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Spanish Land Grants and the Cielo Vista Ranch

Five miles east of San Luis, the oldest postcolonial town in Colorado, lies the Cielo Vista Ranch, which sold for $105 million to an undisclosed buyer in 2017.[1] The ranch is near the Colorado-New Mexico border, closer to Albuquerque than Denver. The famous San Luis Valley, which encompasses the town of San Luis and the Cielo Vista Ranch, is approximately 122 miles long and 74 miles wide, stretching from the Continental Divide of Colorado on the northwest rim of the valley into New Mexico on the south. It is what geologists refer to as a high-elevation depositional basin, with an average elevation of 7,664 feet above sea level. The valley is well known in Colorado and New Mexico for its stark beauty, appearing as a relatively fertile oasis nestled amongst strikingly tall mountains, within a proverbial stone's throw of some of the most arid, desert country in the nation. The valley is drained by the Rio Grande River flowing south into New Mexico, and although its climate is cold and dry, there are year-round surface and groundwater sources capable of sustaining seasonal farming activity during the months of the year in which it is possible to farm.[2]

Cielo Vista Ranch is one of the crown jewels of the San Luis Valley. Previously known as the Taylor Ranch, and stretching across 3,000 acres of the valley floor, the ranch also includes portions of the flanks of the stunning Sangre de Cristo mountains and 14,047-foot Culebra Peak.[3] The varied topography of the ranch has always offered good hunting and fishing, as well as meadows for grazing livestock and ample supplies of timber for firewood and building material. One of the ranch's previous owners, John Taylor, was well versed in the timber

[1] Sylvia Lobato, *Unidentified Purchaser Buys Taylor Ranch for $105 Million*, Conejos County Citizen (Aug. 16, 2017), https://conejoscountycitizen.com/article/unidentified-purchaser-buys-taylor-ranch-for-105-million.

[2] Karin Deneke, *Old and New Methods of Agriculture in the San Luis Valley*, Countryside Mag. (Feb. 25, 2019), www.iamcountryside.com/growing/old-and-new-methods-agriculture-in-san-luis-valley/.

[3] Kate Perdoni, *Costilla County Commissioners Reach Settlement with Cielo Vista Ranch*, Rocky Mtn. PBS (Nov. 15, 2022), www.rmpbs.org/blogs/rocky-mountain-pbs/costilla-county-commissioners-reach-settlement-with-cielo-vista-ranch/.

business, having run a massive timber company in North Carolina before moving west to Colorado's poorest county in the 1960s.[4] Soon after Taylor acquired the ranch, he began to build a fence around his property line, sealing off his newly acquired jewel from any interlopers.

The land on which the Taylor – and later Cielo Vista – Ranch was established was not ordinary fee land, though – meaning that it was not completely private. It carried communal use rights, which had been exercised for hundreds of years prior to Taylor's arrival. After his fence went up, the holders of these rights, all of whom are descendants of Spanish and Mexican families that emigrated to the San Luis Valley in the 1800s, were excluded from their traditional hunting, fishing, grazing, and gathering areas. Their rights to use the ranch lands derived from an 1844 Mexican government land grant promising their ancestors access to and use of the land in perpetuity, as a commons. The allocation of use rights in this commons was documented in historical records, which marked it as perpetual. The document creating these was sometimes referred to as the Sangre de Cristo Land Grant, or simply "the Grant."

The use of this area as an agricultural commons predated the Sangre de Cristo Land Grant by centuries, and possibly millennia, though. In a dry, dusty basin 230 miles southwest of Cielo Vista Ranch is Chaco Canyon National Historic Park. Within the Park boundaries are structures and other evidence offering proof that this area was once the center of an empire.[5] Although the canyon itself is relatively small, archaeologists now know that the empire spanned an area the size of Ireland that crossed the modern boundaries of four states: New Mexico, Arizona, Colorado, and Utah.[6] The Greater Chaco region, as the larger circumferential area is known, once contained a network of settlements, villages, and storage structures that either served the nerve center at Chaco Canyon or were served by it, or perhaps both. Archaeological records reveal that the Chacoan empire may have emerged because previously disparate populations settled in more urban patterns and the cities, towns, and isolated outcroppings emerged from this consolidation, in a pattern that lasted approximately 500 years. Remnants of the outer edges of this civilization are visible today in Mesa Verde National Park in Colorado, Hovenweep National Monument on the Utah-Colorado border, Bears Ears National Monument in southern Utah, Canyons of the Ancients National Monument in Colorado, and Canyon de Chelly National Park and Navajo National Monument in Arizona. The sites these reserves have been created to protect make up what is often referred to as this continent's

[4] James Brooke, *In a Colorado Valley, Hispanic Farmers Try to Stop a Timber Baron*, N.Y. Times (Mar. 24, 1997), www.nytimes.com/1997/03/24/us/in-a-colorado-valley-hispanic-farmers-try-to-stop-a-timber-baron.html.

