinction to be made between the acts of a sovereign power and an individual ... a legislative act, unlike a deed of a private person, may confirm and make valid a void conveyance.*" (FN 7).

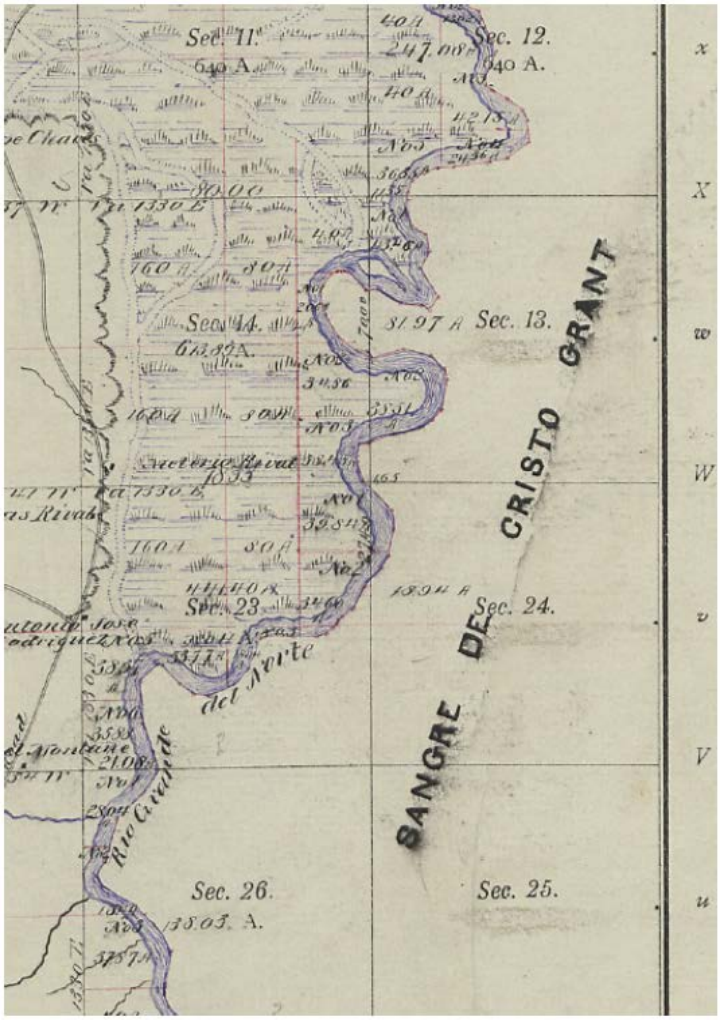
1876 - Evidently convinced that the 1874 Colorado ruling validating the SDC in its entirety was erroneous, Tameling took the matter on to the Supreme Court of the United States (SCOTUS) only to experience defeat once again, as statehood arrived in Colorado and the nation celebrated the arrival of its first centennial. SCOTUS agreed with the highest Colorado court that Tameling could not prevail, because the illegitimate origin of the SDC, born as it was of Mexican chicanery stemming from desperation, had been rendered moot and irrelevant by the 1860 action of Congress, which in legal effect represented a federal land grant made under US law, without regard to any flaws, however severe or substantial, afflicting the prior formation of the approved tract. Thus SCOTUS informed Tameling of the immensity of the power of Congress, to address and conclusively determine land rights, whenever a federal interest is involved, justifying congressional action, and Tameling learned that his observation regarding the excessive size of the SDC had come too late to be of any assistance to him. The opportunity to fight and potentially prevent federal acceptance of the SDC had in fact once existed, SCOTUS reminded Tameling on this occasion, as he could have petitioned Congress in 1860, demanding that congressional approval of the SDC be denied, but because he had failed to raise his protest at the appropriate time, before Congress acted on the matter, that opportunity had been foreclosed,

leaving him with no means of escaping the legal consequences of that congressional action, which was legitimately taken in fulfillment of obligations placed upon the US by the aforementioned 1848 treaty. In so ruling, SCOTUS took particular notice of the highly significant role played by Surveyor General Pelham in assessing the validity of the SDC. Upon observing that authority to evaluate the validity of land grants like the SDC, and make recommendations to Congress regarding such lands, as Pelham had done in 1856, had been federally bestowed upon Pelham in 1854, SCOTUS pointed out to Tameling that the congressional approval of the SDC boundaries in 1860 had clearly, and quite properly, been based on Pelham's letter of recommendation, which was a fully authorized act on the part of the Surveyor General under federal law. After quoting from Pelham's 1856 letter, SCOTUS went on to verify the legal force of the reliance of Congress upon Pelham's favorable report regarding his findings pertaining to the SDC:

> *"... the grant is a good and valid one ... legal title vests in Charles Beaubien to the land embraced within the limits contained in the petition. The grant is therefore approved by this office ... with the recommendation that it be confirmed by the Congress of the United States."*
> *William Pelham, Surveyor General*
> *Surveyor General's Office,*
> *Santa Fe, NM*
>
> *"determination of this case depends upon the effect of the act of Congress to confirm certain private land claims ... Did the act confirm the Sangre de Cristo grant to the extent of the exterior boundaries of the claim? ... Congress legislated ... the adjustment of land claims ... the duty of ascertaining their origin, nature, character, and extent was expressly enjoined upon the Surveyor General ... he was empowered for that purpose ... Congress acted upon the claim as recommended for confirmation by the Surveyor General. The confirmation being absolute and unconditional, without any limitation as to quantity ... such an act passes the title of the United States ... a grant may be made by a law as well as by a patent."* (FN 8).

The Tameling ruling exemplifies the principle that any foreign land grant, once ratified by Congress, effectively becomes subject to all of the protective forces of federal law which armor all congressional land grants, under the "grant de novo" concept, placing any ambiguities or problematic facts arising from the original foreign grant, such as the issue of excessive acreage highlighted by Tameling, in a state of permanent and absolute repose. In reality, many recipients of foreign land grants comparable to the SDC have taken legal action over the subsequent decades, complaining that they were cheated in one respect or another by Congress, when their land grants were congressionally approved, only to be confronted with the fact that congressional action on land rights is conclusive, even if Congress acted in ignorance or was misinformed about some aspect of the land at issue. But the successors of the SDC grantees were among the fortunate few in American history, whose land rights were protected by the powerful mantle of congressional approval to the fullest extent, despite the highly questionable nature of the origin of those rights, making them beneficiaries, rather than victims, of the conclusiveness which flows from congressional engagement in the land rights arena. Thus SCOTUS declined to throw the SDC successors under the proverbial bus by agreeing with Tameling that the SDC was illegitimate, and instead placed a veil of validation over all of the SDC parcels that had been created by conveyances from both Beaubien and Gilpin, effectively shielding those properties from any future attacks upon their validity, such as the one launched by Tameling.

1880 - By this point in time all of the GLO survey work in the relevant area, which had been conducted primarily if not entirely during the 1870s, was complete, and GLO personnel were therefore confident that the boundaries of the SDC had been duly verified on the ground and accurately platted. In addition, SCOTUS had validated the SDC, as noted above, deeming it to be privately held land, worthy of the title security bestowed by a confirmatory federal patent, rather than public land, so at last no reason for further delay in carrying out the 1860 congressional mandate, directing the GLO to fulfill Beaubien's 1856 patent request, remained to deter federal personnel from taking the designated disposal action. The GLO had no capacity however, to determine exactly who, or even how many people, stood in the shoes of Beaubien at this time as his successors, 16 years after his death, so the only name that appeared on the document issued by the GLO at this date was that of the man who had requested the patent. Nonetheless, the arrival of this long awaited federal confirmation brought documented certainty to the chain of title held by all those who had legitimately acquired any portion of the land within the SDC, from either Beaubien or Gilpin.



