

Some original attachments
submitted in larger size or
in color.

#E1-2797
R2

FD 34284

Victoria Rutson, Chief
Office of Economics, Environment Analysis and Administration
Surface Transportation Board
1925 K Street N W, Ste. 500
Washington, D.C 20423-0001
(202) 565-1674

received
1/31/07

Tap Pilam Coahuiltecan Nation
Tribal Council
273 Nicks Rd.
Comfort, Texas 78013
(830) 995-3356 cell or (210) 724-3356, coahtex@hctc.net

January 27, 2007

RE: Surface Transportation Board docket 34284, Southwest Gulf Railroad Company

Dear Chief:

As one of the listed "Consulting Party" organizations, please list all of the instruments enclosed herein as part of the written comments submitted by the Tap Pilam Coahuiltecan Nation.

The Payaya are the native, indigenous people of South-Central Texas whose traditional homelands extend outward from the sacred headwaters of the Yanaguana (refreshing waters.) This body of water is now known as the San Antonio River. Together with all the bodies of water that drain into the San Antonio River, such as the Rio Medina, the Rio Leon, and other less known streams, these water ways were all sacred to our ancestral peoples. Our traditional creation story tells us that we come from these springs, even though some springs have presently become dry. Like the springs that flow out of the earth, we are also traditionally called the Tap Pilam: People of the Earth.

This letter serves as formal protestation against the issuing of a permit by the Surface Transportation Board styled as Finance Docket No. 34284.

The Surface Transportation Board is a federal agency that has jurisdiction over the issuance of any railroad line or railroad line improvement. As such, this federal agency has a ministerial duty to take in comments from potentially affected parties. The Tap-Pilam Coahuiltecan Nation, through its tribal council, formally asks that the Surface Transportation Board take judicial notice to the documents submitted to the Board for its review. In Texas, judicial notice is governed by Vernon's Texas Rules Annotated-Rules of Evidence, Rule 201-Judicial Notice of Adjudicative Facts. In the federal jurisdiction we are relying on Federal Rules of Civil Procedure, 44- Proof of Official Record and Federal Rules of Civil Procedure, 44.1-Determination of Foreign law, and Article II Judicial notice, Federal Rules of Evidence 201-Judicial notice of Adjudicative Facts.

By way of background information on the Tap-Pilam Coahuiltecan Nation, we submit the following:

1. **Vernon's Texas Rules Annotated Rules of Evidence, Vol. 7 Judicial Notice, Rule 201.**

2. **Draft Environmental Impact Statement. Finance Docket No. 34284 Vol. III – appendices G-I by Surface Transportation Board** reported on page 71, letter from **Tap Pilam Coahuiltecan Nation**, February 4, 2004. This letter gave the Tap-Pilam Coahuiltecan Nation consultation and interested party status with the Board.
3. **Reassessing Cultural Extinction: Change and Survival at Mission San Juan Capistrano, Texas, edited by Alston V. Thoms, 2001.** This instrument, which consists of 20 pages, is listed as Appendix H, Selected Letters and Documents. These documents are a chronology of over 30 years of efforts by this tribe in repatriating ninety-two Coahuiltecan remains exhumed by the Texas Historical Commission in conjunction with The Witte Museum and the Roman Catholic Church.
4. May 09, 1995, **letter from Florida Tribe of Eastern Creek Indians to the Tap Pilam Coahuiltecan Nation** requesting that we take possession of some Texan Indian remains located in Bruce, Florida. Since it was determined by the Creek Indians that these remains were, in fact, Texas Indians, the Coahuiltecan Indians took possession of these remains and interred them in the Comanche National Cemetery, Fort Hood, Texas.
5. **Reassessing Cultural Extinction: Change and Survival at Mission San Juan Capistrano, Texas, edited by Alston V. Thoms.** These papers are excerpted from this report and describe how the Tap-Pilam Coahuiltecan Nation finally repatriated nine-two Mission Indians at Mission San Juan Capistrano in San Antonio, Texas.
6. **A.D. 1870 map of Quihi, Texas**, taken from the James Allison Survey and the Rudolph Schorobiny Survey. An important feature is located on the Rudolph Schorobiny Survey which has been identified as the location of a burial site of some 18-20 Native Americans. This unmarked cemetery is now claimed by the Coahuiltecan nation as being culturally affiliated to our native people.
7. A copy from the archivist Alfred Rodriguez verifying that these documents are held in the Spanish Archives of the County Clerk's Office in Bexar County, San Antonio, Texas. He indicates that the attached information is taken from an **"informal catalogue of the Red Numbered Miscellaneous Folders located in the Spanish Archives of the Bexar County Courthouse"** compiled by Robert L. Tarin, Jr., 1991. Amongst the Red Folders we have an index that is entitled Land Grants and Sales. Land Grants and Sale Number 311 is from a Father Refugio De La Garza, grantee, and the grantors are Antonio Garcia and heirs, dated January 16, 1833. Attached to this document is Sale of Eleven Sitios of Land by Antonio Garcia and heirs to Refugio De La Garza, 1833. As the document is written and filed forever and ever, it turns out that this was an invalid sale. Refugio De La Garza was the priest in charge of the Parish Church at San Fernando in the village of La Villa de San Fernando, which later became known as San Antonio. The ancient Recopilacion De Las Leyes De Las Indias forbade trustees, which was the role that Father Refugio De La Garza played, from ripping off the persons for whom he held either money or land or goods in trust. He was supposed to administer these eleven

Sitios for the benefit of the survivors and the still remaining Mission Indians that were at Mission San Jose and all the other Missions in San Antonio after 1794. The final secularization of the lands and goods and property of all the Missions took place in 1824 and the priest at San Fernando was placed in charge of distributing and administering these properties, handling the Indians' money for them, making cattle sales, vegetable sales, and every kind of sale. It so happens that the western boundary of the rancho belonging to San Jose Mission was ceded to them by the Spanish crown, November 18, 1766, as a result of a lawsuit entitled Castelo v. Mission San Jose. The priest in charge at Mission San Jose was Father Pedro Ramirez de Arrellano, O.F.M. He was successful in keeping the land in the name of the Mission Indians, at least for a period of time. Instead of properly administering the secularization of the lands, Father Refugio De La Garza simply stole these lands from the proper owners.

See document that reads sale of eleven sitios of land by the priest, Father Refugio De La Garza, to a General John McMullen dated 1834. The sale took place in July, 1834, for the amount of one-thousand-one-hundred pesos. This involves the area of Quihi because the western limits of Rancho San Lucas was the area of a creek immediately east of Quihi and all the way south through San Lucas Springs, which are still there today.

Spanish Archives, Spanish Book No. 2, page 263, dealing with Domingo Castelo lands. Don Castelo simply took adverse possession of the lands of Rancho San Lucas and claimed it as his own. The Supreme Court in Mexico City issued a decree dated November 18, 1766 which invalidated Domingo Castelo's claim to Rancho San Lucas land. What is interesting about this document is that he is listed as Senor Gobernador Y Capitan General Domingo Castelo natural de los Reinos de Castilla, no exact date found, on or about 1772, in the Bexar Archives.

8. **An informal catalogue of the Red Numbered Miscellaneous Folders located in the Spanish Archives of the Bexar County Courthouse, San Antonio, Texas**, taken again from the Tarin Collection, dated 1991. The most important document that is attached to this report is taken from the General Land Office Holdings file stamped date February 16, 1983, which is the date it was obtained from the General Land Office Holdings. It is part of the law suit, once again, styled Domingo Castelo v. Mission San Jose. The copy of the title of lands granted by the government of Spain to the Indian community of the Mission of San Jose situated on both sides of the Rio Medina, Eleven Leagues Grant, dated November 18, 1766. It is further certified by the land commissioner in Austin, related to the dispute between Don Domingo Castelo against the Reverend Father of Mission San Jose and his Mission Indians.

The relevance of all these Spanish land grants and Spanish deeds are to establish the fact that the lands around Quihi and leading up to Quihi from the east, from San Antonio, all pertained to the Mission Rancho of San Lucas that stayed in possession of the Indians until 1834 when Refugio De La Garza essentially dispossessed these original grantors of their lands.

We have submitted a full copy of the thirty page report which is Special Publication No. 1, published by the Southern Texas Archeological Association dated 1975, authored by T. N. Campbell, entitled **"The Payaya Indians of Southern Texas."** We submit this into evidence specifically because it is very difficult to give a thumb-nail sketch of any group of Indians, let alone, one that has such a lengthy history in the area of San Antonio, the Rio de San Antonio, the Rio de Medina, and the Leon Creek. For the Payayas, this was their principal lands, occupation sites, camp sites, hunting grounds, burial places, which led all the way up to and even beyond Quihi. No doubt, there are multiple burial sites approaching Quihi, within Quihi, and beyond the Camino that was called at time El Camino del Camion that runs through Quihi.

We have also submitted into evidence **Hunter-Gatherer Mortuary Practices during the Central Texas Archaic** by Leland C. Bement. This is an excellent account of the type of people the Payaya were. They were hunter-gatherers in their culture hunting buffalo, deer, wild pigs and all the naturally occurring game wildlife in and around Bexar and Medina counties. The hunter-gatherer mortuary practices are very relevant, the Edwards Plateau of Central Texas is known for its long sequence of prehistoric hunter-gather societies. Beginning over ten thousand years ago, this band-society mode persisted in Texas until the arrival of the Spanish in the 1500's, even though neighboring groups such as the Caddoans to the east, Puebloans to the west, and Plains Villagers to the north became sedentary and adopted corn agriculture. Five centuries before European contact, subsistence procurement systems, technology, and settlement patterns of the Edwards Plateau hunter-gatherers had been reconstructed through the study of the material culture uncovered by eight decades of archaeology investigations in Texas.

We submit into evidence a work by the famous artist, Mr. Jose Cisneros, entitled **Riders across the Centuries- Horsemen of the Spanish Borderlands** with a biography by John O. West. Many readers of this report may not be familiar with Spanish Colonial History and we submit these renderings by Mr. Cisneros with a brief explanation of the priest: the attire of the priest cited on page 94 is exactly what Father Refugio De La Garza would have worn while carrying out his priestly duties in San Fernando, which is present day San Antonio. Domingo Castelo would have looked like the Spanish Officer early 18th century featured on page 55 of this book. The Franciscans that ran all the Spanish Missions in San Antonio would have dressed exactly like the priest featured on page 78 with an Indian riding on a mule. Based on their religious rule, the priests or friars were not allowed to ride horses or mules. The horse or mule was to be led by a rope instead of riding the animal. Finally, a fact that may be little-known by many involves the Mission Indian Vaquero. Vaquero is a term used in the south for cowboy. This may be perceived as a contradiction in terms: the first cowboys in San Antonio and Texas were Indians and would have appeared like the picture featured in his riding gear on page 93 of this report.

We now submit into evidence documented series number 7, **Letters and Memorials of Fray Mariano de los Dolores Y Viana, 1737 – 1762**, from the Old Spanish Missions Historical Research Library of Our Lady of the Lake University of San Antonio, Texas, dated 1995. We submit this into evidence to show that at least on two separate occasions the Mission Indians, mostly the Indians at Mission San Antonio de Valero, actually were responsible for saving the fledgling village of San Antonio known in the colonial period as La Villa de San Fernando. There was an attack by Apaches on September 18, 1731, and they were repelled by the Valero Mission Indians. A second attack was

made during the night of June 30, 1745, where 350 Apaches, including women and children, attacked the settlement, and again, the Mission Indians fought them off and saved the town. What makes this account relevant to the Quihi site is that the Apaches came through a road, El Camino del Cañon that goes right through Quihi. When they were chased away by the Spanish Mission Indians, the Apaches retreated by way of Quihi back up into the Apacheria.

We submit **Reassessing Cultural Function: Change and Survival at Mission San Juan Capistrano, Texas**, edited by Alston V. Thoms, dated 2001. We included this in the record because there is dispute and uncertainty as to from whence came the name Quihi. There were Mission Indians living in the Missions in San Antonio, some of which our Tap-Pilam Coahuiltecan Nation members descend from people like Jose Diaz, Coronado Rivera and Jose Maria Rivera. Their Indian band was called Pamaque-Piquique and is also spelled Pihuique. If you use the English pronunciation of Pihuique, there is great similarity to the name Quihi.