[5] Childs at 14.

[6] Paul F. Reed, *Chaco's Legacy: Discerning Migration and Emulation along the Middle San Juan River*, 20 Archaeol. Southwest 1, 4 (Winter 2014).

"Cradle of Civilization."[7] Archaeological records indicate that the outlier communities in these areas of protected public lands – such as Hovenweep National Monument and Bears Ears National Monument – were possibly ancient suburbs to which the urban residents of Chaco Canyon fled, with the archaeological records indicating that they were occupied for a time after the buildings in Chaco's urban center. Some of these outliers are also found in the Sangre de Cristo mountains, not far from Cielo Vista.

A typical Chacoan community was focused around the "unit house," essentially a family dwelling structure with anywhere from six to fifteen adjacent rooms that served as living areas, storage, and ceremonial space.[8] The community consisted of several unit houses loosely clustered near one another and always oriented in rows from east to west, facing a central open plaza.[9] Some of the communities also contained multistory dwelling structures and kivas, the round ceremonial rooms used for prayer and other ceremonies.[10] Great houses, as the multistory structures are known, reached four or five stories in height and sometimes contained hundreds of rooms. The main urban hub at Chaco was a large city even by today's measure, occupying over 100 square kilometers, and its buildings were the tallest in the area that became the United States until steel skyscrapers built in Chicago in the nineteenth century surpassed them.[11]

The workmanship at Chaco is extraordinary; the number of individual stones used to build the Chacoan great houses is estimated in the millions.[12] The great houses also contained rooms with eight-foot ceilings, some weighing upward of ninety tons.[13] Supporting these heavy structures required a combination of adobe-like clay and timber, and their construction required laborers transporting hundreds of thousands of timbered beams over distances of more than fifty miles without the benefit of livestock. Construction of a complex, large great house could take several decades. But these great houses were likely not houses at all – rather they seemed to be public buildings, probably used for public gatherings, ceremonial purposes, and for similar reasons that public buildings exist in urban centers today.[14]

[7] John W. Ragsdale, Jr., *The Rise and Fall of the Chacoan State*, 64 UMKC L. Rev. 485, 487 (1996) (Ragsdale I). The precise purpose of Chaco Canyon's buildings, streets, and ceremonial centers is not known, but it was important to those living in the outlier communities throughout the region, which bore its architectural and agricultural characteristics.

[8] *Id.* at 489.

[9] *Id.*

[10] Annalee Newitz, *Conservatism Took Hold Here 1,000 Years Ago: Until the People Fled*, The Washington Post (June 1, 2018), www.washingtonpost.com/news/speaking-of-science/wp/2018/06/01/conservatism-took-hold-here-1000-years-ago-until-the-people-fled/.

[11] Cody Cottier, *Cahokia and Chaco Canyon: The Ancient Cities That Flourished in North America*, Discover Mag. (Mar. 10, 2021), www.discovermagazine.com/planet-earth/cahokia-and-chaco-canyon-the-ancient-cities-that-flourished-in-north-america.

[12] Ragsdale I. at 489.

[13] Childs at 14.

[14] *Id.* at 15.

They also may have been symbolic – built to demonstrate the power of the Chacoan center and perhaps as a show of wealth and force that outlying communities should emulate.[15]

Those outlying communities bear similar hallmarks, including multistory dwelling structures and kivas, along with a similar planning style with respect to the orientation of the buildings and their proximity to one another. They may have served for a time as agricultural hubs, as the necessity of importing food and especially water into the narrow canyon that housed the urban center is clear from the still visible earthen and masonry dams of a few feet in height and the remains of storage structures for grains and other crops. These hubs were part of a network of thousands of smaller villages, remote settlements, and agricultural lands that were connected by roads still visible using Light Detection and Ranging (LiDAR) technology.[16] Although the exact nature of the relationship between the main urban centers and the outlier communities is unclear, archaeologists agree that the settlement and road patterns indicate a planned, rather than spontaneous, effort. The archaeological records also reflect that people from far-flung regions likely were drawn to Chaco, leaving traces of their migration toward this urban center along the roads that can be seen from orbiting satellites today, dotted with shattered pottery they likely used to transport food, water, and possibly ceremonial items or trade goods.[17]

By the year 1000, the Chacoan settlements had expanded to virtually all the arable land in the 100-mile-wide San Juan Basin of northwestern New Mexico, and the carrying capacity of the basin was stressed to what must have been close to its maximum.[18] Agriculture was essential, and needed to support the population that swelled into the thousands by AD 1100. This required some creative farming techniques in the canyon itself, but also required imported grain and maize grown in farther-flung regions, as the canyon was too small to cultivate the quantities of maize and grains that were needed to sustain the population.[19] Several studies have revealed agricultural secrets of Chaco, including that

[15] Newitz.