1881 to 1959 - For 8 decades, Culebra Peak, one of the towering pinnacles standing above the elevation of 14,000 feet which mark the backbone of the Rockies, watched like a sentinel from its vantage point along the east boundary of the SDC as generations of SDC successors were born, used the land, and passed into history. Exactly when Gilpin sold the last portion of the SDC property that he had acquired in 1864 is unknown, but by the time of his death 30 years later all of the SDC land that he had once owned had passed into the hands of numerous others. During this period the most hospitable areas within the SDC were presumably parcelized and occupied for residential purposes, while the less hospitable portions thereof, consisting mainly of wooded land situated at high elevation, remained largely if not entirely uninhabited. During the early decades of this period various parts of the former Gilpin property were utilized on a regular basis by Beaubien's successors, for the purposes which had been enumerated in the 1863 Beaubien Grant, but no serious land use issues evidently arose, since Gilpin's initial successors apparently acknowledged, at least tacitly if not expressly, that the successors of Beaubien had the right to enter and use those portions of the SDC which had never been conveyed in fee to anyone by Beaubien. The primary uses which were made of the vast Gilpin estate by the SDC successors were pasturing, obtaining water, and harvesting timber, all of which were specified in the 1863 document, but they also occasionally engaged in some recreational activities upon that land, such as hunting and fishing. This land use pattern continued throughout this period, even after all of the Nineteenth Century occupants of the area had departed, apparently without any significant disruption or disturbance, as the successors of Gilpin and their grantees generally honored the rights of Beaubien's successors. During the 1930s and 1940s however, letters were exchanged between local attorneys, revealing some uncertainty about the validity of the rights held by the SDC successors by virtue of the Beaubien Grant. Then as land valuations increased after World War II, both in the SDC region and elsewhere, greater scrutiny was applied to land rights of questionable origin, and use of the Torrens Title process, which had been statutorily adopted in Colorado in 1903, became prevalent. At the end of this period, a timber baron named Taylor residing nearly 2000 miles to the east, in the North Carolina town of New Bern, decided that an undeveloped portion of the SDC appeared to present an attractive opportunity to expand his business operations into the west, and that decision would have a dramatic impact upon the residents of Costilla County.

1960 - Evidently well advised and fully informed about the history of the ground comprising the SDC, as one might expect a person with access to extensive legal resources to be, Taylor elected to acquire a portion of the former Gilpin estate which contained about 77,000 acres, much of it consisting of prime timberland, interspersed with mountain meadows, constituting ideal pastureland, all below the timberless ground occupying the upper slopes of the Sangre de Cristo Range, overlooking the historic town of San Luis to the west. Apparently aware from the outset that title to the land he had just acquired was clouded by the events outlined above, Taylor realized that like Tameling nearly a century before him, he was a latecomer to the SDC region, therefore he would have to deal in some manner with the existing land rights which eroded the exclusivity of the title he had acquired. It appears that Taylor understood that Gilpin had accepted the SDC remainder property in 1864 with full knowledge of the Beaubien Grant, enacted during the preceding year, and Taylor's legal team was cognizant that Gilpin had taken no meaningful or effective steps to deny or restrict the rights of Beaubien's direct successors, even though he had the opportunity to do so, because Gilpin viewed his land within the SDC only as an investment or a profit source, and was therefore inclined to simply disregard land use, leaving it up to subsequent parties like the Taylor cadre to take on the task of directly assailing

the legal status of the Beaubien Grant. Taylor wanted to hold his new Colorado property in isolation, as a timber resource, free of any right of entry or usage held by any others, but he knew that before he could enclose his tract or exclude all others from that land, he would need to clear his title, and his legal team informed him that the best way to accomplish that was to engage in Torrens Title litigation in federal court. So upon finalizing his SDC acquisition, and thereby stepping into the shoes occupied by Gilpin nearly a century before, Taylor promptly and quite logically proceeded to file a federal legal action, seeking a decree declaring the termination or nullification of any and all land rights allegedly or purportedly held by any of the SDC successors pursuant to the Beaubien Grant of 1863 (FN 9).

1961 - The process of identifying and notifying the parties who would form the group comprising Taylor's legal opponents in his Torrens Title action commenced, conducted by numerous attorneys with input from the presiding federal judge, and with assistance from federal law enforcement officers as well, who hand delivered notification letters to hundreds of people on Taylor's behalf, in accord with the law and the guidance provided by the federal judge.

1962 - Still unconvinced that all of the relevant parties had been identified and contacted, Taylor's legal team reached out by mail to over 100 additional people, offering them the opportunity to join the group of defendants opposing Taylor's legal objective. After the passage of several months of response time, a total of 369 individuals who had been provided with notification in one form or another, but who either chose not to respond or simply neglected to respond, were deemed to be in default by the federal judge, legally ending their opportunity to engage in the federal litigation launched by Taylor, while 112 other parties, who responded to their notifications and expressed a desire to participate, formed the group standing in opposition to Taylor's goal of clearing his title.

1965 - Taylor's Torrens Title action, known as Taylor v Jaquez (unreported - 10/5/65) ended in complete victory for Taylor, as the federal judge, convinced that the efforts of Taylor and his legal team to contact every one of the SDC successors and invite each of them to participate in his title action were legally sufficient and fully satisfactory, rejected all of the land rights assertions made by his 112 opponents. Obviously dismayed by this result, a group of the defendants, under the leadership of an individual named Sanchez, decided to appeal this ruling, placing this matter before a federal appellate court.

1967 - Upon appeal, the defendants once again experienced defeat, as the appellate review revealed no error in the lower court decision to quiet Taylor's title against all of his opponents. Focusing solely upon the federal aspects of the creation of the SDC, specifically the 1860 congressional approval of the 1844 Mexican land grant and the 1880 federal patent that was based upon that approval, the federal Court of Appeals agreed with Taylor that his portion of the SDC was legally unburdened by any land rights other than those which Congress expressly intended to approve and put in place. In the eyes of the federal judicial panel, due to the fact that the SDC was a product of federal authority, as SCOTUS had indicated 91 years earlier, no federally unauthorized land rights could be allowed to prevent Taylor from quieting his title through the Torrens Title process, so no opportunity existed for any of Taylor's opponents to legally leverage either the 1863 Beaubien Grant or any rights subsequently established through the use of the relevant SDC land by their ancestors, in support of their assertion that the Taylor estate was subject to their use:

> *"Named as defendants were several hundred persons comprising the entire adult population of the area immediately to the west* (of Taylor's tract) *... A default judgment was entered against 369 named defendants for failure to respond to interrogatories. Issues were joined as to 112 defendants ... most of the lands of the grant* (the SDC) *other than the Mountain Tract* (Taylor's acquisition) *have been segregated and fenced. This tract which Taylor purchased in 1960 remains the only unfenced portion of the grant of any significance ... was the grant of the land herein involved by the Mexican Government burdened with a servitude in favor of any person or group of persons other than the grantee? ... rights under Mexican law did not survive the acquisition of the lands by the United States and the congressional confirmation of title to the Sangre de Cristo Grant in Beaubien ... appellants, as a matter of law, have no rights in Taylor's land under Mexican law or the original grant. Any conflicting rights* (of Mexican origin) *... were thereby extinguished* (by Congress)." (FN 10).

Because none of the defendants, or in fact anyone at all, the Court of Appeals observed, could prove that any land rights which the earliest occupants or residents of the SDC may have been granted, or may have otherwise established, under Mexican law, were ever endorsed or otherwise accepted by Congress, no such rights could prevent Taylor's Torrens Title action from achieving success. Taylor's opponents elected not to file any appeal of this ruling to SCOTUS, bringing complete finality to the matter at the federal level, and thereby placing the protective mantle of federal law upon Taylor's shoulders.