We submit all this seemingly unrelated data because all of it is related to the historiography of the area of Quihi as it applied to the Mission Indians and the pre-Mission Indians of Bexar and Medina Counties.

We submit now **Putnam's Geology**, 3rd Edition, by Peter W. Birkeland and Edwin E. Larson, Oxford University Press, 1978. Because the area of Quihi has been described as a karst region, we submit this into the record as a similar instance of other areas that are made of these types of gravels and limestone formations that are affected and shaped and reshaped by underground aquifers.

We submit the **Explorers' Texas-The Lands and Waters**, by Del Weniger, former director of Biology Department at Our Lady of the Lake. In that, the first photograph featured is captioned Theodore Gentilz: Camp of Indians. While Gentilz never details the grassy vegetation of the prairie, he paints an aesthetic village scene with scattered trees of the prairie. This photograph is provided courtesy of The Witte Museum, San Antonio, Texas. It is relevant because on or about 1842 this very group of Indians, possibly Apache, was massacred by members of the early Texas Rangers who were known Indian fighters. There is some suspicion that this attack was, if not directed by, certainly carried out with the authority of an early Texas Ranger by the name of Jack Hayes. The massacre of Indian settlements in Texas during that era were commonplace. It is described as the boldest and most concentrated of Indian invasions on Texas and the deepest into the heart of Texas soil occurring in August of 1840 and culminating in the Battle of Plum Creek. These hostilities and hysteria overtook almost all the white settlers around San Antonio, Austin, and down towards Lavaca and Victoria. For some reason, the official policy then was the only good Indian in Texas was a dead Indian. The fact that they massacred these Indians on the road to Quihi makes it relevant. Once again, Professor Weniger's writing describes the area of Quihi in his book, the Explorers' Texas-The Lands and the Waters. On page 144 it reads thus, Captain French left us the best report on Hondo Creek and its branches. Experienced as he was as he moved west through Medina County in June of 1849, he wrote: "from Castroville, the road leads over some gentle hills, and thence through a tract of land pretty well timbered, until it opens out to Hog Wallow prairie....beyond this prairie is an elevated ridge, and the top of which, spread out before him, the traveler sees the beautiful valleys of the Quihi and the Hondo, pent in by blue hills in the distance. The valley of the Quihi is sparsely covered with timber, principally mesquite and oak...in midsummer the spring ceases to flow, but the water at intervals collects in never failing pools...on reaching....the Hondo, however, we find it but the dry bed of a

river with occasional ponds of water rising from the Hondo the road stretches over a prairie country to the Seco crossing a hog wallow that we found nearly impassable.” This is quite an accurate description of the beauty and topography of the area around Quihi all of which is now in jeopardy by the permitting of this blasting quarry that they are going to create just north of Quihi.

We now make reference to the **Texas Speleological Survey** entitled **Overview of Texas Caves and Karst** by William R. Elliott, Ph.D. The relevant parts of this study are as follows: at least 9,000 caves, sink-holes and springs are known in Texas, distributed in karst regions covering about 20% of the state. Karst is a terrain formed by the dissolution of bedrock, and generally is characterized by sink-holes and caves that channel water underground. Texas caves and karst aquifers are important, economic, scientific, and recreational resources. As in the area in the immediate environs of this soon to be rock quarry that will be blasted and excavated to the point of scarring the land irreparably.

We have also included an article entitled **Cenoté**. The ancient Mayans pronounced this word, ‘T’zonot’. A cenoté is merely a sink-hole that dots the limestone terrain mostly in the area of the Yucatan. They are also found in Florida and in the complete area that encompasses our Edwards underground aquifer, which of course, runs under Quihi and is in the recharge zone of the Edwards underground aquifer. So blasting and introducing contaminants like Benzene and other chemicals that are contained in these explosives can only harm the surface water and the underground aquifer and create possibly a large plume of contamination that we do not have now but expect to have with this gigantic blasting to be done by Vulcan Industries north of Quihi in order to obtain surface road fill and other uses of the karst limestone.

Another reason why the area of Quihi is sacred to us is that these sink-holes may contain ancient burials. Dr. Hester has already identified burials (work in progress.) In the cenotés of the Mayan country and other cenotés or karst regions of Texas there have been found many meters in depth of sink-holes alternately filled with burials, layers of stone, and more burials, and then more layers all the way up to within four-to-six feet of the top of the sink-hole. For this reason, those sink-holes that have already been identified and those that have yet to be identified in Quihi are sacred and we claim cultural and religious affiliation to these cenotés. Additionally, in the area of Quihi, Medina County, there is a plant called *Croton Fruticulosus*, common name Bush Croton, common Spanish name Encinilla, Hierba Loca. This is a plant that does bloom in the area of Quihi. The Mexican farm workers that still live there today use the non-poisonous species of this plant to brew teas from the leaves and upper portions of this *Croton Fruticulosus*. Moreover, we know from our historic records that the missionaries describe the Indians going to that area and obtaining this Bush Croton, and boiling the roots from which yielded scarlet red paint. This paint was used to paint their bodies, faces, their horses, and their shields. So the source of the red paint came from the Quihi area. We give you this data in order to further establish a cultural and religious affiliation with the areas of all those creeks, Quihi Creek, Chacon Creek, the Medina River, and the Hondo River and all the way to the Rio Frio. Those were the Payaya lands we occupied for a millennium.

By way of further documentation of the presence of the Payaya Indians in the area of Quihi, we refer to the exhibit entitled **Preliminary Studies of the Texas Catholic Historical Society, Vol. I, March 1930, Number 3, Espinosa-Olivares-Aguirre Expedition of 1709** by Reverend Gabriel Tous, T.O.R. During this expedition on Wednesday, April 10, the chronicler cites, “passing some small villages filled with mesquite clumps and oak groves we came to the arroyo called Chiltipiquie which

was dry.” Notice the last two syllables of this word, piquie. Might this be the source of the name Quihi? Moreover, his diary further reads on Thursday, April 11, “we set out from the set place towards the east in search of the Medina River which we reached and crossed on the opposite bank, in a clearing, along the river, we found the Rancheria of the Payayas who were not numerous. Moreover, on Friday, April 12, 1709, we moved on to the east to a plain, and at a distance of three leagues, not far from the river, met some Payaya Indians. Later we met five others of the Pampoa tribe, who were going to the Rancheria of the Payayas.” This report also includes in it the map of the Espinosa-Olivares-Aguirre Expedition of 1709.

We have included a map dated 1870 entitled **Map of John McMullen Grant**. The outline on this map is the actual meets and bounds of the eleven league Rancho of San Lucas belonging to the Mission San Jose and its Indians. Special mention is given to the late Miss Ann Davis of Hondo, Texas, from where we obtained a copy of this map, as a part of her estate. We thank her and her sister Lucy Davis, who is still living in the Hondo area, for their contribution to our efforts of this wonderful map.

We also include a master’s thesis produced in August, 1952, by Irma M. Benavides, in completion of her master’s degree. In it she wrote a paper entitled **Route Through Texas Followed by the First Column of the Army of the Mexican Republic, Commanded by Brigadier General Adrian Woll, Commander of the Second Division, and made by his quartermaster, Captain of Sappers, Colonel Jose Maria Carrasco, and August 24, 1842**. The relevance of this document includes that this report dated 1842 before the formal establishment of the town of Quihi, he mentions Quihi in his military campaign report. On the 9th day of March we quote “the march was continued through a forest of mesquite, leaving Quije Lake,” the spelling used by this Mexican, “to the left and following a north, northeast direction. Quije plain was crossed, and, turning to the east, Medina River was reached at 5:00 p.m. after having traveled seven leagues in the first direction, and two leagues toward the second. The river was crossed, etc.” It’s interesting to note that even before the foundation of Quihi in 1845 by the Alsatians who came with Henry Castro’s Colony Empresario Grant that founded Castroville, Quihi was already being mentioned. This was because it was the main road, which later became known as Woll’s Road, (remnants of which still exist in present-day Quihi dating from the period of just up to the Battle of the Alamo in 1836, a time when the Mexicans returned in an attempt to retake San Antonio in 1842 under the Woll invasion of Texas).

Because it is relevant, we also include “**Primeras Exploraciones Y Poblamiento De Texas (1686-1694)**” by Fray Lino Gómez Canedo O.F.M., printed by Publicaciones del Instituto Tecnológico Y de Estudios Superiores de Monterrey, Mexico, 1968. This report by the Franciscan Father Lino indicates the diary that was kept by the founders who named the Rio de Medina, Alonso de León in his entrada of 1689, on Holy Monday after Easter Sunday. He describes it as “topamos con un rio bien grande aunque no con mucha agua y con bien bado para pasarle; le pusimos por nombre el Rio de Medina.” It is also noted in this diary that on Tuesday after Easter Sunday, while traveling further down the road, it notes thus, “la tierra fue muy sertil de pastos y a cuasa de haber allado cerca de este arroyo un león bien disforme, muerto, le pusimos el Arroyo del León.” This is just some of the historiography of the areas and the roads leading through Quihi dating back to pre-contact periods. Apparently the terrain was such that travelers naturally followed it, which consequently took them by way of Quihi. So too did almost all the earliest explorers, certainly all the Mexican explorers, during

the period when Texas was called the El Estado Libre de Coahuila y Tejas, up to the Republic period and finally statehood and beyond. All the roads that led to San Antonio first passed through Quihi.

For the sake of brevity there will be no separate synopsis of every map contained in the map folder which is part of this formal report to the Surface Transportation Board. The maps are self-explanatory. They are placed in this document to illustrate the roads dating back from 1845 and beyond.

We have identified the route of the road that came through Quihi called Camino del Cañon. This road was named thus because the Mission of San Antonio de Valero, The Alamo, and the Village of San Fernando, later named San Antonio, connected to all the missions and the road that connected us in San Antonio to the missions located on the lower Nueces which were transplanted from the San Sabá River in 1762. That area of the Nueces River is called El Cañon, thus the name El Camino del Cañon. We rely on a map describing the boundaries of the Provincia de Tejas and bounded by the Provincia de Coahuila. The boundary line for these two ancient provinces of New Spain was the Rio de Medina. We cite here Vito Alessio Robles in his work called **Coahuila y Tejas en la Epoca Colonial**, in 1991, the Texas State Department of Transportation (TXDOT) published a **Texas Legacy-The Old San Antonio Road and the Caminos Reales-A Tricentennial History, 1691-1991**. This is an excellent study from which we extracted map figure number 20 on page 145, an enlargement of the meets and bounds of the Rancho San Lucas. A question mark can be seen on the dotted line which is a road leading to a crossing on the Medina. That was the road called the El Camino del Cañon later known as Woll's Road, which makes the Spanish Colonial history relevant to Quihi. Page 151, figure 21, is a further example of the delineation of Rancho San Lucas, El Atascosa Ranch and the Rancho belonging to Ignacio Perez, all from Spanish Colonial Period and again, the Medina River up to Castroville and Quihi were the western boundaries of these large settlements and ranches.

We have no date or source for the map that describes the names of some of the major early Texas tribes. Especially notice along the Balcones Escarpment west of San Antonio are the Payayas which is the group from which we descend and are proud to be descendants from.

There was a Spanish book that was translated into English by Franciscans Father Benedict Leutenegger and Father Marion Habig, entitled the **Zacatecan Missionaries in Texas, 1716-1834**. Of the excerpts from the **Libros De los Decretos of the Missionary College of Zacatecas 1707-1828**, is extracted the composite map of the New Spain in the 18th Century which shows the province of Coahuila which is adjacent to the province of Texas, and after 1749, the province of La Provincia de Nuevo Santander. The Medina and the Nueces were boundaries to these provincias and they are relevant in the history of the area of Quihi and that part of Texas.

We have also added **Spanish Establishments in Texas** from the same book by Fathers Leutenegger and Habig. It shows all thirty-six missions of the Spanish Colonial era which were located in Texas.

Additionally, in **Digging into South Texas Pre-History, A Guide for Amateur Archaeologists** by Dr. Thomas R. Hester, the figures referenced show what the average Payaya Indian member and what other Coahuilteco bands looked like or would have dressed like while hunting and gathering in the area of Bexar County and all of South Texas.