[16] Sean Field, *Lidar-Derived Road Profiles: A Case Study Using Chaco Roads from the US Southwest*, 11 Adv. Archaeol. Pract. 2, 184–97 (2023). doi:10.1017/aap.2022.31.

[17] Childs at 17; David E. Stuart, The Ancient Southwest: Chaco Canyon, Bandelier, and Mesa Verde, p. 77 (2009). The road network that connected Chaco Canyon to the greater region is so vast that only a small fraction of it has been thoroughly inventoried or documented. Ragsdale I at 514. In the 1980s, the BLM initiated the most comprehensive survey of these roads to date, cataloguing approximately 1,500 roads radiating outward from the San Juan Basin. *Id.* The longest road segments measure up to fifty kilometers and appear to connect outlier great houses with urban great houses. *Id.* Main roads were approximately twenty-seven-feet wide and smaller, spur roads were roughly ten-feet wide.

[18] John W. Ragsdale, Jr., *The Aboriginal Land and Water Rights of the Jemez Pueblo*, 24 U. Denv. Water L. Rev. 109, 117 (2021) (Ragsdale II).

[19] Larry Benson, John R. Stein, & H. E. Taylor, "Possible Sources of Archaeological Maize Found in Chaco Canyon and Aztec Ruin, New Mexico" (2009). USGS Staff – Published Research. 748.

remnants of corn found among the Chaco canyon dwelling structures were imported from places like the Chuska mountains, over sixty miles away.[20]

The archaeological record, combined with the histories of the descendants of those who lived and traveled through the canyon, reveals that the urban hub was positioned to import agricultural products from producers scattered across a region of astonishing size – approximately 40,000 square miles in total.[21] At the time that Chacoan leaders were determining how to feed the thousands of people that converged upon the urban center in the heart of the canyon every year, the applicable rule of law they would apply to solve this problem would have taken the form of Traditional Ecological Knowledge, norms of behavior based on information passed down from one generation to the next. As is reflected in descendant communities today, hunting, gathering, farming, and plant cultivation followed rules that were tied to families or clans, and other cultural markers, like gender.[22] Families cultivated crops or harvested wood in certain areas, the jurisdictional limits of which were dictated by history, practice, and language.[23] Resources were shared, even if access to land was delineated and more restrictive, to ensure a food supply for the entire community.

Sometimes, the internal rules of law did not translate to other nations, and the need to access resources resulted in intergovernmental negotiations to resolve the resulting disputes, or outright warfare, especially when resources were scarce. There is evidence in the Chacoan record to support the argument that the people who lived in Chaco Canyon may have abandoned their city due to this type of intertribal conflict. Some archaeologists theorize that residents of Chaco fled to the north in fear of a military assault from the south, or perhaps directly after an invasion.[24] Skeletal remains excavated from Chaco and dating to the post-1100 AD period could support the latter theory, with indicia of violent deaths resulting from severe, human-inflicted injuries, and mass graves indicating that armed conflict may have included massacres.[25]

Approximately 400 years after the collapse of the urban center at Chaco Canyon,[26] the Spanish arrived in this region, exploring it with the messianic zeal that was their trademark throughout the world at this time. They arrived astride horses, armed with guns, and bearing the blessing of the Pope in the form of a rule of positive

[20] *Id.*

[21] Ragsdale II at 117.

[22] Univ. of Arizona, Indigenous Resilience Center, "The Man Working to Sustain Hopi Dry Farming in Arizona" (Sept. 2, 2022), available at https://resilience.arizona.edu/news/man-working-sustain-hopi-dry-farming-arizona.

[23] *Id.*

[24] George Johnson, *Scientist Tries to Connect Migration Dots of Ancient Southwest*, N.Y. Times (June 29, 2009), available at www.nytimes.com/2009/06/30/science/30chaco.html.

[25] Newitz, www.washingtonpost.com/news/speaking-of-science/wp/2018/06/01/conservatism-took-hold-here-1000-years-ago-until-the-people-fled/.