1968 to 1977 - Confident that his right to exert total control over all use of the land within his property boundaries had been properly adjudicated and conclusively resolved in his favor, Taylor instructed his employees to actively pursue and eject all those who attempted to make any use his land, and they frequently did so, leading to high tension between the Taylor family

and most of the residents of Costilla County. Among the steps taken by Taylor, in an effort to fully isolate his estate, was the blockage of all of the existing roads passing through his property, but in response to the resultant public outcry county workers soon removed the barricades that Taylor's personnel had put in place, while informing them that the roads they had closed were actually public, and thus were not subject to any private closure. At the end of this period however, acting with complete confidence pursuant to his federal court triumph 10 years earlier, and convinced that his federally validated Torrens Title enabled him to legally prevent anyone from entering his property on any basis, Taylor proceeded to file another federal action, against the Sheriff of Costilla County and the Board of County Commissioners, seeking damages for the unjustified removal of those barricades, and for the ongoing public use of the roads at issue, on the grounds that none of those roads were public. Taylor then succeeded in securing another federal decree in his favor, as a federal district judge found that the county had failed to prove that any of the contested roads were public, agreeing with Taylor that the county's barricade removal activities represented an unjustified intrusion upon his right to isolate all of his land on that basis. Although Taylor was awarded only nominal monetary damages on this occasion, he nonetheless accomplished his primary objective, which was to obtain federal confirmation of his right, as a Torrens Title holder, to combat any and all unauthorized entries upon his land through road closure, given the absence of definitive proof that any of the roads within his property boundaries were actually public in nature. Once again Taylor had scored a bullseye by turning to federal litigation, rather than taking legal action at the state court level, and at this point those who had been legally vanquished by his efforts, and their allies who had not yet directly engaged Taylor, recognized that any success they might still hope to achieve could not be obtained through the federal legal system (FN 11).

1978 to 1980 – The Taylors continued to actively prevent any use of their land by any county residents during this period, yet a substantial number of the members of the nearby communities remained determined to take them on in legal battle again, and those parties spent this time period marshalling their resources, in anticipation of doing so. Taylor's decision to bring the free historical usage of the land comprising the Taylor Ranch to an end had caused a dramatic economic decline in Costilla County during the 1960s and 1970s, as numerous local residents who had grazed their livestock upon that land for decades were forced to sell off all of their animals, and many of them became welfare dependent as a result, creating an enormous drain upon the already strained capacity of the impoverished county to provide for the needs of its citizens. When Taylor's son took over the ranch operations from his aging father at the end of this period, and it became clear that he was intent upon maintaining the exclusionary policy established by the elder Taylor, a substantial group of community members decided that the time had come to assert that they could not be legally barred from entering and using the Taylor property, in the manner which Beaubien had outlined in 1863, nearly a century prior to Taylor's arrival. Since they had experienced repeated defeat at the federal judicial level however, this group of plaintiffs astutely elected to attack the Taylors at the state court level, and thus began their effort to mitigate the aforementioned federal rulings, which in their view had wrongly disregarded and effectively destroyed their legitimate historically founded land rights (FN 12).

1981 to 1991 – At the dawn of this period another group of SDC successors, about 100 in number, rose in opposition to the Taylors, this time under the leadership of an individual named Rael, filing an action against the ranch and its fee owners in the state court system, but the Taylors and their allies emerged victorious once again as this period ended, when the Colorado Court of Appeals (CCOA) agreed with them that none of the SDC successors had any rights whatsoever within the Taylor property, noting in so holding that a quarter of a century had passed since this same controversy had been duly addressed and resolved in federal court (FN 13).

1992 to 1994 – The SDC successors continued to pursue judicial verification of their land rights, and at the end of this period their legal team obtained a reversal of the 1991 CCOA decision from the Colorado Supreme Court (COSC) on the grounds that the rights of an unknown number of the Costilla community members, who were in fact successors of Beaubien, had never been fully or properly addressed:

> *"Heirs and successors in interest to original settlers ... brought a quiet title action against a landowner* (Taylor) *seeking rights including grazing, hunting, fishing, timbering, firewood gathering, and recreation ... issues of fact as to whether that landowner exercised reasonable diligence to ascertain the identities of heirs and successors in interest to original settlers around his property in his prior action to register property pursuant to the Torrens Act and, thus, whether the publication of notice* (in 1961 & 1962) *was constitutionally adequate, precluded summary judgment ... in 1860, the Congress of the United States adopted a recommendation by the United States Surveyor General to confirm that Carlos Beaubien owned the land, and Carlos Beaubien was issued a patent for the land in 1880."*

Thus the COSC found that dismissal of the Rael group's title action was unjustified, because the Taylors failed to prove that they had adequately notified all of the parties whose rights were impacted by the federal legal action they had launched in 1960, quite ironically exactly 100 years after Congress had concluded that Beaubien was entitled to the SDC. Declining to agree with the Taylors that the 1967 federal ruling in their favor was truly conclusive in all respects, the COSC held that the Torrens Title verification thereby obtained was legally inoperative against any parties who had either no notice or inadequate notice of those proceedings. As the basis for this decision to open the ancient controversy to further litigational efforts, the COSC pointed to the documentation supporting the 1864 Gilpin acquisition, poignantly observing that it was within Taylor's chain of title, which had put him on notice from the outset, and emphasizing the legal consequences of Gilpin's agreement to accept and adopt all of the promises regarding land rights that had been made by Beaubien, quoting from the 1864 conveyance to Gilpin, Taylor's predecessor, as follows:

> *"this agreement and obligation* (to transfer the SDC title still held by Beaubien at the time of his death) *in its full intent, meaning & object ... is made to secure the specific performance of the obligations & liabilities of Charles Beaubien on the part of William Gilpin, and to perfect the rights of said parties ... in accordance with the conditions of the said Charles Beaubien."*

But was that 1864 language to be construed, well over a century later, as having been meant to bind only Gilpin himself, and only so long as the relevant lands remained legally in his hands, or alternatively as being legally binding upon his successors in perpetuity, for the benefit of all future SDC residents, rather than just those who were alive in 1864? The COSC could not concur that the former interpretation was clearly accurate, thus the Taylors and those who had invested in the Taylor Ranch learned that as successors of Gilpin, who had contractually agreed in writing to fulfill all of the land rights commitments which had been made by Beaubien, they actually stood in the shoes of Beaubien himself, in the eyes of the law. Turning to the legal consequences of the aforementioned Torrens Title action, the COSC concluded that because it involved less than 500 named defendants, only a small fraction of the population of Costilla County, its legal capacity to shield the Taylor Ranch was at best highly questionable, even though at least 2 years, under the watchful gaze of a federal judge, had been devoted to the

process of identifying and assembling participants for that legal action during the early 1960s:

> "*In 1981, the petitioners* (Rael and the other plaintiffs) *filed this civil action ... the petitioners ... are heirs or successors in interest of the original settlers of the Sangre de Cristo Grant at or near the towns of San Luis, San Pablo, San Acacio, Chama, San Francisco, and La Valle ... within the County of Costilla ... in 1985, Taylor filed ... for summary judgment ... the trial court granted Taylor's motion. It held that the claims asserted by the defendants ... had been considered and rejected in the 1960 Torrens action ... the Court of Appeals affirmed the trial court's judgment ... the Court of Appeals did not address any of the other issues raised by the petitioners ... our initial inquiry focuses on ... the adequacy of notice in the 1960 Torrens action ... if notice by publication in the 1960 Torrens action was constitutionally defective, the decree entered therein is void ... factual determinations, and the application of the appropriate legal principles to those determinations, must be made and performed by the trial court ... whether any of the plaintiffs ultimately meet their burden of establishing that the 1960 Torrens decree is not binding as to them can only be decided after a determination of the adequacy of the notice given* (by Taylor's legal team during the federal action 30 years earlier) *to all reasonably ascertainable persons.*"

In view of the fact that evidence verifying that Taylor's notification effort satisfied the statutory Torrens requirements for notice was insufficient or absent, the COSC recognized that the Rael group might well be right in their assertion that justice had not been fully or properly carried out during the federal action in the 1960s, and for that reason the COSC deemed it necessary to return the matter to the trial court level, striking down both the summary judgment which had been awarded to Taylor 9 years earlier by the trial judge and the CCOA approval of that lower court decision. This majority ruling, renewing and perpetuating bitter and highly acrimonious litigation as it did, was dissented by 3 COSC Justices, who stood in agreement with the 1965 & 1967 federal rulings and saw fit to regard them as both genuinely complete and legally conclusive, on the grounds that any rights which Beaubien may have intended or sought to create in 1863 had been properly disregarded, in part because the dissenters were unconvinced that any such rights were ever meant to place any permanent or legally binding burden upon the particular land comprising the Taylor Ranch:

> "*Taylor, the applicant in the 1960 Torrens action, exercised reasonable diligence to identify parties who should have been named personally and should have received direct notice of the suit through personal service ... reopening the question of rights in property determined over thirty years ago is counter to the public policy of this state, because it creates uncertainty in the conclusiveness of quiet title decisions and fails to keep title secure and marketable ... In the 1960 action, Taylor complied with all of the notice requirements of the Torrens Act ... Taylor's application listed 316 individuals as potential defendants ... Attorneys for potential claimants added an additional 142 names to the list ... other possible claimants ... were served by publication of the summons for six weeks in a newspaper of general circulation in Costilla County ... communal rights established under the Beaubien document ... were not part of the Mountain Tract* (the Taylor property). *Even if ... the Beaubien document remained valid, it did not apply* (to Taylor's land) *... the effect of the majority's decision is to create uncertainty in the conclusiveness of land title in this state.*" (FN 14).