One of our greatest concerns as the Tap-Pilam Coahuiltecan Nation is that there will be a repeat at the Quihi mine that will be mined for gravel (see figure 4.13), of what occurred at the Oso

Cemetery Site. Depicted is the kind of horror that we are trying to avert from ever happening again. This picture was taken in 1930, Nueces County. There is no record of the disposition of all these Indian burial remains and we have never seen an archaeological report from that site. There is also a need to become aware of a report from the **Supreme Court of the State of Texas**, Austin, 1849 December term. This lawsuit settled the issue of a composition deed, which is when the Spanish Crown ceded to the missionaries to the actual Indians in the name of their nation, multiple acres of land that later came down to Refugio De La Garza and finally came down to McMullen v. Hodge (Texas 1849). It describes the names of the Mission Indians from Mission San Jose that initially sold to Father Refugio De La Garza all these eleven sitios of land from the Rancho San Lucas which later came into possession by General John McMullen from Refugio De La Garza. It is an excellent description and it makes points of law that are applicable to the impact area of the quarry that is to be blasted by Vulcan Industries.

Finally, we extracted from the **"Supplemental Draft Environmental Impact Statement" Finance Docket No 34284, Vol. II, Appendices C-F**, dated 2006, a very interesting map entitled **Map Sheet 1, Site Numbers & Survey Area Boundaries, Quihi Vicinity, Medina County, Texas**. There is a feature which is going to have one of the alternative routes run directly through it, a wall that is based on the descriptions provided by Dr. Fitzgerald and his wife, Alyne Fitzgerald, in Quihi. From it can be seen a green wall that is over a mile in length. The only reference that can be made to that is the missionaries in all the Ranchos had many walls built, many corrals, including chapels that were visited by the missionary to offer the Holy Sacrifice of the Mass for the outlying Indians that were at the Rancho. Also, Don Domingo Castelo indicates in his lawsuit that he had made improvements on the land and had a Rancho House which would have been in the area of Quihi Creek, more or less at the western boundary of the eleven leagues of land comprising the Rancho San Lucas which was in the possession of the Mission Indians of Mission San Jose in San Antonio, Texas.

In summary, we have submitted what we feel to be sufficient information to indicate that the Tap-Pilam Coahuiltecan Nation definitely has cultural and religious affiliation with all the areas which include all the creeks of Medina County, in Quihi and outside of Quihi, dating back to pre-history as well as during the contact period: all through the Spanish Colonial period, the Mexican period, the Republic of Texas period, and Statehood to the present date because there are Indian remains located in many sink-holes unknown and unrecognized as yet; cemeteries comprised of Indians that date back from the beginning of time. We ask that the Surface Transportation Board disallow the exemption to Vulcan Industries and to all of their associates. We do not need this mine for quarrying gravel in Medina County. It is too sensitive a zone. It is located directly over an earthquake zone. It is located directly over the Edwards Aquifer Underground Recharge Zone. If extensive studies had been done, Vulcan Industries could not have picked a worse location for a place to blast mountains into gravel than what was done in selecting Quihi and Quihi Creek as a site for their work in mining the gravels of the karst region of South Central Texas. We ask that the Commission contact the Tap-Pilam Coahuiltecan Nation and make us interested parties and consultation parties to all of these efforts so that we can all come to a common agreement that we will not be left out when and if Indian burial remains or ancient burial mounds are located. They will at times be identifiable by deer antlers and arrow points because part of the funerary rituals of the Payayas and the Coahuiltecos was to build funeral pyres, put the deceased Indian on the pyre, and add three arrows and the head of a deer before

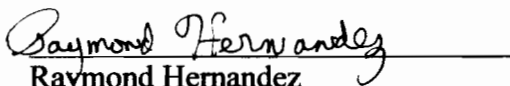
January 27, 2007 - Page 10 of 10

Victoria Rutson, Chief

Office of Economics, Environment Analysis and Administration, STB

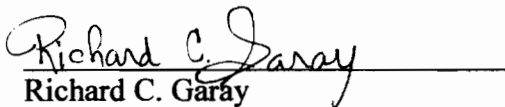
setting fire to it. It is most likely that artifacts and funerary objects of this type will be found which point directly to our ancestors. Please help us preserve our history, our ancestors, our Indian burials, and our sacred grounds in the Quihi area, Medina County, Texas.

Respectfully yours,



Raymond Hernandez

Tribal Councilman and Cultural Preservationist of the Tap-Pilam Coahuiltecan Nation



Richard C. Garay

Research and Investigative Team Director for the Tap-Pilam Coahuiltecan Nation

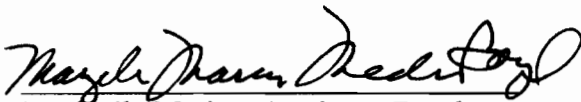
Bruce A. De La Cruz

Linguistic Specialist and Research and Investigative Team Consultant



Jesus Reyes

Research and Investigative Team Consultant



Marizella Mariana Medrano-Boyd

Research and Investigative Team Editor and Typist

CC: Dr. Robert T Fitzgerald
Alyne Fitzgerald
202 CR #450
Hondo, Texas 78661
Fax: (830) 426-2060

CC: Director
Texas Historical Commission
Austin, Texas

Table of Contents
Finance Docket No. 34284
Blue Folder

Part One

1. **Vernon's Texas Rules Annotated...Rules of Evidence...Vol. 7 West Law Article II Judicial Notice...Rule 201**..... 2 pages
2. **Draft Environmental Impact Statement. Finance Docket No. 34284 Vol. III – Appendices G-I** by: Surface Transportation Board (STB) November 05, 2004, see attached letter from Mr. Raymond Hernandez, **Tap-Pilam Tribal Council** to the STB dated February 4, 2004..... 2 pages
3. **“Reassessing Cultural Extinction: Change and Survival at Mission San Juan Capistrano, Texas.”** Edited by Alston V. Thoms, 2001, a joint publication by: Center for Ecological Archaeology, Texas A & M University Reports of Investigation no. 4 and the National Park Service in San Antonio, Texas... 20 pages
4. May 9, 1995, from **“Florida Tribe of Eastern Creek Indians”** to Mr. Raymond Hernandez, Tribal Council for American Indians in Spanish Colonial Missions (AIT-SCM), part of **Tap Pilam Coahuiltecan Nation**, Transmittal of Native American Remains to Texas..... 2 pages
5. **“Reassessing Cultural Extinction: Change and Survival at Mission San Juan Capistrano, Texas.”** Edited by Alston V. Thoms, etc, with photos of the reinternment of 92 Coahuiltecan Mission Indians at the Spanish Mission of San Juan Capistrano. Includes pp. 40-43 plus title page..... 5 pages
6. A.D., 1870 map of **Quihi, Texas**, shows Indian cemetery together with pictures of R. Schorobiny and Michael Schorobiny who gifted the land on which the Indians are interred..... 4 pages

Part Two

7. Records from County Clerk, Bexar County, Texas. Taken from **An Informal Catalogue of the Red Numbered Miscellaneous Folders in the Spanish Archives of the Bexar County Courthouse.** Compiled by Mr. Robert Tarin, Jr., 1991..... 11 pages
8. **An Informal Catalogue of the Red Numbered Miscellaneous Folders Located in the Spanish Archives of the Bexar County Courthouse**, by Robert L. Tarin, Jr., 1991, includes papers from The General Land Office, Austin, Texas, ca. February 16, 1983. These are only the introductory papers to a very long and very old lawsuit; dated November 18, 1766, which deals with the lands around Quihi, Texas, then known as Rancho San Lucas..... 9 pages

9. **“The Payaya Indians of Southern Texas”** by: T. N. Campbell, Special Pub., No. 1, Southern Texas Archeological Association, 1975..... 30 pages

Part Three

10. **Hunter-Gatherer Mortuary Practices during the Central Texas Archaic Period** by Leland C Bement, 1994..... 8 pages
11. **Riders Across the Centuries-Horsemen of the Spanish Borderlands** by Jose Cisneros, University of Texas at El Paso, Texas, 1984..... 9 pages
12. Documentary Series no. 7 **“Letters and Memorials of Fray Mariano de Dolores Y Viana 1737-1762.** From Old Spanish Missions Historical Research Library At Our Lady of the Lake University, San Antonio, Texas, 1985..... 4 pages
13. **“Reassessing Cultural Extinction: Change and Survival at Mission San Juan Capistrano, Texas,”** edited by Alston V. Thomas, 2001..... 3 pages

Part Four

14. **Putnam’s Geology**, 3rd edition, Peter W. Birkeland and Edwin E. Larson, New York Oxford University Press, 1978..... 4 pages
15. **The Explorers’ Texas-The Lands and Waters** by Dr. Del Weniger, Ph. D..... 6 pages
16. **Overview of Texas Caves & Karst** by Wm. R. Elliott, Ph. D. (c) Texas Speleological Survey, June 14, 2006..... 5 pages
17. **Cenoté @ <http://www.mysteriousplaces.com/mayan.Cenote.html>**..... 3 pages
18. **Bush Croton (Croton fruticulosus):** Common Spanish Names Encinilla, Hierba Loca..... 1 page

Part Five

19. **Preliminary Studies of the Texas Catholic Historical Society**, Vol. 1, March, 1930, No. III. “The Espinosa-Olivares-Aguirre Expedition of 1709” by Rev. Gabriel Tous, T.O.R. (includes map)..... 9 pages

Part Six

20. **Map of the John McMullen Grant** from Miss Ann Davis, J.D., papers of her Estate in Hondo, Texas..... 1 page
21. **“Route Through Texas Followed by the First Column of the Army, of the Mexican Republic, Commanded by Brigadier Gen. Adrian Woll, Commander of**

The 2nd Div., and made by his Quartermaster, Capt. of Sappers, Col. Jose Maria Carrasco.” Year 1842, August the 24th, Thesis for Degree of Master Of Arts by I. M. Benavides, B.A., U.T. Austin, August, 1952..... 12 pages

22. **“Primeras Exploraciones Y Poblamiento De Texas (1686-1694)”** by Fray Lino Gómez Canedo O.F.M., printed by Publicaciones del Instituto Tecnológico Y de Estudios Superiores de Monterrey Serie: Historia. Monterrey, Nuevo Leon, Mexico, 1968..... 4 pages

Index to the Maps in this Report

1. **Platted on Map of Bexar** ca. 1842 or 1845 on file in the General Land Office, Austin, Texas..... 1 page

2. **Map of former Rancho San Lucas between Bexar and Medina Counties** ca. January 5, 1845, oversized page, GLO map..... 1 page

3. **General Land Office** map entitled **“Pressler Map”** ca. 1858 shows Quihi, Texas, with Woll’s road that ran through Quihi..... 1 page

4. **“The Archaeology and Early History of The Head of the San Antonio River”**
By Karen E Stothert I.W.U., 1989, together with a Spanish map ca. March 24, 1764, shows a map of the Camino del Can’on Road, which went via Quihi..... 2 pages

5. **“A Texas Legacy. The Old San Antonio Road-The Caminos Reales: A Tricentennial History, 1691-1991”** by A.J. McGram, J. W. Clark, Jr., and E. A. Robbins, TEXDOT, January, 1991..... 4 pages

6. **“Coahuila Y Texas en La Epoca Colonial”**by Vito Alessio Robles, showing the limits of the Provincias Internas de Oriente, which included Texas..... 2 pages

7. Map of some of the tribes that lived in Texas during the early Spanish Colonial Era. This map is undated and its source is not found. It shows the terrain of the **Coahuiltecan Tribes**, including the **Payaya Tribe**..... 1 page

8. **“The Zacatecan Missionaries In Texas, 1716-1834.”** Excerpts from the Libros De los Decretos of the Missionary College of Zacatecas 1707-1828. Translated By Fray Benedict Leutenegger, O.F.M., and Fray Marion A. Habig, O.F.M., Texas Historical Survey Committee, Report No. 23 with 2 maps..... 3 pages

9. **Digging Into South Texas Prehistory-A Guide for the Amateur Archaeologist**, By Thomas R. Hester, Ph. D. (c) 1980, with three photos, Figures 5.5, Figure 4.13, Figure 4.14..... 3 pages

10. **“The Supreme Court of the State of Texas”** by Oliver C. Hartley, Vol. V, 1877, McMullen v. Hodge (Texas 1849) pp17-44..... 16 pages

11. **“Supplemental Draft Environmental Impact Statement”** Finance Docket No 34284, Vol. II, Appendices C-F, by: (STB) December 8, 1006, Map Sheet 1, Site Numbers & Survey Area Boundaries, Quihi Vicinity, Medina County, Texas 2 pages

Vernon's
TEXAS RULES
ANNOTATED

RULES OF EVIDENCE
Rules 101 to End
Index

Volume 7

THOMSON
—★—
WEST

Mat #40146601

ARTICLE II. JUDICIAL NOTICE

Law Review and Journal Commentaries

Annual survey of Texas law:

Civil evidence. Linda L. Addison,
49 SMU L.Rev. 755 (1996).