[26] Ragsdale II at 127.

law called the Doctrine of Discovery.[27] This Doctrine, which will be explored in more detail in Chapter 2, served as a religious and legal justification for the violent takeover of Indigenous populations the world over, including Puebloan people in northern New Mexico in the sixteenth and seventeenth centuries. The Catholic Church and the secular governments of the Mexican territory, backed by the army, consolidated to repress and control the Pueblos and their land, using techniques such as forced tribute slavery, religious persecution, and executions.[28] These brutal but effective strategies, combined with imported diseases that the immune systems of the Pueblos could not fight, brought the entire Puebloan population to the brink by 1680.[29]

Despite the deadly efficacy of the initial Spanish colonization effort, the descendants of the Chacoan occupants in the Pueblos did not yield their lands without a fight. In August of 1680, the Puebloan Nations consolidated their force and ejected the Spanish, not only their clergy, government functionaries, priests, officials, but the families of settlers, including women and children, in what later became known as the "Pueblo Revolt."[30] The resulting independence they secured lasted only slightly more than a decade before a force of 800 Spanish soldiers, settlers and priests began to retake Puebloan lands and communities in 1692. Having possibly learned a lesson from the experience of the pre-Revolt occupation, the new Spanish leadership colonized in a "lighter" fashion – allowing greater political, economic, and religious autonomy among the colonized nations.[31] The heart of this policy shift was a recognized minimum entitlement to land under Spanish law, which applied to the Pueblos as a population colonized by the Spanish government. The Spanish called this concept the "Pueblo Leagues," which is still reflected in the twenty-first century rules of law defining land grant rights.[32]

During the Spanish and Mexican conquests of the Puebloan and Chacoan regions, both foreign sovereigns used land grants to distribute rights to land

[27] *Id.* at 127.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 137.
[31] *Id.* at 128.
[32] Richard W. Hughes, *Pueblo Indian Water Rights: Charting the Unknown*, 57 NAT. RES. J. 219, 222 (2017), n. 7. The Spanish governors also gave Pueblos additional land grants to be used as a grazing commons, which represented the first iteration of the grazing commons that this region would experience under post-contact colonial rule. Under Spanish colonial law, the Pueblos were considered wards of the Spanish Crown, and the Crown forbade all other Spanish citizens to live on Pueblo lands. This system endured from 1692 until 1821, for over 120 years. The jurisdictional framework altered slightly for the Pueblos in 1821, when Mexico achieved its independence from Spain, and the Mexican government notified the Pueblo tribes that their members would be recognized as citizens of Mexico and their title to their lands would be recognized by the new sovereign colonial power. Ragsdale II at 128.

and other resources, like water and timber.[33] These systems reflected values of shared property rights and common control over land and resources.[34] Under both systems, one individual, usually wealthy and powerful, would receive a grant from the regional Governor, guaranteed by the wealthy grantee's promise to lure settlers to the granted lands to establish a visible footprint of occupation and productivity throughout the Spanish and Mexican territories. As these settlements spread, they would serve as a warning to other governments that the colonizing sovereign behind them claimed these lands and intended to stay.

To encourage the settlers to move to the grants, the grantee would promise them land for home sites, cultivation of crops, grazing of livestock, and for hunting and other subsistence purposes.[35] Families would therefore move, usually to remote areas, in reliance on the promises of perpetual access to the commonly held resources of the grant.[36] Some grantees would record their promises and permissions with regional or local authorities, detailing the settlers' rights to access common resources on the granted lands, containing more detailed provisions for organizing life on the grant, including "the use and care of the water, regulation of roads, land for churches, location of mills, and pasturing of animals."[37] Some recorded documents included clauses guaranteeing the "enjoyment of benefits of pastures, water, firewood and timber," provided that the settlers and their descendants did not take more than their fair share.[38]

Under Spanish, and later Mexican, law, land grants were property rights; fully alienable, transferrable, and hereditary. The original Spanish land grant system depended upon a hierarchical structure, under which a Lord, or Patrón, was given authority by the Spanish Crown to allocate land located in a claimed territory. In exchange, the Crown expected each Patrón to ensure that grantees made productive use of the area within the Grant and paid taxes. To build a solid tax base, the Patrón would recruit individuals and families to come live on the land and organize cooperative farming communities, like the one in San Luis, Colorado. The Patrón would then divide his land into individual parcels – known as varas – and reserve a portion to be used in common.[39] The varas were narrow strips of land adjacent to a river or stream, and the Patrón allocated pastures or parcels within the vara to settlers in fee simple, giving them exclusive

[33] Ryan Golten, *Lobato v. Taylor: How the Villages of the Rio Culebra, the Colorado Supreme Court, and the Restatement of Servitudes Bailed Out the Treaty of Guadalupe Hidalgo*, 45 Nat. Res. J. 457, 459 (2005).

[34] *Id.*

[35] *Id.* at 460–61.

[36] *Id.* at 461.

[37] *Id.*

[38] *Id.* at 461–62.