1995 to 1998 - The Taylor family, their successors and their legal advisors presumably cogitated upon their legal options and decided to combat the COSC position by turning back to the federal court system, which had proven to be their only avenue of success, insisting upon enforcement of the 30 year old federal Torrens Title decree, but in 1997 the Tenth Circuit, which had supported Taylor's 1965 Torrens Title victory in 1967, rejected the assertion that the Taylors or their associates were free to rely fully upon the federal decrees of the 1960s and disregard the results of the state level action that had been maintained by the Rael group. Then in 1998 SCOTUS declined to overturn the Tenth Circuit's refusal to shield the Taylors and their successors from the state court proceedings, effectively extinguishing the protective benefit which the Taylors had hoped to derive from the federal court victory that had been scored by the elder Taylor amidst the dramatic social turbulence of the Civil Rights Era. The Tenth Circuit informed the Taylors and their allies why they could expect to obtain no further support from the federal judicial system as follows:

> *"Taylor, as Executor ... filed the present action in US District Court for the district of Colorado* (resurrecting the 1960 Jacquez action) *to enjoin 110 plaintiffs* (the Rael group) *... from attacking the validity of the Final Decree of Confirmation of Title and Registration entered in 1965 ... a 1994 Colorado Supreme Court decision construed the notice requirements of the Colorado Torrens Title Act and concluded, as a matter of state law, that the 1960 federal action may not have provided constitutionally adequate publication notice, sufficient to constitute a binding judgment on those not served ... the defendants* (Rael, Jaquez, et al) *... moved to dismiss ... the* (federal) *district court ruled ... to dismiss ...* (because) *there are ongoing state proceedings and Taylor has an opportunity to raise his federal claims in that forum ...* (to support federal abstention and thus dismissal) *the state proceeding must involve important state interests, matters which traditionally look to state law for their resolution, or implicate separately articulated state policies ... Taylor portrays the state proceeding as one involving only claims of private individuals ... however ... the Colorado Supreme Court has*

comprehensively addressed the Torrens Act's notice requirements ... to ignore the pronouncement of the Colorado Supreme Court ... would intolerably interfere with the judgments of state courts ... (federal judicial) *abstention applies ... we defer to the state proceeding. We therefore affirm the order dismissing this action."* (FN 15).

2000 - Realizing that there was no way to overcome the closure of the federal litigation option in 1998, the Taylors and their fellow defendants were compelled to turn their attention back to the ongoing Rael action in the state court system, which as noted above had been sent back to the trial court for further work by the COSC in 1994. Their efforts in that regard were initially rewarded, as the trial judge held that the ambiguity of the 1863 Beaubien Grant rendered it incompatible with Colorado law, and thus viewed it as nothing more than a legal nullity, which was useless to the members of the Rael group, dismissing their action on the grounds that they could not prevail, due to the legal insufficiency of that ancient document. Upon the inevitable appeal by the Rael group, the CCOA once again deemed the lower court ruling in favor of the Taylors to be acceptable, just as it had in 1991, agreeing with the trial judge on this occasion that the Beaubien grant of 1863 bestowed no clear and definitive or legally binding land rights upon any of the ancestors of the SDC successors. Even if the Beaubien Grant was legitimate, the CCOA concluded, it created no appurtenant land rights, so any rights established at that time had died in the Nineteenth Century, along with the original settlers, who were intended by Beaubien, the CCOA decided, to be the sole beneficiaries of his magnanimity, thereby effectively reinstating the controlling status of the federal Torrens Title decrees of the 1960s, which amounted to a complete triumph for those on the Taylor side and devastation for their opponents. The efforts of both sides to litigate this conflict were still far from their endpoint however, as the COSC would soon be called upon for a second time, 8 years after first being confronted with this scenario, to provide additional guidance (FN 16).

2002 - Once again, just as in 1994, the Justices of the COSC were deeply divided in their opinions with regard to both the supportability of the land rights which the SDC successors were striving to validate and the justifiability of the effort by their opponents to isolate the Taylor Ranch from the Costilla community members, but again a majority of them found the position taken by the plaintiffs to be in accord with justice on equitable grounds. In reality, the majority recognized, under state law, which in their view had been neglected in multiple respects during the federal legal action that took place in the 1960s, the legal insufficiency of the 1863 Beaubien document was immaterial, and did not control the rights of the litigants, because the land rights at issue were not dependent upon the legitimacy of that document as either a dedication of land or a conveyance of land rights amounting to an easement. The historically established land use pattern, which as the evidence revealed clearly included long and consistent use of the land within the boundaries of the Taylor Ranch by the community members, founded as it was upon the good faith belief on the part of the SDC successors that the right to use that area as communal ground had been granted to them, was sufficient to support the formation of an easement appurtenant to the parcels held by each of them, under the principles of implication, prescription and estoppel, in the eyes of the majority. The breadth of the Torrens Title which had been federally bestowed upon Taylor during the 1960s was judicially unsupportable, in the view of the majority, because neither the stringent notification requirements of the Torrens Title Act nor the historically established equitable land rights of the SDC successors, both being components of state law rather than federal law, as the Tenth Circuit had acknowledged in 1997, had been adequately respected or properly handled during

the Torrens Title proceedings, rendering the title security obtained in federal court by Taylor incomplete at best, and an empty legal nullity with regard to any parties whose opportunity to fully defend their rights had not been judicially protected during the federal adjudication from which Taylor had emerged victorious in 1967.

> *"The 1863 Beaubien document … guarantees that all the inhabitants will have … pastures, water, firewood and timber … Taylor's deed indicated that he took the land subject to claims of the local people … the Beaubien document was not an effective express grant of rights … the rights at issue are most appropriately characterized as … an easement … the firewood was used to heat their homes, the timber to frame their adobe houses, and the grazing was necessary to the viability of their farms … the settlement rights … were in fact a necessary incentive for settlement in the area … the rights … are easements appurtenant to the land … the Beaubien document fails as an express grant … however, we find that the document … establishes a prescriptive easement, an easement by estoppel, and an easement from prior use … extrinsic evidence is relevant … it would be the height of arrogance and nothing but a legal fiction … to interpret this document without putting it in its historical context … we cannot determine* (from the document itself) *… what lands were burdened … we look to the extrinsic evidence … Beaubien meant to grant permanent access rights that run with the land … the resources listed in the document were only available in the Taylor Ranch area … evidence points to the Taylor Ranch as the location of the rights … he meant to burden Taylor's land … common areas were not only a typical feature but a necessary incentive for settlement … the Gilpin agreement contains an express condition confirming the settlers rights … the Gilpin agreement is in Taylor's chain of title …* (focusing first on the principle of implication) *the law of implied easements recognizes that rights may be implied even though they were not properly expressly conveyed … honoring the intentions of the parties … and avoiding injustice … the landowners* (Lobato et al) *have … implied servitudes … an exception to the statute of frauds … injustice can be avoided only by … an equitable remedy … founded on the policy of preventing injustice … equity will enforce … an easement implied from prior use … strong policy … necessitates judicial recognition of implied rights in land … Colorado has a strong history of implying servitudes based on equitable concerns … we now apply the law of implied easements to … every deed of conveyance in Taylor's chain of title …* (turning next to the principle of prescription) *a prescriptive use is … a use that is made pursuant to the terms of an intended but imperfectly created servitude, when a grant has been imperfectly attempted …* (turning lastly to the principle of estoppel) *the landowners have also established every element of an easement by estoppel … Beaubien attracted settlers … by convincing them that he would provide them with the rights they needed for survival … Taylor had ample notice of these rights … the landowners have established … estoppel … the parties affirmatively intended for these rights to exist … grazing, firewood and timber … we reject the landowners claims for hunting, fishing and recreation."* (FN 17).