Evidence. Linda Leuchter Addison,
38 Southwestern L.J. (Tex.)
371 (1984).

Judicial notice under Article II of the Texas
Rules of Evidence. Olin Guy Wellborn III, 19
St. Mary's L.J. 1 (1987).

Texas Rules of Evidence: Commentary—Arti-
cle II. Murl A. Larkin, 20 Houston L.Rev. 107
(1983).

Library References

Tex.Prac., Texas Rules of Evidence:
Civil and Criminal, Ch. 2.

Rule 201. Judicial Notice of Adjudicative Facts

(a) **Scope of Rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When Discretionary.** A court may take judicial notice, whether requested or not.

(d) **When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to Be Heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing Jury.** In civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal cases, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Effective March 1, 1998.

Law Review and Journal Commentaries

Affidavits of heirship. J. Howard Hayden, 31
Tex.B.J. 741 (1968).

Annual survey of Texas law: Wills. Charles
O. Galvin, 35 Sw.L.J. 21 (1981).

Authentication under existing laws and pro-
posed federal rules of evidence. 16 Wayne
L.Rev. 195 (1969).

Computer printouts: Admissibility under the
business records exception. 12 South Texas
L.J. 291 (1971).

DRAFT
Environmental Impact Statement

Finance Docket No. 34284

Southwest Gulf Railroad Company
Construction and Operation Exemption
Medina County, Texas

Volume III - Appendices G-I

Prepared by:
Surface Transportation Board



Section of Environmental Analysis
1925 K Street NW
Washington, DC 20423-0001

Information Contacts:
Victoria Rutson, Chief
Rini Ghosh, Attorney-Adviser

Served on Parties and Delivered to US EPA: November 5, 2004
Comment Due Date: January 10, 2005



#EI-596
224



**Tap Pilam
Coahuiltecan Nation**

1426 El Paso
San Antonio, Texas 78207
Ph. 210-227-4940

Certified Letter 7003 1010 0000 2279 1405

2/4/2004

Surface Transportation Board
Chief Section of Environmental
1925 K Street N.W.
Washington, D.C. 20402-0001
Attention: Ms. Victoria Rutson

Tap Pilam
Coahuiltecan
Tribal Council

Ms. Rutson

Tribes

Pa-nam-a Payaya
Raymond Hernandez
coahtexo@hctc.net

This is in regard to Project 34284 S.W. Gulf in Quihi Texas Medina County. It has come to our attention that a Preliminary Cultural Resource Assessment has been prepared by your agency, concerning this site. We believe that your agency along with Advisory Council on Historic Preservation have not properly complied with Federal Law in regards to notifying American Indians with Cultural affiliation. It appears that no attempt was made to contact any of the aboriginal Tribes of Texas. This practice by Federal Agencies is dishonest and a disservice to American Indians and to all Taxpayers.

Pompopa
Mickey Kilian
pakawan@sabx.rr.com

As Coahuiltecan Indians we know that these sites are very likely to be of our Ancestors (Same race & culture of people from which we descend). Many past practices by some archeologist and anthropologist have created much misinformation about existing Coahuiltecan Indian Tribes.

Venados
Teodoso Herrera
venado5@sabx.rr.com

Auteca Pagueame
Ramon Vasquez y
Sanchez
rvasquezysanchez@msn.
com

We respectfully are requesting that we be involve in the Consultation process and that all reports pertaining to this excavation be share with our Community. Information can be mailed to Tap Pilam Tribal Council Raymond Hernandez Cultural Preservationist Rt. 1 Box 76 B-2 Comfort, Texas 78013. Can be reached at Tel. # 830-995-3356 or 210-724-3356.

Pamposa
Stephen Casanova
scasanova@stcloudstate.
edu

Respectfully

Raymond Hernandez
Tap Pilam Tribal Council

Cc Carol Legard
Advisory Council on Historic Preservation
12136 West Bayaud Suite 330
Lakewood, CO 80228

REASSESSING CULTURAL EXTINCTION:



CHANGE AND SURVIVAL AT MISSION SAN JUAN CAPISTRANO, TEXAS

Edited by
Alston V. Thoms



Contributing Authors

Adán Benavides
Patricia A. Clabaugh
Jeffery H. Cohen
Charlotte E. Donald

Jennifer L. Logan
J. Bryan Mason
D. Gentry Steele
Alston V. Thoms

Reports of Investigations No. 4

A Joint Publication of:
Center for Ecological Archaeology
Texas A&M University
and
San Antonio Missions
National Historical Parks, Texas
National Park Service

**REASSESSING CULTURAL EXTINCTION:
CHANGE AND SURVIVAL AT
MISSION SAN JUAN CAPISTRANO, TEXAS**

Edited by Alston V. Thoms, Principal Investigator

Technical Editors:

Dawn A.J. Alexander

Rhonda Brinkmann

Julia M. Gottshall

Jennifer L. Logan

Christopher H. Sasser

Funded by and Submitted to:

National Park Service

San Antonio Missions National Historical Park, Texas

Prepared and Submitted by:

Center for Ecological Archaeology

Texas A&M University, College Station

A Joint Publication by:

Center for Ecological Archaeology, Texas A&M University

Reports of Investigation No. 4

and

San Antonio Missions

National Historical Park, Texas

National Park Service

Contract No. 1443cx760098001

APPENDIX H

SELECTED LETTERS AND DOCUMENTS

- Letter from Curtis Tunnell, State Archaeologist (State Building Commission) to Archbishop Robert E. Lucey, of the San Antonio Archdiocese, concerning an agreement to conduct preliminary archaeological investigations at Mission San Juan Capistrano, dated January 11, 1967313
- Inter-office Correspondence from Father Grahmann to the Archbishop concerning the contract with the Witte Museum relative to discoveries of artifacts at Mission San Juan Capistrano, dated March 25, 1969315
- Letter from Robert J. Mallouf, State Archaeologist at the Texas Historical Commission, to Rev. Balthasar Janacek, Director of the Old Spanish Missions for the San Antonio Archdiocese, regarding the Archdiocese's intent to rebury the human remains recovered during archaeological excavations at Mission San Juan, dated June 25, 1986.....316
- Letter from Curtis Tunnell, Executive Director of the Texas Historical Commission, to members of the San Juan Capistrano Mission Repatriation Committee regarding the Committee's request to obtain human remains and funerary objects recovered during archaeological excavations at the mission, dated August 15, 1994318
- Letter from Robert C. Amdor, Superintendent of the San Antonio Missions National Historic Park, to Raymond Hernandez, of the American Indians in Texas at the Spanish Colonial Missions, regarding human remains and funerary objects recovered from Mission San Juan and stating that the Catholic Church, not SAAN, had legal standing in the matter of reburial issues, dated March 23, 1995320
- Letter from Most Reverend Patrick F. Flores, the Archbishop of the San Antonio Archdiocese, to Raymond Hernández, President of American Indians in Texas-Spanish Colonial Missions, asserting the Church's legal standing as the only group with rights to seek the return of human remains recovered from Mission San Juan, dated May 10, 1995.....322
- Letter from Most Reverend Patrick F. Flores, the Archbishop of the San Antonio Archdiocese, to Reverend Jorge Biastra, parish priest at San Juan Capistrano Mission, asserting that NAGPRA is not applicable to the human remains recovered from Mission San Juan during archaeological excavations, dated June 9, 1995.....324
- Resolution by Wichita and Affiliated Tribes to sponsor the Tap Pilam-Coahuiltecan Nation of San Antonio, Texas in their efforts and activities to protect and preserve their sacred sites, burial grounds and artifacts. Resolution adopted on May 23, 2000, attested by S. D. Williams and approved by G. McAdams325
- HR 787 Enrolled 05/14/2001, authored by Bob Turner, Recognizing the Tap Pilam-Coahuiltecan Nation and its efforts to preserve its cultural and spiritual heritage and traditions327
- SR 1038 Enrolled 05/11/2001, authored by Judy Zaffirini, Commending the Tap Pilam-Coahuiltecan Nation328

(Attachment A)



STATE BUILDING COMMISSION

GOVERNOR JOHN CONNALLY, CHAIRMAN · ATTORNEY GENERAL CRAWFORD C. MARTIN
CHAIRMAN BOARD OF CONTROL CHARLES S. COATES · DIRECTOR H. R. NIEMAN JR., P. E.

409 SAM HOUSTON STATE OFFICE BUILDING
P. O. BOX 12172 AUSTIN, TEXAS 78711 512 GR 5-2941

January 11, 1967

Most Reverend Robert E. Lucey
Archbishop of San Antonio
P. O. Box 13190
San Antonio, Texas 78213

Dear Archbishop:

This letter will enumerate the terms of our verbal agreement on January 10, 1967, concerning the preliminary archeological investigation of Mission San Juan Capistrano.

It is understood that the State Building Commission and the Catholic Church will each provide the sum of \$2,000.00 to conduct an archeological investigation which is expected to add substantially to our knowledge of this important historic site in particular and our Spanish Colonial heritage in general, and in the preservation of valuable architectural data and historical specimens.

The investigation will be under my general supervision with the collaboration of Mardith Schuetz of the Witte Memorial Museum in San Antonio. Utilizing the funds provided, the Witte Memorial Museum will provide the necessary personnel and services to carry out the investigation and maintain a proper accounting of the expenditures. In addition to half the funds and general supervision of the project, the State Building Commission will provide certain field equipment (cameras, surveying instruments, heavy excavation equipment) for use on the project.

It is expected that the archeological project will begin late in January, 1967. As fully as time and funds permit, the following areas will be tested: the rooms north of the chapel, the original church, the floor

(Attachment A)

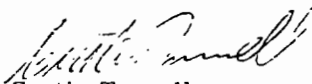
Most Reverend Robert E. Lucey, January 11, 1967
page 2

of the chapel, random locations in the plaza, the mission middens. Excavation, laboratory analysis and report preparation should be completed by August 31, 1967. An illustrated report will present the results of the investigation and fully acknowledge the contribution of all participants in the project.

- * Specimens recovered from the excavation will be properly processed and analyzed. When museum facilities are available at the site, a representative sample of the specimens (including any unique or unusual objects) will be returned to the Mission for inclusion in interpretive exhibits. The remainder of the specimens will remain in an archeological research collection where they will be available to qualified scholars for research purposes.

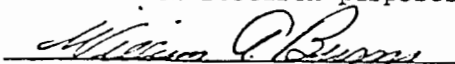
If this agreement meets with your approval, please so indicate by attaching your endorsement to this letter and returning it to my office. After securing the endorsement of the Director of the Witte Memorial Museum, I will return a copy of the completed agreement to you for your files.

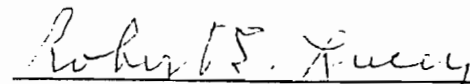
Sincerely,


Curtis Tunnell
State Archeologist

- * The paragraph noted with an asterisk is amended to read as follows:

Specimens recovered from the excavation will remain the property of the Archdiocese of San Antonio. These specimens will be properly processed and analyzed. A representative sample of the specimens and any objects that are unique or unusual in the judgment of the Archbishop or his representative will be returned to the Mission for inclusion in interpretive exhibits when museum facilities are available at the site. The ownership of the remainder of the specimens will be relinquished by the Archdiocese, and these specimens will remain in an archaeological research collection where they will be available to qualified scholars for research purposes.