[39] Richard D. Garcia & Todd Howland, *Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre De Cristo/Rael Case*, 16 Chicano-Latino L. Rev. 39, 41 (1995).

rights to use and occupy their delineated areas. Areas nearby, outside the boundaries of the vara, but either unsuitable for farming or inaccessible by existing irrigation methods, were either held in common by the settlers of the vara; or, under private land grants, were available for use by the settlers for a variety of nonagricultural purposes.[40] The Grants also contained corollary rights: communal grants and private grants to individuals.[41] Recognition of each right codified a resource management system that took into account the aridity of the region and its limited water resources, requiring users to share.

Because land grants were themselves property rights, Patróns could sell them, which sometimes resulted in dramatic changes to the terms of the bargain that settlers had struck with the original grantee, especially if the terms had not been recorded. Under the prevailing legal system in which non-property owning individuals and families engaged in farming to benefit the community as a whole, use rights to the commons were perquisites that lured people to the arrangement – giving them access to land for farming, hunting, and other activities that they otherwise could not attain. This system made sense in the San Luis Valley because individual varas did not usually have the capacity to produce enough crops to sustain single families, let alone the entire community.[42] Moreover, areas like the flanks of 14,000-foot Culebra Peak were not suitable for farming – but they could be set aside as common hunting grounds and for harvesting valuable timber. And the settlements established by those who created communities like San Luis gave notice to neighboring Tribal Nations and other foreign governments that the Spanish crown claimed this land. The arrangement had echoes of the communal experiment to the south, in Chaco Canyon, half a millennium prior.

Ultimately, Spanish dominion over the area did not last, and the Mexican system that supplanted Spanish law changed the land grant framework. Instead of granting lands to Patróns, who were entitled to these benefits by virtue of their heredity, Mexican land grants were awarded to entrepreneurs who demonstrated the potential to generate tax and other revenue from the lands.[43] Mexican land grants were also conditioned on some reciprocal service promised to the central government – such as establishing a visible footprint of colonization and settlement, or Christianizing the Indigenous population. By contrast to the Spanish grants, the Mexican grants included additional incentives for grantees and settlers that reflected these national values in collective land use and access. Unlike the more feudal Spanish system, the Mexican grantees were permitted to retain one-third of the grant in fee, as long as they distributed the remaining two-thirds of the grant to settlers within twenty years.[44]

[40] *Id.*
[41] *Id.* at 40.
[42] *Id.* at 41.
[43] *Id.* at 42.
[44] *Id.*

Interestingly, the Mexican government also made many grants to groups of settlers, creating autonomous pluralistic communities with private and communally held lands.[45] But Mexico struggled under this system to establish itself as an autonomous nation, at the same time the United States was also expanding and permanently establishing its territorial boundaries.

The American model of settler colonialism did not use a land grant system, in keeping with the American preference to eschew the land baron model of Europe, and particularly feudal England. In the 1800s, fast-moving American settlers were encroaching upon Mexican lands in what is now southern Colorado and northern New Mexico – which of course were once the lands of Puebloan people descended from the Indigenous occupants of the Chacoan empire.[46] Into this quilt of legal frameworks for allocating land and water rights, the American legal system was also beginning to develop around a very individualistic model of land ownership and resource control. While United States courts favored exclusionary, individual rights to land and disfavored communal access rights like those of the people who lived on or used the grants, Mexican law continued to value and recognize communal land use, especially for agricultural purposes. These contradictory values toward land and resources were never reconciled, and United States courts made little effort to explore or reflect the Mexican values underlying these legal rights when adjudicating cases involving land grants, even after the United States had acquired nearly half of Mexico following the Mexican–American War.[47]

The Cielo Vista ranch traces its title to a Mexican grant issued in 1844, during the height of the tension between Mexico and the United States. The Sangre de Cristo Land Grant conveyed rights to approximately 1,000,000 acres of land to Stephen Luis Lee and Narcisco Beaubien, two entrepreneurs who had promised to develop and reap financial rewards from this land for the benefit of the Mexican government.[48] After Lee and Beaubien were killed in 1847 in the Taos Rebellion, one of many battles of the Mexican–American War, Beaubien's father, Carlos, inherited his son's half-interest in the grant and purchased the remaining half-interest from Lee's estate.[49] Carlos moved quickly to satisfy the terms of the grant, recruiting over 1,500 settlers from Mexico to establish farms and put down roots by 1860. This included the founders of the town of San Luis, Colorado.