Several vital principles of easement law which were invoked by the COSC in formulating this ruling, from a distance of nearly a century and a half, are highly noteworthy:

- Easements which have been equitably created do not implicate or violate the statute of frauds, even though they are very often poorly documented or even wholly undocumented, because although the statute of frauds can nullify inadequately documented conveyances, it has no power to prevent the formation of legally binding land rights that are founded in equity.

- Easements based upon legal implication are founded upon judicial interpretation and implementation of the actual intent of the parties to any given conveyance, and represent judicial recognition of the fact that intent is quite often inadequately captured in conveyance documentation for a wide variety of reasons, thus implied easements provide justice, where either an absence or a denial of easement rights would facilitate injustice.
- Easements can arise through prescription, as well as through genuinely adverse land use, whenever land use occurs pursuant to a legally insufficient or otherwise defective grant of easement rights, because the concept of prescription facilitates judicial fulfillment of the actual intent of ignorant or misguided grantors, through whose negligence the relevant rights were so deficiently documented that they cannot withstand legal scrutiny.
- Estoppel can operate as an equitable basis for the formation of easement rights, under circumstances in which an offer of an easement was used by a grantor as an inducement to encourage a grantee to invest in an acquisition of land, or under circumstances in which a grantee had knowledge of the existence of land rights which were in actual use by others at the time of the grantee's acquisition.
- All rights comprising easements are judicially presumed to be legally bound to the dominant estate, which is the land served by the easement, through the concept of appurtenance, unless it is conclusively proven that any given easement was intended to operate only as a personal privilege, limiting its benefits to the grantee in personam, and preventing it from operating to the benefit of any successors of that grantee.
- Extrinsic evidence can be judicially embraced and adopted for the purpose of resolving descriptive ambiguity or other legal insufficiencies appearing in conveyance documentation, and such evidence is frequently utilized when it provides historical context, clarifying the actual intent of parties who lived and acted in the distant past.
- One who has any viable means of obtaining knowledge about land rights pertaining to land which he or she proposes to acquire is legally charged with that knowledge, under the judicial maxim dictating that no one is free to acquire land with their eyes closed, unless they are prepared to experience the consequences of doing so.
- Reliance on the part of a grantee, upon the intentions of his or her grantor, as the grantor communicated those intentions to the grantee, generates a protective shield, supporting the existence of easement rights that were within the reasonable expectations of the grantee, which becomes impermeable and legal binding upon all parties with the passage of an extensive period of time.

As can readily be seen, the origin of the land rights which were in contention here was steeped in history, as is very often the case in such disputes, and the fact that those rights arose during a remote period of time, when society in the southwestern portion of our continent was undergoing a governmental transition, was among the most judicially problematic aspects of this controversy. The central point of divergence between the broader view of this scenario taken by the COSC and the narrower perspective of the federal courts related to the question of whether the easement rights at issue arose under Mexican law or under US law, making evidence of the circumstances under which those rights had come into existence key to the determination of their validity in the Twenty-First Century. As the Tameling case cited herein illustrates, land rights which were created under Mexican law survived and remained in effect after the American conquest of the southwestern region only to the extent that such rights were approved by Congress, in accord with the requirements of the treaty which ended the Mexican-American war. So to prevail, the SDC successors needed to prove, through the introduction of extensive historical evidence, that their rights originated after US control over the relevant ground, in this instance consisting of the SDC, had been legally established, thereby clarifying that those rights were not merely vestiges of the defunct era of Mexican control over that area, which had legally dissolved when the SDC formally became part of the US in 1848. When the Beaubien Grant was made in 1863, the majority realized, its grantor knew that his grantees were still Mexican people from a cultural standpoint, although they had been transformed by war into American citizens, so he made that grant in the Mexican manner, using terminology they could understand, without regard for American standards or rules pertaining to conveyance documentation. For that reason, Beaubien's 1863 conveyance was technically defective under US law, but when he spoke to the crowd, 15 years after the war had ended and 3 years after Congress had officially acquiesced in his ownership of the SDC, all of them were standing on American soil, and most importantly in the eyes of the majority, a right of reliance thereupon vested in his grantees, which they proceeded to exercise consistently, decade after decade, thereby establishing rights of land use under the umbrella of equity, by operation of the real property law of the conquering nation. In summation, the Jacquez group lost in federal court in the 1960s because they failed to introduce sufficient historical evidence to provide the federal judiciary with any legally solid basis upon which to protect their rights at that time, but once they reorganized under Rael and Lobato, and assembled a powerful array of convincing historical evidence, it became clear that they had valid land rights, of truly American origin rather than Mexican origin, which the COSC not surprisingly deemed to be worthy of judicial protection.

2003 - While the highly controversial 2002 ruling of the COSC established that neither the Taylors nor their successors could rely upon the nearly 40 year old federal Torrens Title decree as a valid legal basis for indiscriminate exclusion of all members of the Costilla community from their property, it did not represent the finalization of the litigation between the community members and the outsiders who sought to exert full control over the land acquired by Taylor in 1960. In reality the 2002 COSC decision effectively turned the clock back 4 decades, vastly broadening the potential number of participants in the ongoing litigation, and placing a heavy burden of additional effort and expense upon the successors of the Taylors, by informing them that the federal adjudication of the 1960s was not in conformity with Colorado law, because it failed to encompass all of the broad land rights held by all of the parties whose involvement was necessary to secure legally binding Torrens Title to the subject property, leaving their goal of exterminating all communally held easement rights within the former Taylor estate far from completion. Recognizing that those seeking to isolate the SDC land at issue faced enormous additional expense and tribulation, if they were to meet the stringent Torrens Title notification requirements with which they were confronted, the legal team representing the Taylors and their successors sought and obtained a rehearing of the matter by the COSC at this time, but the outcome merely reinforced the ruling that had been handed down the previous year, clarifying that the defendants bore a legal burden to reach out to every individual who was legally qualified to oppose their effort to eliminate all rights of others within the subject property.

> *"This is the third in a trilogy of decisions that we have issued construing some of the oldest property rights in the state ... rights to a large mountainous tract in southern Costilla County ... rights of the present-day descendants of 1850s frontier farming families who were recruited by Carlos Beaubien to move north from the Taos area ... without these property rights, subsistence farming on the valley floor would have been impossible ... for over one hundred years, the use of these rights was widespread ... we recognize the grave depravation of rights suffered by the landowners over the past 40 years ... The circumstances surrounding Taylor's 1960s Torrens action lead us to conclude that at the time of the Torrens action, all landowners in Costilla County possessed an identifiable interest in the Taylor Ranch ... the argument that he* (the elder Taylor) *could not have reasonably identified and named the landowners must fail ... Taylor should have recognized that all the landowners of Costilla County claimed an identifiable interest in the Taylor Ranch ... although the number of names and addresses of the landowners might have been large ... the identities of these landowners were reasonably ascertainable by Taylor ... the publication notice given by Taylor when he initiated his Torrens action violated due process ... Taylor did not exercise reasonable diligence in effectuating proper notice because he did not personally name and serve all reasonably ascertainable persons with an identifiable interest in the Taylor Ranch ... Beaubien's intentions remained in force* (unsilenced by the federal Torrens decree) *... landowners of Costilla County who are able to show that their property was settled during the time of Gilpin's ownership of the Sangre de Cristo grant or earlier will be granted rights ... res judicata precludes the claims of those landowners or their successors who were personally named and served in the 1960s Torrens action ... we direct the trial court to identify all landowners who have rights to the Taylor Ranch and ... to safeguard those rights."* (FN 18).