Most Rev. Robert E. Lucey
Archbishop of San Antonio

CHANCERY BUILDING - SAN ANTONIO
Inter-Office Correspondence

To: The Most Reverend Archbishop Date: March 25, 1969
From: Father Grahmann Re: Contract: Witte Museum

Your Excellency:

Attached is a copy of the contract with the Witte Museum relative to discoveries of artifacts at San Juan Capistrano.

Generally speaking, specimens recovered remain the property of the Archdiocese. A representative sample of these determined by the Archbishop will be displayed at the old mission. Remainder will be turned over to a collection for research purpose.

C. C.

Att.
CG/pa

HARRY A. COLEMAN, HOUSTON
CHAIRMAN
GAY RAYLIF, AUSTIN
VICE-CHAIRMAN
JAMES S. NABORS, SECRETARY
LAKE JACKSON

MRS. LURELLE A. ANDERSON, SAN MARCOS
JOHN M. BENNETT, SAN ANTONIO
DUNCAN E. BOECKMAN, DALLAS
MRS. GEORGE ANN CARTER, FORT WORTH



CURTIS TUNNELL
EXECUTIVE DIRECTOR

GEORGE CHRISTIAN, AUSTIN
RICHARD H. COLLINS, DALLAS
T. A. FEHRENBACH, SAN ANTONIO
MAXINE E. FLOURNOY, AUSTIN
MR. ALBERT G. HILL, DALLAS
DR. ROBERT D. HUNTER, AUSTIN
MRS. H. L. LONG, AUSTIN
W. MERRIMAN MORTON, EL PASO
LOUIS P. TERRAZAS, SAN ANTONIO
EVANGELINE LOESSIN WHORTON,
GALVESTON ISLAND
DR. DAN A. WILLIS, FORT WORTH

TEXAS HISTORICAL COMMISSION

P.O. BOX 12276

AUSTIN, TEXAS 78711

(512) 475-3092

Rev. Balthasar Janacek
Archdiocesan Director
Old Spanish Missions
2610 Perez Street
San Antonio, Texas 78207

June 25, 1986

Dear Reverend Janacek:

I appreciate your informing us of the Archdiocese's intent to rebury human skeletal material from archeological investigations at Mission San Juan during the late 1960's. Since our telephone discussions, I have talked this matter over with several archeologists having familiarity with the projects and the remains, including Mr. Curtis Tunnell and Dr. Thomas R. Hester, and I have reviewed files and published reports concerning the projects at Mission San Juan.

The first season of archeological work at Mission San Juan in 1967 was a cooperative project by the Archdiocese, the Witte Museum, and the State Archeologist. A few burials were removed from beneath the floor of the old church which collapsed in colonial times, and many more burials remain undisturbed in that structure. From the first season's work, certain artifacts (such as silver coins) were returned directly to the Archdiocese. Some other selected items were placed in exhibits at the Mission. The Archbishop relinquished all claim to the remaining collections, including the skeletal remains, and agreed they could be permanently curated as a research collection (please see attachment A). A dissertation resulted from analysis of the skeletal remains, but the researcher stated emphatically that much more could be learned using more modern techniques of analysis (attachment B).

In 1969, the Archdiocese initiated another season of archeological work at Mission San Juan under contract with Dr. Mardith Schuetz. This work was done for the convenience of the Archdiocese in their restoration of the chapel. A large number of burials were removed from beneath the floor of the chapel to facilitate the installation of new air conditioning ducts and a new floor. The Archdiocese did not provide funds for the analysis of the burials and they have never been studied. Again the Archdiocese retained certain interesting artifacts for use in exhibits and relinquished the remainder of the collections, including the skeletal material, to the university for permanent curation as a research collection. The University of Texas at San Antonio, in good faith, has curated these collections at no charge for many years.

The State Agency for Historic Preservation

Rev. Balthasar Janacek June 25, 1986 Page 2

In sum, it was agreed by all parties from the outset of investigations that the skeletal remains would form part of a permanently curated research collection. Although some of the materials have undergone preliminary analysis, much of this scientifically important collection remains unstudied due to a lack of funding. The Archdiocese has now announced that this research collection will shortly be reburied, without consideration of prior agreements and without proper study. We feel that this course of action is unacceptable for the following reasons:

- a. The state has contributed significantly to the acquisition and curation of these collections and should be involved in deciding their disposition.
- b. The skeletal remains from beneath the chapel are well preserved and may represent mission Indians of identifiable ethnic groups, during the traumatic period of their acculturation.
- c. These remains have never been adequately studied and analyzed because of lack of funds. The burials would still be under the chapel today if the Archdiocese had not removed them for their convenience, but they have not funded an analysis of this material.
- d. After a comprehensive analysis of these remains is completed, a group of interested parties including the Archdiocese, U.T.S.A., the State Archeologist, National Park Service, and any direct descendants of the deceased should consider the question of final disposition.

The Center for Archaeological Research is currently contacting qualified physical anthropologists to see if proper analysis can be arranged, although funding is currently lacking.

In light of these stated concerns, we hope that the Archdiocese will reconsider its decision to rebury these remains this summer, and will work with us and other concerned parties to arrive at a satisfactory resolution of this problem.

Please call me at (512) 463-6090 if you would like to discuss this matter further.

Sincerely,


Robert J. Mallouf
State Archeologist

RJM/nh

xc: Mr. Curtis Tunnell
Dr. Thomas R. Hester



TEXAS HISTORICAL COMMISSION
P.O. BOX 12276 AUSTIN, TEXAS 78711 (512)463-6100

August 15, 1994

Mr. Richard C. Garay
Mr. Raymond R. Hernandez
Mr. Joel L. Silva
San Juan Capistrano Mission Repatriation Committee
1130 Mission Road
San Antonio, Texas 78210

Dear Sirs:

Thank you for your letter of August 7, 1994, in which you request assistance and support from the Texas Historical Commission in obtaining human remains and funerary objects excavated in 1967 from the vicinity of the San Juan Capistrano Mission in San Antonio, Texas. It is our understanding that the remains in question are currently being studied and curated by the Department of Anthropology of Texas A&M University. According to your letter, you are requesting, pursuant to provisions of the Native American Graves Protection and Repatriation Act (NAGPRA - Public Law 101-601, 104 Stat. 3048-3058) of November 16, 1990, that Texas A&M University turn over to your organization all human remains and funerary objects recovered from the San Juan Mission area. It is our further understanding that you are filing an official request for repatriation of these remains in your appointed role as representatives of the Coahuiltecan Indians (Los Coahuiltecos).

While our agency fully supports the intent of NAGPRA and we understand and appreciate your concerns relative to the San Juan Mission skeletal remains and associated funerary objects, I am afraid that we are in the difficult position of informing you of problems with your request. While NAGPRA clearly states in Section 7(a)-1 that "...If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (c) of this section, shall expeditiously return such remains and associated funerary objects." Under Section 2(7), Indian Tribe is defined as "...any tribe, band, nation, or other organized group or community of Indians...which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." The Coahuiltecan Indians are not included in the Federal Register (Vol. 53, No. 250, Dec., 1988) listing of 312 "Indian Tribal Entities" eligible to receive funding and services from the Bureau of Indian Affairs. Until such time as your organization can achieve recognized federal standing as an

The State Agency for Historic Preservation

Indian Tribe, you will not be eligible under NAGPRA to carry out repatriation of Native American funerary remains and objects from federally funded institutions and museums. The most recent organization in Texas to receive federal recognition and listing is the Kickapoo Tribe of Texas, which received official federal recognition on July 11, 1989. It was understandably the intent of the authors of NAGPRA to restrict repatriation claims to recognized Native American tribal groups.

In light of this NAGPRA requirement, we would recommend that your group first address the issue of federal recognition through discussions with the National Park Service and the Bureau of Indian Affairs. Once you have achieved the required federal recognition as an Indian Tribe, you can then move to the next step of demonstrating cultural affiliation with the San Juan Mission remains, and ultimately, receive recognition of your organization's right to carry out repatriation claims.

As a state agency, we are required to follow federal law to the letter, and we make every effort to do so. While we understand your concerns relative to the San Juan Mission remains, you must of necessity qualify as an Indian Tribal group before this agency can be of any further assistance.

Thank you for your inquiry, and please contact us should you wish to discuss this matter further.

Sincerely,


Curtis Tunnell
Executive Director



United States Department of the Interior
NATIONAL PARK SERVICE

SAN ANTONIO MISSIONS NATIONAL HISTORICAL PARK

2202 Roosevelt Avenue
San Antonio, Texas 78210
(210) 229-5701

IN REPLY REFER TO:

D6215

March 23, 1995

Mr. Raymond Hernandez
American Indians in Texas
At the Spanish Colonial Missions
1130 Mission Road
San Antonio, Texas 78210

Dear Mr. Hernandez:

Your hand delivered correspondence, dated February 7, 1995, to National Park Service Director Roger Kennedy was passed to us for addressing the specific issue you raised.

American Indians in Texas - At the Spanish Colonial Missions (AIT-SCM) and the National Park Service appear to have a number of common goals. We are both interested in the protection of the past, present, and future of all indigenous Native American people. In fact, a large percentage of our annual budget is allocated to that end.

We are very cognizant of the role indigenous people performed for hundreds of years prior to establishment of the Spanish Colonial Missions. A very pivotal role indeed.

The National Park Service recognizes AIT-SCM status as an interested organization. We support your efforts to protect the remains and funerary objects of American Indians.

We are pleased to work together in furtherance of our mutual goals. Our area of influence is not all encompassing, and is limited, by agreement to portions of the Spanish Colonial Missions in San Antonio. We agree in principle to the suggestion of identifying the camposantos areas and telling the story of the many contributions of the Mission Indians. To a large extent, this has already been accomplished. We feel we know the general locations of all camposantos and routinely tell of the many contributions made by the Mission Indians. This is evidenced by the exhibit panels installed at Mission Concepcion and the numerous educational presentations made by our interpretive staff at all Mission sites. Plans are well underway to further refine the educational material that will be presented at the new Visitor Center at Mission San Jose, which you have been requested to comment on.

The National Park Service fully supports the repatriation of all human remains and funerary objects associated with Native Americans removed from the Missions. It is important to recognize that all known human remains and funerary objects removed from the Spanish Missions was done so prior to the National Park Service assuming any management control. This issue will have to be settled between your organization and the Catholic Church. We have no legal standing in the matter but would be more than happy to offer our assistance.

The National Park Service fully supports your efforts to recognize the Indian nations who lived at the Spanish Missions. That recognition should come in the form of inclusion in all exhibits and wayside panels. It is a very critical part of the story which needs to be told in a tasteful manner.

The sacred burial grounds certainly need to be respected by all visitors to the park. We routinely restrict vehicular access and other activities that may damage in situ artifacts.

The issue of marking and delineating the area of the camposantos at the missions is a delicate issue. Much of the area where these camposanto are located are areas under the control of the Catholic Church, thus the National Park Service has no authority to dictate how these areas will be treated. We are concerned that illegal pot hunting would increase if the camposantos are clearly delineated.

The United States Constitution prohibits the National Park Service from dictating to the church any aspects of religious activities. The separation of church and state decree clearly differentiates the authorities retained by the National Park Service and those retained by the Catholic church. We have no authority to dictate to them which areas are open or closed. The sacred sites maintained and under the administrative control of the National Park Service are always open to all groups for religious activities. We will in no way place burdens on the rights of you or other groups to perform religious activities.

The National Park Service has not been a participant in archeological investigations which resulted in the disturbance of remains of any individuals interred in the camposantos, nor do we plan any archeological investigations in the future that will interfere with these camposantos.

We feel the historical record on the burial areas of the missions is well documented. Our current plans address the Native American presence at the missions and we anxiously await your reply to the previously mentioned review of our Exhibit Plan for the Visitors' Center at Missions San Jose.

We welcome your planned activities to celebrate the Indian Decoration Day in September. Due to the large number of requests that we receive for other groups to use the mission sites, we encourage you to continue the dialog and give your precise

We feel that your correspondence has opened up a dialog that we trust will continue. By working together we can both insure that the common goals of preserving and protecting the very important cultural heritage contained within the San Antonio Missions National Historical Park are met.