Meanwhile, the United States had emerged victorious from the war, and forced Mexico to cede the territory including this grant and so many others to the United States in the 1848 Treaty of Guadalupe Hidalgo. It was this war, and this treaty, by

[45] *Id.* at 42–43.
[46] *Id.* at 42.
[47] *Id.* at 54.
[48] *Id.* at 44.
[49] *Rael v. Taylor*, 876 P.2d 1210, 1213 (Colo. 1994); Lobato, https://conejoscountycitizen.com/article/unidentified-purchaser-buys-taylor-ranch-for-105-million.

which the United States took over half of Mexico's territory, including the sovereign lands of so many Indigenous Nations.[50] The present states of Utah, as well as portions of Colorado (including the lands of Cielo Vista), New Mexico, Arizona, and Wyoming, were carved out of that 529,000-square-mile acquisition from the Republic of Mexico – the largest by the United States since the Louisiana Purchase. The 1848 Treaty of Guadalupe Hidalgo protected the rights of Mexican citizens living on and using grants, though, noting that "Mexicans now established in territories previously belonging to Mexico … shall be free to continue to reside, or remove at any time to the Mexican republic, retaining the property which they possess in the said territories…."[51] Moreover, the treaty acknowledged that Mexican citizens living on the lands subject to the treaty possessed property rights "of every kind," which would be "inviolably respected" by the United States.[52]

Operating under the premise that this treaty would protect the rights of those living on his grant, Carlos Beaubien executed and recorded a document memorializing the permanent regulations, rights, and privileges of the Sangre de Cristo settlers.[53] Recorded in 1863, this document provided that certain lands within the Grant would "remain uncultivated for the use of the residents of San Luis, San Pablo and the Vallejos, and other inhabitants of said towns, for pastures and community grounds, etc."[54] It also allocated waters of the Rito Seco river to "the said inhabitants of the town of San Luis, and those on the other side of the Vega, whose lands lie in the vicinity and cannot be irrigated by the water of the Rio Culebra."[55] Three acres of land within the Grant were dedicated to the local Catholic Church, and the remainder was "deeded for the use of the inhabitants of this town and of the others up … the Vallejos Creek and also for the benefit of those who may in the future, settle on the Gregorio Martin Creek."[56] Finally, the Beaubien document stated that "no one shall have a right as they might have thought, to place any obstacles or hindrances to interfere with the rights of others," and "regulations as to roads shall be also observed so as to allow every one [sic] to have access to his farm lands" and water.[57]

For more than a century thereafter, the community members of San Luis enjoyed exactly what was guaranteed by the 1863 Beaubien document – undisturbed communal use of this land and access to water for the purposes specified therein. An anthropologist who researched these communities found that they supported themselves

[50] Christine A. Klein, *Treaties of Conquest: Property Rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M. L. Rev. 201 (1996).
[51] Treaty of Guadalupe Hidalgo, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922.
[52] *Id.*
[53] Garcia & Howland at 45.
[54] *Id.*
[55] *Rael v. Taylor*, 876 P.2d 1210, 1213 (Colo. 1994).
[56] *Id.*
[57] *Id.*

from "a mixed economy of irrigated river agriculture on the valley floors, pastoralism with seasonal migrations of flocks between the highland mountain meadows in the summer and valley-bottom pastures in the winter," and free hunting and fishing rights year-round.[58] Their usufructuary, or use, rights were respected by their neighbors in Colorado, including landowners whose lands they had to cross or use to exercise them.

All of this changed in 1960, when Taylor purchased the 77,500-acre tract then known as "the Mountain Tract," which was communal land subject to the 1863 Beaubien document and within the boundaries of the Sangre de Cristo grant. The North Carolina-born lumber baron paid seven dollars an acre for that land, and a nearby parcel, which thereafter became known as the Taylor Ranch.[59] Upon purchasing this land, Taylor immediately began fencing it off, preventing the descendants from exercising their rights to access and use it. The conflict that followed Taylor's 1960 purchase ultimately generated one of the longest title disputes in Colorado history. The legal and factual issues were complex, but the core legal issue in each case was whether Taylor's attempt to exclude descendants of the Beaubien beneficiaries from the lands within the Ranch boundaries was lawful, or whether the beneficiaries still held the legal rights memorialized in the Beaubien document.[60]

Although unacknowledged in the litigation, the threads that wound through every case were race, class, and ethnicity – the Beaubien beneficiaries were Mexican American, Spanish American, or Indigenous Mexican-Americans, while Taylor was white. Taylor was also rich, and the Beaubien beneficiaries were poor, living in a county that in the 1990s recorded a per capita income average of only $7,057.[61] Taylor's original action, filed under the Torrens Act, asked a Colorado court to invalidate any legal rights claimed by the Beaubien beneficiaries, due to the fact that Taylor had purchased the land in fee simple absolute and (allegedly) not subject to any conditions imposed by foreign governments. Taylor's claims were belied by the Beaubien beneficiaries' lived history on this land and their descendants understanding of the legal basis under which they had done so for generations, though, despite his legal arguments that he and "his predecessors in title have maintained continuous possession of the subject land and have exercised complete dominion over it since the issuance of the original grant from the Mexican government."[62]

[58] Garcia & Howland at 45 (quoting Marianne L. Stoller, Preliminary Manuscript on the History of the Sangre de Cristo Land Grant and the Claims of the People of the Culebra River Villages on the Lands, 4–5, 46–47 (1980) (unpublished manuscript, submitted as an affidavit to the District Court of Costilla County)).