Thus both the successors of the Taylors and the trial judge were compelled to shoulder an incredibly onerous legal burden, if the matters that were at the core of the flawed title action, which had commenced over 4 decades earlier in federal court, but had been legally inadequate in

breadth and scope to fulfill its intended purpose, were to be properly and conclusively addressed in the state court system. On this occasion the COSC set forth the legal parameters which would need to be judicially applied moving forward, to fully resolve and clarify all of the easement rights of a large and unknown number of parties that remained unadjudicated due to the inadequacy of the federally conducted proceedings of the 1960s, highlighting the monumental importance of full legal notice to support any Torrens Title decree:

- All Torrens Title applicants have a duty to provide adequate notice, in accord with statutory state law, to all those parties who potentially hold rights that stand to be foreclosed by a Torrens Title decree.
- Any Torrens Title obtained without adequate notice to all relevant parties is not legally binding upon anyone who had no opportunity to defend their rights due to incomplete or improper notification.
- All parties whose ancestors were, as grantees of Beaubien, among his intended beneficiaries in 1863, must be notified of their right to judicial review of any rights to make use of the land within the Taylor Ranch which may accrue to them pursuant to the Beaubien Grant.
- Those relatively few individuals who did in fact have legally sufficient notice of Taylor's 1960 federal action, or whose ancestors had proper notice thereof, thereby became barred from subsequently asserting any rights which they had ample opportunity to assert during the federal litigation of the 1960s, under the principle of res judicata, leaving them with no opportunity to participate in the ongoing litigation.

Having established a framework for further proceedings at the lower court level, the COSC sent the matter back to the trial judge, to begin the arduous process of determining exactly who was, and who was not, qualified to stand in opposition to the legal seclusion of the property in contention, with all of the investigatory work to be done at the expense of the unfortunate successors of the lumberman from New Bern.

2004 to 2010 - In accord with the directive from the COSC, embodied in the ruling of 2003, all of the participants on both sides being both willing and prepared to proceed with the litigation despite the great cost of doing so, the process of identification and notification of all relevant parties was initiated by the trial judge, and everyone involved understood that such a process would take years to fully play out, if it was to comply with the COSC mandate, due to the expansive number of people involved. During this period, once the relevant individuals had been duly identified and contacted and had entered the judicial arena, the rights of approximately 4500 people, linked to about 6000 SDC parcels, were adjudicated, each of them obtaining, by virtue of the concept of appurtenance, judicial verification of their easement rights pertaining to the subject property, all stemming from Beaubien's promise to their ancestors 14 decades in the past. At the end of this period, upon the retirement of the trial judge who had handled the action up to this point, the CCOA reviewed the progress which had been made toward the goal of adjudicating the rights of all relevant parties and deemed the process to be incomplete, requiring the action to continue.

2011 to 2016 - Since the process of ascertaining which Costilla community members held the easement rights in contention through appurtenance had been completed, the new trial judge had to initiate a secondary process, to identify additional parties who might also be easement holders, and a subsequent process which met with his approval, being based upon a recommendation made by the retired judge, was instituted. Under that process, approximately 23,000 letters of notification were mailed to Costilla County property owners during this period, about 1200 of them responded thereto, and by the end of this period another 350 individuals had obtained judicial confirmation of their easement rights as SDC successors. Then late in 2016, after several months had passed without any additional responses coming in, the trial judge elected to bring the litigation to a point of finalization, but litigants on both sides were unsatisfied with that decision for a variety of reasons, and as a result the matter returned yet again to the CCOA for further review.

2017 to 2018 - Confronted with objections from both sides to many of the procedures employed, and many of the decisions made, by the second trial judge, the CCOA proceeded to evaluate what had transpired at the trial court level since it had last reviewed this litigation in 2010. Perhaps the most notable objection made by the successors of Taylor was the refusal of the trial judge to divide and distribute the easement rights of the numerous defendant parties through apportionment of the subject property, in order to prevent that estate from being overburdened with hordes of livestock owned by hundreds of parties covering the entire landscape, which in their view held the potential to devastate the ecosystem within the ranch and therefore constituted a fundamentally unjust state of affairs. After finding no problems with the judicial property identification process that was implemented by the original trial judge, which utilized an 1894 Costilla County survey to establish the element of appurtenance, having been characterized by the COSC in 2003 as the "best available evidence" for that purpose, the CCOA scrutinized the secondary judicial process that controlled the path of the litigation during the subsequent 6 year period, and found it to be deficient. Despite the fact that the owners of literally thousands of properties in Costilla County had won the right to graze their animals upon the former Taylor estate, the CCOA deemed the assertion that destruction of the ranch ecosystem through overgrazing was inevitable to be meritless, and on that basis declined to agree that the trial judge had erred by rejecting the highly restrictive apportionment proposal that had been introduced by the plaintiffs, which would have limited the right secured by each

of the SDC successors to use the entire tract in contention for grazing, by partitioning the ranch into some 6000 grazing units. Nevertheless, the CCOA determined that the second trial judge had in fact erred in another vital respect, by putting in place and employing an inadequate secondary notification and identification process, which after 2010, the appellate panel indicated, had improperly curtailed the opportunity of certain community members to secure the comprehensive easement rights that were due to them. Thus no true finality had been achieved, the CCOA concluded, informing the litigants that still further time and expense would be necessary to fully resolve the controversy at hand:

> *"The parties have endured a long and circuitous road ... landowners in Costilla County who are able to trace the settlement of their property to the time of Gilpin ... are entitled to appurtenant easement rights ... claims can be established by tracing settlement of property to the time of Gilpin's ownership of the Taylor Ranch ... landowners must prove ... that their property is included within the boundaries of property owned or occupied by settlers during the time of Gilpin's ownership of lands of the Sangre de Cristo Grant ... the trial court ... was responsible for identifying the current landowners who have access rights ... the res judicata bar only extended to landowners and successors who were personally named and served in the 1960 Torrens actions ... reasonable diligence required that Taylor personally name and serve all landowners in Costilla County ... from 2004 until 2010 the district court relied on the best available evidence to decree access rights ... after 2010 ... the district court did not completely discharge its mandate, because the identification process used after 2010 ... was not comprehensive ... extinguishing the rights of any non-responding claimants without first personally serving them ... would violate the Supreme Court's mandate ... the trial court refused to apportion the landowners access rights in proportion to their parcel sizes, or implement rules and regulations governing their use ... the landowners had implied rights to the ranch ... memorialized in the Beaubien Document ... there is no legal basis to deny enforcement of these access rights ... the ranch owner requested that the trial court limit each landowner's rights ... the ranch owner contends that ... livestock grazing overburdened the ranch ... we are not persuaded ... the ranch owner failed to present evidence of actual overburdening ... that injury was unsubstantiated ... increased use of the easement ... does not represent a change in the kind of use ... the degree of use ... is within the scope of the easement ... the trial court did not abuse its discretion in denying ... apportionment ... the entire Taylor Ranch was burdened ... the Supreme Court's mandate required the trial court to identify all landowners who have access rights to the Taylor Ranch ... from 2010 through 2016 ... the process ... was not comprehensive ... the ranch owners ... bear the burden to identify all Costilla County landowners with access rights to the ranch ... with costs to be paid by the ranch owners ... the process from 2010 to 2016 was insufficient ... further proceedings are required."* (FN 19).

Thus the CCOA, after having mistakenly supported erroneous lower court decisions favoring the Taylors and those who stood in league with them, both in 1991 and in 2000, squarely aligned itself with the COSC on this occasion, more than a third of a century after the Rael group set out on their mission to rectify the consequences of the incomplete federal legal action of the 1960s, staunchly upholding the position taken by a majority of the COSC Justices in 2002 and 2003. But as indicated in FN 19, despite the remand order issued by the CCOA late in 2018, finality appears to have nonetheless arrived shortly thereafter, not through litigation, but through a beneficent concession on the part of the plaintiffs, hopefully allowing peaceful conditions to return to the SDC region for the first time since an easterner brought turmoil to Costilla County during the middle of the previous century.