Sincerely,


Robert C. Andor
Superintendent



ARCHDIOCESE OF SAN ANTONIO

CHANCERY OFFICE

P.O. BOX 28410
SAN ANTONIO, TEXAS 78228-0410
TELEPHONE (210) 734-2620

May 10, 1995



Mr. Raymond Hernandez
President
American Indians in Texas -
at the Spanish Colonial Missions
1130 Mission Road
San Antonio, Texas 78210

RE: The American Indians in Texas - at the Spanish Colonial
Missions (AIT-SCM)
File No.: 200.1073

Dear Mr. Hernandez:

This letter is in response to yours of March 15th in which you enclosed a draft of a letter that you proposed that I send to you as president of American Indians in Texas - at the Spanish Colonial Missions (AIT-SCM). I have met with the Mission priests to discuss your letter and I can assure you that they and I are supportive of the desire of the descendants of the Mission Indians to recover their heritage in terms of its history, its artifacts and the preservation of the remains of their ancestors.

To give credence to its support, the Archdiocese will make its resources available to those Indians who wish to verify their ancestry. The Archdiocese will provide technical assistance to those who wish to undertake this task, and will certify the authenticity of those whose heritage is verified. Although the process to verify his identity may seem burdensome to one who believes himself to be a descendent of the Mission Indians it is essentially the same process that a Native American must undertake to qualify as a member of one of the tribes recognized by the Federal Government. The certification that may be provided by the Archdiocese should be valuable for an individual or group of individuals who seek further recognition.

As I mentioned, the Archdiocese will be glad to work with the individuals who are interested in verifying their ancestry and establishing themselves as descendants of the Mission Indians. Should a sizable group be certified it would perhaps become expedient for them to put forth a representative to act on their behalf with the Archdiocese. In the meantime, however, the Archdiocese will deal with them on an individual basis.

You have proposed that I authorize the use of the Missions, the Mission Churches and the camposantos by all Native Americans. If by the "Missions" you mean more than the portions reserved for religious services, generally only the Mission Churches, you must consult the National Park Service. As for the Mission Churches and the camposantos, you should consult the priest at the Missions. Since they have voiced their support of the cause of Native Americans generally, I am sure

you will have their full cooperation so long as the proposed use is not inconsistent with Catholic doctrine and liturgy, and does not conflict with their regular services. Although the camposantos are owned by the Archdiocese they are strictly controlled by State law and the Archdiocese can not delegate their control. Subject to that consideration, I am sure that you will find the parish priests also cooperative with respect to whatever services you wish to perform in the camposantos.

The Archdiocese will not surrender any rights or responsibilities it may have with respect to the remains of those who were originally interred in consecrated ground. Legally, only the Archdiocese has standing to seek the return of the remains from San Juan Capistrano and it will continue to seek their return. When recovered, they will be reinterred in consecrated ground. The remains at San Juan Capistrano were exhumed to enable the restoration and preservation of the Mission. Some of the remains had been disturbed and were badly scattered, and some dated from the post mission period.

The remains at Alamo Plaza were exhumed to allow the construction of a United States Post Office and courts building on land the Archdiocese did not own. Many of the exhumed remains have been returned and reinterred. The funerary objects and other artifacts are architectural treasures to be shared for scientific and educational purposes. A representative number of these artifacts will be returned to the Missions when appropriate facilities for their display are available. In this comment is the suggestion of a future project for AIT-SCM.

Although for the reasons stated I am unable to subscribe to the letter which you drafted and propose that I send to you, I hope that in this letter you will recognize that a spirit of cooperation truly exists between the Archdiocese and the descendants of the Mission Indians. The Archdiocese will continue to assist them in reaching their goals as the limits of its own responsibilities will permit.

I solicit your further comments and suggestions at any time.

With every best wish, I remain

Sincerely yours in Christ,



Most Reverend Patrick F. Flores, D.D.
Archbishop of San Antonio

PFF/mgs

xc: Mr. Samuel A. Kirkpatrick
President
University of Texas at San Antonio
6900 North Loop 1604 West
San Antonio, Texas 78249

Mr. Raymond Baird
Director of Behavioral and Cultural
Sciences
University of Texas at San Antonio
2900 North Loop 1604 West
San Antonio, Texas 78249



ARCHDIOCESE OF SAN ANTONIO

CHANCERY OFFICE

P.O. BOX 28410
SAN ANTONIO, TEXAS 78228-0410
TELEPHONE (210) 734-2620



June 9, 1995

Reverend Jorge Baistra
San Juan Capistrano Mission
9101 Graf Road
San Antonio, Texas 78214

COPY

RE: American Indians in Texas - at the Spanish Colonial Missions

Dear Father Baistra:

I recently received in the mail three petitions apparently executed by a total of twenty-four (24) individuals. I am enclosing a copy of one of the petitions for your information. The three are identical except for the signatures.

As you can see, the petitioners request that all human remains and associated cultural objects previously removed from San Juan Capistrano be returned there and be reinterred. In my letter of May 2nd to Mr. Hernandez of AIT-SCM, I said only the Archdiocese has standing to seek the return of the remains from San Juan Capistrano and it will continue to seek their return. That is a plain statement and I do not believe anything more needs to be said about the return of the human remains. As for the associated cultural objects, I said that some of them will be shared for scientific and educational purposes and a representative number would be returned to the Missions when appropriate facilities for their display are available. This letter will require funding which is not presently in hand. Interested parties such as the AIT-SCM might wish to assist in this regard.

For those who are concerned with this matter, Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), P.L. 101-601, 104 Stat. 3048, 25 USCS Section 3001 et seq., is not applicable to San Juan Capistrano Mission, the remains and cultural items associated therewith that were removed from San Juan Capistrano or from any of the other Spanish Colonial Missions in the Archdiocese.

I am sending this letter to you because I believe you may be in a position to disseminate this information among at least some of the petitioners, whose addresses are not known to me. I am also sending a copy to Mr. Hernandez.

With every best wish, I remain

Patrick F. Flores
Sincerely in Christ,

Most Reverend Patrick F. Flores, D.D.
Archbishop of San Antonio
PFF/mgs

xc: Raymond Hernandez
Samuel A. Kirkpatrick
Raymond Baird

Wichita and Affiliated Tribes

P.O. Box 728

Anadarko, Oklahoma 73005

Telephone (405) 247-2425

Fax (405) 247-2430

WT-00-30

RESOLUTION

WHEREAS, the Wichita and Affiliated Tribes (Keechi, Tawakoni, Waco) possess substantial inherent sovereign powers and has exercised those powers since time immemorial, and

WHEREAS, the Wichita and Affiliated Tribes (Keechi, Tawakoni, Waco) has a duly established Tribal Government recognized by the Secretary of the Interior, and

WHEREAS, the Executive Committee of the Wichita and Affiliated Tribes has been empowered to act in all matters of business on behalf of the Tribe, and

WHEREAS, the Tribe has received a request from the Tap Pilam-Coahuiltecan Nation to sponsor their participation in the management of cultural and natural resources within and by Fort Sam Houston, and

WHEREAS, the Wichita and Affiliated Tribes fully support our traditional Tribal Neighbors the Tap Pilam-Coahuiltecan Nation of San Antonio, Texas, in their efforts and activities to protect and preserve their sacred sites, burial grounds and artifacts.

BE IT RESOLVED, that the Wichita and Affiliated Tribes hereby sponsor the Participation of the Tap Pilam-Coahuiltecan Nation in all official and appropriate matters involving their traditional homeland to include properties owned and controlled by the U.S. Government.

BE IT FURTHER RESOLVED, that the Wichita and Affiliated Tribes recognizes the authority Mr. Teodoso (Ted) Herrera and Mr. Raymond (Ray) Hernandez to represent and vote for the Coahuiltecan Nation on all official and appropriate matters when dealing with the U.S. government on traditional homeland issues, such as repatriation of Sacred sites, uncovered remains, funerary objects and Indigenous artifacts.

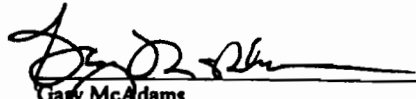
CERTIFICATION

The foregoing resolution was adopted by the Executive Committee of the Wichita and Affiliated Tribes of Oklahoma on, May 23, 2000, in Anadarko, Oklahoma, by a vote of 5 for, 0 against and 0 abstentions, a quorum being present.

ATTEST:

APPROVED:


Stratford D. Williams
Secretary


Gary McAdams
President

R E S O L U T I O N

1-1 WHEREAS, Although the United States government acknowledged
1-2 receipt of the Tap Pilam-Coahuiltecan Nation's petition for federal
1-3 recognition in 1997, the tribe is currently unrecognized by the
1-4 State of Texas or by the United States; and
1-5 WHEREAS, There are now more than 550 federally recognized
1-6 tribes in the United States; this unique designation conveys a
1-7 legal relationship between these tribes or groups and the U.S.
1-8 government; and
1-9 WHEREAS, The Coahuiltecan tribe's distinguished history in
1-10 the Lone Star State merits strong consideration for official
1-11 acknowledgment from the State of Texas and the United States; and
1-12 WHEREAS, In the late 1600s Spanish explorers first
1-13 encountered the Coahuiltecan tribe, whose name is derived from the
1-14 state of Coahuila in Mexico; the tribe members had seasonal
1-15 attachments to their campgrounds and relied on their hunting and
1-16 gathering acumen and skills to survive; and
1-17 WHEREAS, To increase the number of Spanish citizens on the
1-18 frontier, various Native American groups were converted to
1-19 Christianity, and five missions were established between 1718 and
1-20 1731 in San Antonio, including the San Antonio de Valero, San Jose,
1-21 Concepcion de Acuna, San Juan Capistrano, and San Francisco de la
1-22 Espada; moreover, the Coahuiltecan language was translated into
1-23 Spanish to make the conversion process easier; and
1-24 WHEREAS, Members of the Coahuiltecan tribe and other Native
2-1 American groups performed important duties at the missions, such as
2-2 constructing dams and irrigation canals, working in the fields and
2-3 as the first cowboys, and helping to build what became communities
2-4 in present-day Texas and northeastern Mexico; and
2-5 WHEREAS, While many Native American tribes eventually became
2-6 displaced and assimilated in the 18th and 19th centuries, the
2-7 Coahuiltecan tribe's proud rituals and traditions have endured, and
2-8 aspects of its daily life are the same as those in use at the time
2-9 of its first contact with Europeans; and
2-10 WHEREAS, Descendants of this intrepid tribe celebrate
2-11 time-honored occasions, such as Indian Decoration Day, and also use
2-12 ceremonial music and dress as ways of upholding tribal customs; in
2-13 addition, renewed efforts to ascertain more knowledge about their
2-14 ancestry are ongoing; and
2-15 WHEREAS, Throughout the years, the Coahuiltecan have played
2-16 an integral role in Texas' development, and the Native American
2-17 tribes who were the first Texans have greatly enriched our shared
2-18 heritage with their culture; and
2-19 WHEREAS, Given the tribe's justifiable pride in its distinct
2-20 history and culture, the Texas House of Representatives finds that
2-21 it is indeed appropriate to bestow such recognition as will
2-22 encourage the preservation of the Tap Pilam-Coahuiltecan's unique
2-23 cultural heritage and to support those activities consistent with
2-24 the state's interest in preserving all of Texas' diverse cultural
2-25 and natural resources for future generations; now, therefore, be it
2-26 RESOLVED, That the House of Representatives of the 77th Texas
2-27 Legislature hereby recognize the Tap Pilam-Coahuiltecan Nation for
3-1 its immeasurable contributions as an indigenous people of Texas and
3-2 commend the tribe's efforts to preserve its cultural and spiritual
3-3 heritage and traditions.

Turner of Coleman

Speaker of the House

I certify that H.R. No. 787 was adopted by the House on May 10, 2001, by a non-record vote.

Chief Clerk of the House

TEXAS LEGISLATURE ONLINE

Site Map

[Home](#) ★ [Legislation](#) ★ [House](#) ★ [Senate](#) ★ [Information](#) ★ [Resources](#) ★ [Agencies](#)



Bill History

[Bill History](#) - [Text](#) - [Actions](#) - [Captions](#) - [Authors](#) - [Next Bill](#)

Bill: HR 787

Legislative Session: 77(R)

Council Document: 77R 11685

05/14/2001 H Reported enrolled 07:50AM

Recognizing the Tap Pilam-Coahuiltecan Nation and its efforts to preserve its cultural and spiritual heritage and traditions.