[59] Brief of Petitioners, p. 6, *Rael*, 876 P.2d at 1213.

[60] *Rael*, 876 P.2d at 1212.

[61] U.S. Dept. of Commerce, Economics and Statistics Administration, Bureau of the Census, 1990 Census of Population – Colorado, Social and Economic Characteristics, Table 3, p. 35, www2.census.gov/library/publications/decennial/1990/cp-2/cp-2-7.pdf (noting that statewide average at that time was 50 percent higher, at $14,821).

[62] *Rael*, 876 P.2d at 1216.

Although Taylor could prove he had "continuously paid the taxes on said land and … maintained sole and exclusive use and occupation thereof," the beneficiaries offered significant evidence to the contrary – that they and their forebears had used these lands for hunting, fishing, grazing, and other purposes dating back to at least 1863.[63]

The trial court and the Colorado Court of Appeals both concluded that Taylor had demonstrated that any use rights of the Beaubien beneficiaries to the Taylor Ranch had been extinguished, reasoning that "neither the Beaubien document nor the agreement between his [Beaubien's] heirs and Gilpin evidenced a clear intent to establish or recognize a 'dedication' of the usufructuary 'privileges' the defendants sought to establish."[64] The appellate court affirmed the trial court's legal determination that none of the individual descendants possessed any legal rights to use the Taylor Ranch lands and affirmed the lower court's judgment awarding full title, in fee simple absolute, to Taylor. This ruling effectively removed any "cloud", or claim, on Taylor's title and affirmed a legal right to leave his fence up and pursue trespass actions against the Beaubien beneficiaries should they or their livestock set foot on the Ranch property.[65]

The beneficiaries did not give up, though, despite the money, power, and leverage of Taylor and his legal team. Fourteen years after the appellate court's ruling on the original Taylor lawsuit under the Torrens Act, they filed suit in a Colorado state court alleging that the Torrens Act ruling had violated their constitutional rights to due process of law under the Colorado State Constitution. The basis of their claim was that they "were … heirs or successors in interest of the original settlers of the Sangre de Cristo Grant" and that the Taylor Ranch lands had been "historically subject to the community rights and uses of the [petitioners] for grazing, lumber, fire, wood, water, pasturing, hunting and recreational uses."[66] They argued that the court's ruling in the earlier Torrens Act cases had taken their property rights without the minimum due process required by the state constitution. The trial court rejected these arguments, dismissing the claims on a motion from Taylor and the other defendants arguing that this litigation was nothing more than a repackaging of the issues resolved in the earlier Torrens Act litigation. The beneficiaries appealed, initially suffering another defeat in the Colorado Court of Appeals, but they appealed and requested a review by the Colorado Supreme Court. The highest court affirmed the lower court's rulings and it appeared that Taylor had emerged victorious again, although the appeal was limited to the procedural issue of whether Taylor had given adequate notice to all of the Beaubien beneficiaries with claims to the Taylor Ranch.

[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.* at 1217.

Because this issue involved questions of fact, which are outside the scope of the supreme court's jurisdiction to resolve, the supreme court remanded the case back to the trial court for a rehearing to determine which of the beneficiaries had received adequate notice. The trial court ruled that some of them had, but critically, others had not. For the latter group, the supreme court required the trial court to hold a trial on the merits,[67] and following that, the court issued a finding that the beneficiaries and their predecessors had "grazed cattle and sheep, harvested timber, gathered firewood, fished, hunted and recreated on the land of the defendant from the 1800s to the date the land was acquired by the defendant, in 1960."[68] In addition, the trial court found that the beneficiaries had always known the Taylor Ranch lands as their shared space, and that prior to Taylor's purchase in 1960, they had never been denied access to this land. Finally, the court noted that there was no dispute "that the settlers could not have survived without use of the mountain area of the grant."[69] Yet, despite these findings, the lower court ruled that Colorado law did not recognize the type of property rights that the beneficiaries were asserting – communal use rights to the Grant, which was now the Taylor Ranch.