Was the elder Taylor really guilty of reaping an unjustifiable benefit from legally deficient procedures during the federal litigation of the 1960s, as the COSC found, and if so what motivated him to skirt the law, was it conscious bad faith action on his part, or perhaps a lack of appreciation for cultural divergence prevented him from respecting the rights of the Costilla community, or was he victimized by poor decisions on the part of his legal advisors, or even on the part of the federal judge who oversaw those proceedings? The amount of money Taylor paid for his land within the SDC, about half a million dollars, was not so outrageously minimal in 1960 as to make it plain to him as a buyer of land that he was stepping into a booby trap, so there would appear to be no support, at least from a financial standpoint, for any suggestion that he acted in blatant bad faith, on the contrary, from all indications he seems to have earnestly believed that he had made a solid investment. All those events now being 6 decades in the past however, we will never know his true or full motivation or many other potentially enlightening details, but we can objectively observe the status of the law as it stood at the time of his SDC acquisition decision. The Colorado Torrens Title Act, upon which Taylor relied, as he had a genuine right to do, appeared to offer those interested in acquiring real property in Colorado, a readily available opportunity to do so with security, provided that they were prepared to litigate, as Taylor was, and making the many highly problematic land titles situated in Colorado marketable to outsiders, through such a procedure, expressly intended to enhance their security, was clearly one of the major objectives of that particular law. Thus it could very well have been the presence of the Torrens Title option, as a legally established pathway to title security, which attracted Taylor's attention to the Centennial State, and influenced his decision to invest in land in Colorado, as opposed to other western states lacking such an assuring statutorily endorsed measure. Nevertheless, as we have seen, he and his family and their successors were all destined to learn that those who set out to challenge de facto land rights, on the basis that the origin of those rights lies deep in the past and is shrouded with ambiguity, by attempting to leverage the law for that purpose, are best advised to exercise the highest possible degree of both prudence and diligence in so doing.

Footnotes

1) As always, all of the relevant historical material reviewed herein is presented in chronological fashion, because this material comprises not merely a brimming basket of factual information, but also a timeline of vital evidentiary facts and key events, which is best viewed with mindfulness of its value as evidence, making chronological organization the most logical format.

2) The land grant request or petition which was officially filed on 12/27/43 by these young men, seeking title to an audacious amount of land, identified the area of their desire as the Sangre de Cristo region, and described the land they sought to obtain with reference to four rivers, the Costilla, Culebra, Del Norte and Trinchera. Quite ironically, at the same time US Senators Benton and Linn, both from Missouri, were working to put in place a comparable American land grant program, expressly targeted at securing land in the northwestern part of the continent, known as the Oregon Territory, for the US. Through the efforts of those ardent Missourians and many others over the ensuing years, the Donation Act of 1850 eventually became federal law, and it proceeded to play a major role in the establishment of complete and permanent US control over that area, which was also coveted by Britain, Russia and other nations, by encouraging easterners to occupy Oregon, and rewarding them for doing so. While the efforts of those senators were ultimately successful however, and localities throughout the northwest bear their names today as a tribute to their vision, the military might of the US crushed the comparable efforts of Mexico while they were still in an incipient stage, preventing the numerous Mexican land grants that were issued during this time period from producing the result which was anticipated by the Mexican authorities who undersigned those grants. The Donation Land Claim program instituted by the US was not entirely without difficulty however, quite the contrary in fact, extensive litigation was required to hammer out numerous issues stemming from the adoption of the 1850 Donation Act. Classic land rights cases such as Parrish v Stephens (1 OR 59 & 1 OR 73 - 1853) and Lownsdale v Portland (1 OR 381 - 1861) exemplify the many thorny problems which were encountered, at the intersection of federal law and territorial law, pursuant to the implementation of the Donation Act. Readers can turn to The Land Surveyor's Guide to the Supreme Court of Oregon - Volume One, compiled in 2018 by the author of this article and available through the PLSO Online Store, among other resources, for additional information on this fascinating historical subject.

3) As indicated in FN 2, the SDC was bounded principally by prominent natural features, specifically rivers and mountains, but its corners were also marked by mounds of stone, so no contention over the external limits of the SDC played any role in any of the litigation cited herein. Courts of several western states have acknowledged the decidedly liberal nature of Mexican real property law during the early Nineteenth Century, and the potentially extensive nature of the land rights that are typically associated with the Mexican land grants which were made during that period. For example, the Supreme Court of Texas has stated that typical grantees of the Mexican government "were put into possession with all the uses, customs, privileges and appurtenances ... as vested property rights". (Texas Law Review – Volume 36 Page 301 – 1958)

4) This treaty was entitled: "Treaty of Peace, Friendship, Limits, and Settlement", dated 2/2/48, and was codified into federal law as 9 Stat 922. The elder Beaubien's full name was Charles Hipolyte Trotier, Sieur de Beaubien, but he was widely known simply as Carlos Beaubien,

having effectively discarded his French origins and fully immersed himself in the culture of Mexico. As the sole heir of his late unmarried and childless son, the elder Beaubien obtained the title previously held by the younger Beaubien through inheritance, and he then paid the administrator of the estate of Lee $100 for the title which until 1847 was held by his son's deceased partner and friend, who was the sheriff of Taos at the time of his demise, thereby consolidating ownership of entire SDC in the elder Beaubien.

5) William Gilpin (1813-1894) initially rose to prominence as a companion of famed explorer J. C. Fremont, accompanying Fremont to the Oregon Territory in 1843, and becoming a prominent early leader of the successful movement to secure that region for the US by attracting a flood of settlers to pour into Oregon from the eastern states. Gilpin then served with distinction in the Mexican-American War, and later wisely became a supporter of future President Lincoln, who rewarded him in 1861, when the need to appoint a governor of the Colorado Territory arose. Gilpin's time as governor was both brief and troubled however, stricken with financial chaos for which Gilpin was saddled with blame, forcing Lincoln to remove him from that office after just one year. Gilpin had learned how the game was played however, and he went on to parlay his knowledge into great wealth through his engagement in numerous conveyances. Although the exact extent of the profit which accrued to him from the SDC is unknown, his involvement with that tract undoubtedly compounded his wealth enormously, since he acquired that richly prized land, valued at well over $1000 per acre today, for just 4 cents per acre.

6) The text comprising this grant has stood upon the public records in Costilla County continuously since 5/11/63, occupying Page 256 of Book 1. The controversial words of the Beaubien Grant, which was composed in Spanish, upon translation suggest an intention on the part of the grantor that the relevant portion of his estate "shall remain uncultivated ... for the pasturing of cattle ... all the inhabitants are to have the benefits of pasture, water, firewood and timber". The aspects of the grant relating to the necessity of fetching water for domestic use, and the necessity of gathering wood to provide domestic warmth, both having been rendered substantially moot by the passage of time, the pasturage element of the grant was destined to become the central component of future controversy, as the need for grazing land in the relevant area waxed rather than waned as the subsequent decades came and went. There is no indication that Beaubien was an attorney, so his knowledge of legal requirements and limitations pertaining to conveyance documentation was presumably limited or minimal, and in view of that, its hardly surprising that he appears to have been convinced that this grant was legally sufficient to accomplish his intended objective. Since he died the next year he may also have been motivated to announce this grant at this particular time by feelings of plain beneficence and gratitude toward those who had acquired numerous portions of his estate, and had formed humble communities thereupon, but his motivation is nonetheless unclear, because whether or not he had any reason to anticipate that his own death would be soon in coming is unknown. Although Beaubien seems to have quite willingly taken on the role of a land baron, there is no indication that any portion of the SDC was ever formally subdivided or platted under his direction, so all indications suggest that he was less than diligent as a subdivider, and that his attention was focused simply upon disposing of his land, rather than putting sound conveyance documentation in place.

7) See Tameling v United States Freehold & Emigration - Supreme Court of the Colorado Territory (2 COLO 411 – 1874).