Author: Turner, Bob

Subjects: I0705 Resolutions--Congratulatory & Honorary
N0046 TAP PILAM-COAHUILTECAN NATION

House Committee: [Rules & Resolutions](#)

Status: Out

Vote: AYES= NAYS= PNV= ABSENT=

Bill Subcommittee:

[Home](#) | [Legislation](#) | [House](#) | [Senate](#) | [Information](#) | [Resources](#) | [Agencies](#) | [Top](#)

Texas Legislature Online
Created: 22 May 2001 - 03:42PM

SENATE RESOLUTION NO. 1038

WHEREAS, The Senate of the State of Texas takes pride in recognizing the Tap Pilam-Coahuiltecan Nation for its distinguished history in the Lone Star State and its contributions to our country; and

WHEREAS, The Coahuiltecan tribe was encountered by the Spanish explorers in North America in the late 1600s, when tribe members had seasonal attachments to their campgrounds and relied on their hunting and gathering skills to survive; and

WHEREAS, During the early 1700s, a number of Native American groups were converted to Christianity, and members of the Coahuiltecan tribe and other groups performed important duties at the missions, such as constructing dams and irrigation canals, working in the fields and as cowboys, and helping to build communities; and

WHEREAS, Unlike the traditions of many Native American tribes, the proud rituals and traditions of the Coahuiltecan have endured, and many aspects of the tribe's early life remain the same today; time-honored occasions, such as Indian Decoration Day, are still celebrated, and ceremonial music and dress are still in use; and

WHEREAS, The Coahuiltecan have played an important role in Texas history, and they have enriched our culture by preserving and sharing their heritage and customs; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend the Tap Pilam-Coahuiltecan for their exemplary preservation of their heritage and their many contributions to the culture of our state and nation; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the Tap Pilam-Coahuiltecan Nation as an expression of esteem from the Texas Senate.

Zaffirini

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 11, 2001.

Secretary of the Senate

Member, Texas Senate

TEXAS LEGISLATURE ONLINE

Site Map

[Home](#) ★ [Legislation](#) ★ [House](#) ★ [Senate](#) ★ [Information](#) ★ [Resources](#) ★ [Agencies](#)



Bill History

[Bill History](#) - [Text](#) - [Actions](#) - [Captions](#) - [Authors](#) - [Next Bill](#)

Bill: SR 1038

Legislative Session: 77(R)

05/11/2001 S Reported enrolled

Commending the Tap Pilam-Coahuiltecan Nation.

Author: Zaffirini

Subjects: I0705 Resolutions—Congratulatory & Honorary
N0046 TAP PILAM-COAHUILTECAN NATION

[Home](#) | [Legislation](#) | [House](#) | [Senate](#) | [Information](#) | [Resources](#) | [Agencies](#) | [Top](#)

Texas Legislature Online
Created 22 May 2001 - 03:53PM



Florida Tribe of Eastern Creek Indians

P.O. BOX 3028

Bruce, Florida 32455

(904) 835-2078

09 May 1995

FOR: Mr Raymond R Hernandez, Chairman
American Indians in Texas - at The Spanish Colonial Missions
1130 Mission Rd
San Antonio, Texas 78210

FROM: FLORIDA TRIBE OF EASTERN CREEK INDIANS
PO BOX 3028
BRUCE, FL 32455

SUBJECT: TRANSMITTAL of NATIVE AMERICAN REMAINS

In accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and based upon the evidence of cultural affiliation provided to the Florida Tribe of Eastern Creek Indians, these remains recovered from the "Museum of Sea and Indian" at Destin, Fl by Don Sharon of The Florida Tribe of Eastern Creek Indians on March 22, 1995 are placed in the possession of The American Indians in Texas - At the Spanish Colonial Missions. Please address any questions to The Florida Tribe of Eastern Creek Indians, at the above address or by phone at (904) 835-2078.

John C B Thomas; Chairman
Florida Tribe of Eastern Creek Indians

1st Ind, American Indians in Texas - At The Spanish Colonial Missions "COAHUILTECAN NATION".

To: The Florida Tribe of Eastern Creek Indians

I acknowledge receipt of the above remains.

Raymond R Hernandez, Chairman
American Indians in Texas - At The Spanish Colonial Missions

3/27/1995 Notes on Indian remains recovered from the Museum of Sea and Indian at Destin, Fl on 3/22/1995 by Don W Sharon of the Florida Tribe of Eastern Creek Indians.

On 3/15/ 1995 Mr Brown owner of the "Museum of Sea and Indian" Destin, Fl called Don Sharon to see if the Florida Tribe of Eastern Creek Indians could rebury two Indian Skeletons he was removing from public display. Subsequently Don Sharon picked up three skeletons on 3/22/1995. An other skeleton was also removed in Don Sharon's presence. All three Remains were supposed to be local Florida Indians. Later examination of the Remains revealed that two of the Individuals were not Florida Indians.

The remains were turned over to the Walton County Sheriff's Dept. Dr Bill Maples; Director of the C. A. Pound Human Identification Laboratory was called to examine the Skeletons. He said that two of the three American Indian Individuals came from the American SW and one was probably from Florida as the museum label stated. Further investigation by Don Sharon revealed that the Southwestern Indian Remains were excavated by David C Reichelt from a cave on the Pecos River in SW Texas and were circa AD 1200. Male 25 to 30 years old, Child 6 to 12 years old.

Horsetooth with one: appears to have tobacco leaf wrapped around root of tooth.

REASSESSING CULTURAL EXTINCTION:



CHANGE AND SURVIVAL AT MISSION SAN JUAN CAPISTRANO, TEXAS

Edited by
Alston V. Thoms



Contributing Authors

Adán Benavides
Patricia A. Clabaugh
Jeffery H. Cohen
Charlotte E. Donald

Jennifer L. Logan
J. Bryan Mason
D. Gentry Steele
Alston V. Thoms

Reports of Investigations No. 4

A Joint Publication of:
Center for Ecological Archaeology
Texas A&M University
and
San Antonio Missions
National Historical Parks, Texas
National Park Service

representation of the Archdiocese of San Antonio on matters of the "Old Spanish Missions" in its dealings with the City of San Antonio, the State of Texas, and the National Park Service. Janacek attested:

Every time I can, I try to reiterate that the missions represent not only the Hispanic presence in the area but the Hispanic and indigenous presence, because the Native Americans were the ones who really built those missions, whose intelligence was put in visible form at these places. They must have been amazing people to have learned as much as they did and to have learned it so quickly. And their work has continued to be with us as a tribute to them.

As far as the future is concerned, the challenge for us is going to be how to integrate the idea of the participation of the Native American in these Old Spanish Missions. In reality, we have worked ourselves into a linguistic trap by the name commonly applied to them. We thought that was a clever way of integrating the missions into the community, but one heritage has tended to obscure the other in that name [Torres 1997:187].

Father Balty continued to be involved at Mission San Juan while Native American groups, including AIT-SCM and the newly formed Pamaque Band of San Juan Mission Indians, maintained pressure to rebury all of the human remains removed during excavations in 1967 and 1971. He and Hernández, a co-founder of the AIT-SCM group, played key roles in working out a 1999 agreement to rebury the remains. Representatives of the National Park Service, the Archdiocese of San Antonio, the Texas Historical Commission, and the University of Texas at San Antonio reached the agreement (Barrios 1999a; Rosalind Rock, personal communication 1999).

Formal reburial ceremonies were held on Saturday, November 29, 1999, when the

remains of more than 100 individuals were re-interred in the floor of the unfinished church where many of the individuals were first buried more than 200 years earlier (Barrios 1999a, 1999b; Thoms 2000). Two Native American church services were held the night before the reburial to help prepare the Indian contingents for the morning ceremonies (Figure 5; also see cover photos). Saturday morning, Archbishop Patrick Flores performed a funeral mass with assistance from Father Balty (Figure 6). In his homily, Archbishop Flores noted that it had been a mistake for the church to grant permission for the exhumation and protracted study of the remains of its parishioners (Figure 7). He also acknowledged and thanked the Indian descendants for their role in maintaining the pressure for reburial (as principal investigator of the present project, I was among the 100 or so people who attended the ceremonies). Hernández led the Native American reburial ceremony on behalf of AIT-SCM and the Coahuiltecan Nation. In a newspaper article entitled "Indian Remains' Reburial Today," Hernández said, "We're trying basically to honor the past with respect and dignity...The first time they were being buried as Catholics. This time they're being buried as Coahuiltecan" (Barrios 1999b). The Sunday newspaper included a photograph of the funeral mass, entitled "Laid to Rest Again," with the following caption:

Archbishop Patrick Flores gives communion to members of the Coahuiltecan Nation during reburial ceremonies at Mission San Juan Capistrano. The remains of more than 100 American Indians and Mexican Americans that were removed from the site in 1967 and 1968 were reburied there Saturday. The reburial service included Indian and Catholic ceremonies (San Antonio Express-News [SAEN] 1999).



Figure 5. Photograph of teepee in the mission square where a Native American Church service was held Friday night (November 26, 1999) before the Saturday morning reburial ceremonies (photograph by Alston V. Thoms).



Figure 6. Photograph of parishioners and community members, including representatives of the AIT-SCM (foreground), attending the Saturday morning (November 27, 1999) funeral mass held prior to the Native American reburial ceremony led by Raymond Hernandez (photograph by Alston V. Thoms).



Figure 7. Photograph of Archbishop Patrick Flores delivering the homily at the funeral mass that preceded the Native American reburial ceremony on Saturday morning, November 27, 1999; also depicted are Father James Galvin (leaning forward, center foreground), San Juan's parish priest; and Monsignor Bathasar Janacek (seated to the right), the parish liaison between state/federal agencies and Indian groups on matters of old Spanish missions (photograph by Alston V. Thoms).

SUMMARY AND CONCLUDING COMMENTS

A key component of the historical context for Mission San Juan is that the earliest Indian residents and their progenitors—native inhabitants of south Texas and northeastern Mexico known today as Coahuiltecans—had been interacting regularly with the Spanish for more than 100 years. Apocalyptic depopulation from diseases, slave raiding, and warfare had resulted in significant social reorganization. Entirely new groups formed of survivors from what in pre-contact times were probably linguistically and perhaps

ethnically distinctive hunter-gatherer bands (cf. Ewers 1973). It seems likely that non-Indian genes—mostly Spanish and African—would have been incorporated into the aboriginal population as well (cf. Chapa 1997).

During the early part of the eighteenth century, a diversity of Native Americans came to reside at Mission San Juan Capistrano and four other Spanish missions located nearby along the San Antonio River. A few of San Antonio's mission Indians were from agricultural tribes whose home territories were originally as far as way as central Mexico (e.g., Tlaxcalan, a Nahuatl group) and east Texas (e.g., Tejas, a

Caddoan group). Others who came there, including Apaches, Tonkawas, and Comanches, represented hunter-gatherer groups whose homelands were north and west of San Antonio (Campbell and Campbell 1996). The majority, however, represented linguistically diverse hunting and gathering groups, known collectively today as Coahuiltecan; their homelands were in south Texas, including the coastal areas, and in northeast Mexico (Hester 1980, 1998; Rock 1999; Schuetz 1969, 1980a).

Ethnic complexity at the San Antonio missions mirrors their placement on the regional landscape at an intersection, or ecotonal setting, of several distinctive and expansive ecological zones. Mission San Juan and the other missions lie within the southernmost part of the Blackland Prairie ecological zone, but there are three other zones within a few miles of the missions (Frye et al. 1984). To the west is the Edwards Plateau or Hill Country of central Texas; to the east is the more wooded Post Oak Savannah; to the south, just across the San Antonio River, is the brush country of the South Texas Plains. Ethnic diversity was also enhanced by proximity to the Caminos Reales, a major travel corridor that linked more settled territory of northeast Mexico with the outer edge of the Spanish frontier in east Texas. Undoubtedly Indian people traveling within and between these same areas had used this corridor for many millennia (McGraw et al. 1991; Thoms 1993).