The beneficiaries appealed to the Colorado Court of Appeals, where they lost again, but they appealed the Court of Appeals' decision to the Colorado Supreme Court. By then, nearly forty-two years had passed since Taylor first bought the Cielo Vista Ranch and built his fence. Yet, by contrast to its earlier decisions, this time the Colorado Supreme Court appeared finally ready to consider whether Colorado law recognized their communal use rights to land derived from Spanish and Mexican land grants. After analyzing the claims, the court concluded that they were recognizable as a form of easement and that Colorado law had long accommodated easements held by more than one individual. Notwithstanding the difficulty inherent in "attempting to construe a 150-year-old document written in Spanish by a French Canadian who obtained a conditional grant to an enormous land area under Mexican law and perfected it under American law," the court nevertheless determined that it had to apply modern principles of Colorado law regarding the interpretation of source documents that create easements to the facts of this case and the Beaubien document.[70] The court found that "Beaubien wrote this document … in an apparent attempt to memorialize commitments he had made to induce families to move hundreds of miles to make homes in the wilderness," and held that "[i]t would be the height of arrogance and nothing but a legal fiction for us to claim that we [could] interpret this document without putting it in its historical context."[71]

[67] *Lobato v. Taylor*, 71 P.3d 938, 944 (Colo. 2002).
[68] *Id.*
[69] *Id.*
[70] *Id.* at 947.
[71] *Id.*

That context showed that the Beaubien beneficiaries' ancestors would have never moved to the San Luis Valley to settle permanently without an understanding that the incentives Beaubien offered were permanently available to them, and to their children and grandchildren. If they lacked permanent access to the communal areas of the grant, those without varas could not survive, and even those with varas needed the supplemental acreage to support various subsistence activities, including hunting, grazing livestock, procuring water, and cutting timber for firewood.[72] Their survival depended on access to these resources, and the limited supply required that they be shared. Therefore, the supreme court concluded that the rights Beaubien established in the 1863 document "ran with the land," meaning that they were permanent and could not be extinguished by passage of time, transfer of title, or by Taylor's fence.[73]

The 2002 Colorado Supreme Court decision memorializing this rule, *Lobato v. Taylor*, was a landmark decision in that the court recognized the claims of a powerless majority of plaintiffs who were people of color and whose land and resource rights derived from a foreign government's colonial settlement laws. Yet, only a small group of Beaubien descendants emerged from that forty-two-year battle with use rights – those who had not received adequate notice of Taylor's 1960 Torrens Act case. In this way, the ruling fell short for the entire class of beneficiaries. Taking a broader view, though, the *Lobato* decision is a good place to begin any discussion about race, power, and access to resources in the West. It contains every theme that characterizes land ownership and use throughout the region: people of color with communal values and shared principles around agrarian and other resource use and stewardship, colonized by white settlers who wanted exclusive rights to use their lands and attempted to extinguish their legal title. The white settlers succeeded in excluding the people of color, for a time anyway, and the fight to retain the communal use rights wound its way through a state court system for over forty years, forcing a tremendous financial and resource burden on people who were already underresourced and underprivileged. The legal system itself reflected and embraced the white privilege that permeated the litigation, and only began to reconcile that legacy in the early years of the twenty-first century.

Furthermore, the power, privilege, and value set of Jack Taylor and others in his position changes not only the relationships of people to land that have developed over hundreds of years, but complicates modern conservation challenges facing the West, including the climate crisis and the task of ensuring climate justice for all people living in this region, not just the wealthy or the non-Hispanic white. From the earliest agricultural eras in this region, starting with the farmers who supported the settlements in Chaco Canyon and continuing through the twentieth century with the Spanish and Mexican settlers living on the land grants, farming and ranching activities

[72] *Id.* at 944.
[73] *Id.*

were supported by the resources that existed on the land and there were sufficient resources for all who were recognized within the system, at least for a time. But, the repeating patterns starting with the Chacoan Phenomenon and most recently, with disputes over land and water similar to those that arose in *Lobato*, have shown that this region has never been capable of sustaining sufficient agricultural productivity or ecological health for more than a few centuries without experiencing a crisis that leads to a form of legal "reset."

The reset in *Lobato* could portend further upheaval in the system of allocating resources and users in Colorado, and perhaps in other states with land rights derived from Spanish or Mexican land grants. It calls into question the security of the fee title of other ranchlands located within this grant, and within other grants, throughout the region that was once Chaco, then Spain, then Mexico, and is now the United States. It provides arguments for other land grant beneficiaries and descendants to use in pursuing legal claims based on their own usufructuary rights guaranteed by the Spanish or Mexican governments, and this could potentially include Tribal Nations, such as the Pueblos. These implications will be discussed in more detail in Chapter 10, but for now, it is time to journey south to New Mexico, to another famous land grant ranch.