8) See Tameling v United States Freehold & Emigration - Supreme Court of the United States (93 US 644 – 1876).

9) Taylor's initial legal action was filed against the Jaquez family among others, who were apparently residents of nearby SDC lands, and the resultant case was therefore known as Taylor v Jaquez, but no legal citation for that unreported case exists. Taylor's decision to file his action in federal court rather than state court, which he was qualified to do because he was not a resident of Colorado, was an astute one, resulting from his legal team's accurate observation that employing the federal legal system would distinctly enhance Taylor's chances of success. Although Taylor was not the first easterner or outsider ever to buy part of the SDC, he may well have been the first party ever to do so with the express intention of targeting rights which originated in the Nineteenth Century for extinction, and it would appear that he was the first party ever to leverage the Torrens Title process for that purpose in this location, so its not really surprising that until 1960 no legal spotlight had ever been focused upon the rights stemming from the 97 year old Beaubien Grant. There is no indication that Taylor had the SDC land he proposed to acquire surveyed before investing in it, presumably the cited 77,000 acre figure, which equates to over 120 square miles or more than 3 full GLO townships of normal size, was a mere product of computation, based upon existing acreage figures of unspecified origin, yet there appears to be no reason to suspect that it was materially erroneous.

10) See Sanchez v Taylor - United States Court of Appeals for the Tenth Circuit (377 F2d 733 – 5/17/67).

11) See Taylor v Sandoval - United States District Court for the District of Colorado (442 F Supp 491 - 12/28/77).

12) Shortly before his death, the senior Taylor expanded his family's land holdings in Costilla County by acquiring an additional 2500 acre tract, situated in an unspecified location, presumably adjoining a portion of the original Taylor Ranch boundary, from an unspecified party, bringing the total number of acres within the SDC that were controlled by the Taylors to about 80,000. They then proceeded to halt all use of that additional area, along with the original ranch property, by county residents, but this development proved to be legally inconsequential, aside from the fact that it undoubtedly deepened resentment on the part of community members.

13) See Rael v Taylor - Court of Appeals of Colorado (832 P2d 1011 – 12/5/91). Ownership of the Taylor Ranch by the Taylor family ended in 1988, when the entirety of the Taylor property in Costilla County was conveyed to a Texas mogul, but the legal involvement of the Taylors in the determination of the land rights issues associated with their former estate did not end at that point in time, and all of the land they had once so stringently controlled continued to be judicially described as the Taylor Ranch.

14) See Rael v Taylor - Supreme Court of Colorado (876 P2d 1210 – 5/2/94 modified 7/25/94). Taylor's son, who had relinquished his interest in the subject property in 1988, as indicated in FN 13, was nonetheless disgusted about the outcome of the Rael case, because it called the integrity of the title which he had conveyed into question, placing potentially severe liability

upon him. He therefore protested that the COSC had no jurisdiction over the controversy, pointing out that the Colorado Torrens Registration Act allows appeals of Torrens Title rulings only if filed within 90 days. However, in so doing he only demonstrated his own ignorance of the law, because while the 90 day limit cuts off any opportunity to appeal a Torrens decree, it has no capacity to bar jurisdictional challenges to such an action that are launched in another court system, which would be unconstitutional, highlighting the fact that many federal court actions, such as those pertinent to Torrens Title, typically represent attempts to apply state law in a federal venue, and are thus subject to negation by the Supreme Court of the relevant state, should a federal ruling of that variety deviate from state law. As can therefore be seen, the senior Taylor and his legal team took a calculated risk in 1960 when they chose to file their legal action in federal court, where they correctly foresaw that Taylor had a greater chance of success, but if Taylor really believed that in so doing he had escaped the scope of jurisdiction of the COSC he was mistaken, and he underestimated his opponents as well, who proved to be astute enough to recognize and to exercise their option to place their issues in the hands of the COSC.

15) See Taylor v Jaquez - United States Court of Appeals for the Tenth Circuit (126 F3d 1294 – 10/10/97) which ruling SCOTUS refused to review without comment the following year (see 523 US 1005 – 3/9/98).

16) See Lobato v Taylor - Court of Appeals of Colorado (13 P3d 821 – 5/11/00). By this point in time Lobato, another SDC successor and a senior community member, had supplanted Rael as the lead plaintiff, nonetheless the group opposing the Taylors and their successors remained substantially the same as it had been since the early stages of the Rael litigation in the early 1980s.

17) See Lobato v Taylor - Supreme Court of Colorado (71 P3d 938 – 6/24/02). This ruling was dissented for differing reasons by a total of 3 Justices, 2 members of the COSC found the Taylor position to be legally supportable and therefore were in agreement with the lower court and the CCOA that judicial dismissal of the position set forth by the Lobato group was appropriate, while 1 dissenter agreed with the majority in all respects, with one exception, he felt that the easement rights held by the SDC successors included recreational use of the Taylor Ranch, in addition to those easement rights which the majority deemed to have stemmed from the legally deficient Beaubien Grant. Critics of the COSC and supporters of the Taylors and their associates have correctly pointed out that the documentation of the Beaubien Grant lacks some of the typical characteristics of a modern conveyance of land or land rights. Specifically, that document neither defines any clear or exact boundaries, identifying general areas only through the use of locally known place names, nor does it enumerate any specific grantees. These distinct shortcomings leave its exact physical limits, as they may have been envisioned by Beaubien, highly ambiguous, thereby preventing the document from being characterized as a genuine deed, nor does any term equivalent to the word "easement" appear anywhere in the text memorializing the wishes of Beaubien. Yet even if the Beaubien Grant, as recorded, represents nothing more than a set of stipulated rules pertaining to the use of certain lands, as those seeking to marginalize its legal significance have maintained, like all such documents creating rules or covenants which have a genuine impact upon land rights, the document in question nonetheless clearly held the capacity to support the subsequent formation of land rights at the easement level, through the activities of those who acted in accord with Beaubien's mandate, their actions being founded upon his express intentions with respect to the usage of the subject property,

however nebulously those intentions may have been set forth on paper. Thus while it is certainly true that the 1863 document was plainly insufficient to support any transfer of fee title, had that been its objective, that fact, as the COSC majority realized, does not necessitate a conclusion that the document reveals no intention to put in place any enduring land rights whatsoever.

18) See Lobato v Taylor - Supreme Court of Colorado (70 P3d 1152 – 4/28/03 modified 6/16/03). The same 2 Justices who objected to the position taken by the majority in 2002, as indicated in FN 17, dissented this ruling as well, satisfied that the efforts of Taylor and his legal team during the 1960s were in fact legally sufficient, and unconvinced that the position taken by the Lobato group held any merit, reiterating their view that prolongation of this litigation was unjustified. SCOTUS was once again asked by the legal team supporting the Taylor position to review the outcome of the Colorado litigation, but SCOTUS again declined to intervene, tacitly acknowledging that the conflict was clearly a matter of state law, and detecting no indication of any disregard for federal law on the part of the Justices comprising the COSC majority (540 US 1073 - 12/8/03).

19) See Cielo Vista Ranch v Alire – Court of Appeals of Colorado (2018 WL 5987147 – 11/15/18). The new name of the Taylor Ranch was evidently supplied by 2 Texans, who in 2004 acquired the former Taylor property from another Texan, who had purchased that estate from the son of Taylor in 1988, as previously indicated in FN 13. The phrase "access rights" as used in this case does not signify an easement for access purposes alone, the word "access" signifies the right to enter the ranch property for a variety of purposes, comprising the entire basket of rights historically exercised by the SDC successors, which includes grazing rights along with the other rights that were alternatively described in earlier iterations of this litigation as "subsistence rights" and "settlement rights". All of the statistical information cited herein relating to the procedural aspects of this case was enumerated by the CCOA in this 2018 text. Early in 2019, news reports emanating from Costilla County indicated that Taylor's successors had relented, and had agreed to allow the former Taylor Ranch to serve as a communal grazing ground henceforward, acquiescing at last, as both the elder Taylor and his son had so long and resolutely refused to do, to the intentions expressed by Beaubien in 1863.

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