By the time Mission San Juan was established in 1731, Presidio San Antonio de Béxar was already a dozen years old and was being maintained by Spaniards, *criollos* (American-born Spaniards), *ladinos* (Christianized, Spanish-speaking Indians), *mulattos*, and *mestizos* (De la Teja 1995). Cultural and biological diversity increased with Spanish colonization, beginning with

the arrival in March 1731 of Spaniards from the Canary Islands. Initial secularization of the missions during the waning period of Spanish rule in the mid-1790s and final secularization in 1824 under Mexican rule were accompanied by new sets of landowners and inhabitants of the mission communities. From the 1820s through the 1870s, full-scale colonization and settlement, under the auspices of Mexican, Texan, and American governments, brought a variety of European and African-American immigrants to the mission area and the region as a whole (Rock 1999).

The historical literature clearly indicates that the San Antonio area has been ethnically diverse for centuries, and that pattern continues to the present day. Assuming that biological and cultural mixing has been more or less continuous in this region, and probably at a more rapid pace than it was in coastal or inland regions, we might well expect considerable cultural change as well. In any case, a “snapshot” of the local culture at one period in time might not be all that similar to an earlier or later snapshot taken in the same area. Nonetheless, there must have been a substantial measure of continuity, embedded in cycles of acculturation and assimilation that linked contact-period native peoples of south Texas and northeast Mexico from the coast to the rugged interior country to their present-day descendants. In various ways and for varying reasons Spanish officials, linguists, anthropologists, historians, archaeologists, the public, the media, and the descendants themselves came to refer to these diverse native peoples as Coahuiltecan.

From historical and cultural evolution perspectives, Coahuiltecan arguably epitomize the concept of cultural survival. As Old World immigrants came to control this vast area, the aboriginal Coahuiltecan

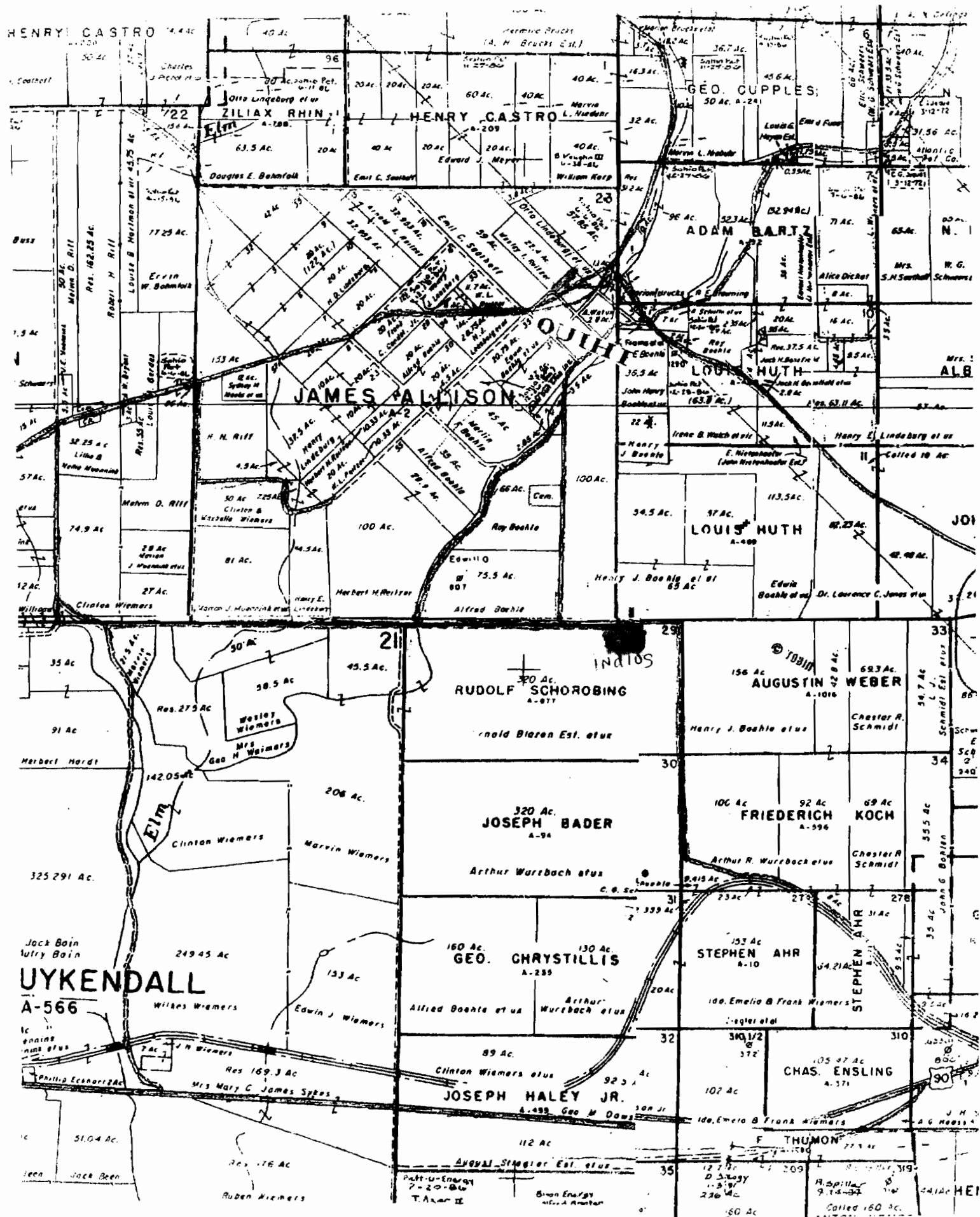


Photo 11 of 1 - 11

EXHIBIT 7

These 2 pages.



EXHIBIT D



(Copy of Stat Measure).

Cemetery
255' x 255'

M. Schorobiny

Warranty Deed from M. Schorobiny, a single man, to O. A. Grell, Emil Boehle, and H. L. Schuehle, Trustees and Managers of the Quihi Public Cemetery Ass'n., and their successors, etc. For \$20.00...out of Survey No. 29, R. Schorobiny, original grantee...8,464 square varas - or 1 $\frac{1}{4}$ acres of land...on and along the S. side of the Dunlay and Quihi Road: Beginning at a rock set in the center of the Dunlay and Quihi Road for the S.E. corner of Survey No. 23 James Allison; Thence S. 7 vrs....^{20 ft} set under the fence for the N. line of this New Cemetery; Thence E. with said fence line 61 vrs.;^{169 ft} Thence S. 92 vrs.;^{255 ft} Thence W. 92 vrs.,^{255 ft} for this S.W. corner; Thence N. 92 vrs.;^{255 ft} Thence E. with fence and along said road 31 vrs.^{86 ft} to the place of beginning. "This cemetery frontage being 92 vrs. E. and W. along the S. side of the Dunlay and Quihi Road as surveyed by H. V. Haass on May 4, 1914...to be used as a public cemetery for all persons without regard to color or religion or politics, and in lieu and replacing Lots Nos. 334-335-336 and 337, in Quihi, heretofore donated by J. C. McKean to the Trustees of Quihi, as per deed recorded in Book A No. 8, p. 53, Medina County Deed Records, and which were today by petition donated to the Lutheran Church at Quihi by the Order of the Commissioners' Court on May 8th., A.D. 1916." The deed is dated May 8, 1916, recorded in Vol. 52, P. 365, Medina County Deed Records, and it is signed by M. Schorobiny.

Gerry Rickhoff

COUNTY CLERK

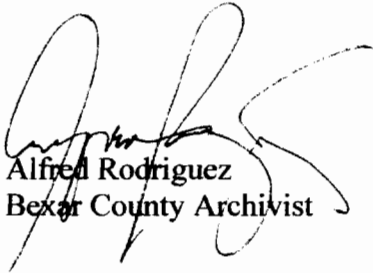


BEXAR COUNTY

BEXAR COUNTY COURT HOUSE
SAN ANTONIO, TEXAS 78205

January 11, 2007

The attached information is taken from *An Informal Catalogue of the Red Numbered Miscellaneous Folders Located in the Spanish Archives of the Bexar County Courthouse* Compiled by Robert L. Tarin, Jr., 1991.



Alfred Rodriguez
Bexar County Archivist

INDEX
LAND GRANTS AND SELLS

<u>LGS.</u> <u>NO.</u>	<u>GRANTEE (S)</u>	<u>GRANTOR (S)</u>	<u>DATES</u>
		G.	
302.LGS.	LEON GRIEGO,	SPANISH GOVERNMENT,	July 18, 1819.
303.LGS.	FRANCISCO GARCIA,	SPANISH GOVERNMENT,	Nov. 3, 1819.
304.LGS.	JOSE ANTONIO DE LA GARZA,	SPANISH GOVERNMENT,	Nov. 24, 1819.
305.LGS.	VICENTE GOTARI,	MANUEL LOSOYA,	June 9, 1820.
306.LGS.	JOSE ANTONIO DE LA GARZA,	MEXICAN GOVERNMENT,	Oct. 27, 1823.
307.LGS.	JOSEFA DE LA GARZA,	MARIA ANTONIA HERNANDEZ,	Dec. 10, 1824.
308.LGS.	JOSE GAMEZ,	MEXICAN GOVERNMENT,	Feb. 22, 1826.
309.LGS.	JOSE ANTONIO DE LA GARZA, MANUEL UTURRI CASTILLO, (plus letter of L. Hawhins to Manuelyturri Castillo, dated Nov. 4, 1827.)		May 7, 1830.
310.LGS.	JOSE ANTONIO DE LA GARZA,	FRANCISCO PERES,	May 2, 1831.
311.LGS.	REFUGIO DE LA GARZA,	ANTONIO GARCIA & HEIRS,	Jan. 16, 1833.
312.LGS.	MIGUEL GOTARI,	PEDRO DEL TORO, ALEXANDRO GOTARRI, CONCEPCION CHARLE,	July 20, 1835.
313.LGS.	PETER W. GRAYSON,	JOSE DE LA GARZA,	Feb. 13, 1836.
314.LGS.	TOMAS F. GREEN,	MANUEL MONJARAS,	Sept. 28, 1836.

SALE OF 11 SITIOS OF LAND BY ANTONIO GARCIA AND MATRONS

TO REFUGIO DE LA GARZA

1833

THIRD SEAL

FOR THE FISCALITY OF

TWO REALES

1832 and 1833

In the City of San Fernando de Bexar, January 16, 1833; before me, Manuel Ximenes, First Alderman of the Illustrious Cabildo of the said City, acting Alcalde in the absence of the incumbent, personally appeared Antonio Garcia in his behalf and in the name of Eusevio Anzures, Luis Romero, Jose Maria Garcia, Juan de La Cruz, Cecilia Numes and Apolinario Ramirez natives of the secularized Mission of San Jose and Declared:

That as sole heirs to the 11 sitios of land granted to their ancestors by the Spanish government, he sells at public sale, now and forever the priest, Refugio de la Garza of this said City the said 11 sitios of land with the following boundaries:

The survey was begun at the place known as the Loma del Padron which is identified by a plateau covered with brush and thorny undergrowth;

From this plateau running the line from North to South to the Ford of Alamo Creek, monuments were placed at the edge of the road which leads to the Presidio de Rio Grande:

Then continuing on the said road toward the West leading to the Patahuia Creek a monument was placed and returning toward the North to the road which leads out of the canyon to Loma Alta a stone monument was placed a short distance from the line of Baltasar Perez, an adjacent land owner and from there toward the East to the said Loma de Padron where a rock monument was placed.

The said land was surveyed in accordance with the boundaries described in the original grant which is filed in the archives of this city and to which the grantors refer.

Antonio Garcia conveys these 11 sitios of land for the price and sum of 330 pesos, which he has received for himself and the remaining heirs, to his and their entire satisfaction. He sells this land with all its uses, customs, easements, rights of ingress and egress to the said purchaser, his heirs and successors or whoever with lawful title may represent his rights so that as property acquired by a lawful title, he may use it, sell it or exchange it whenever or however it may be to his best interest.

Thus for these reasons, from this moment, he parts with and divests himself of all rights of proprietorship, which the grantor and the remaining heirs may have to the said land and transfers them to the purchaser.

Consequently, he waives all laws which may be in his favor or defense, such as the law of four years of continued deceit, the law Non Solus, the Pecunia, the law Circumvenerit de Jurisdictione Omnium Judicium and the provisions of the entire Civil Code.

In testimony whereof, he thus executed and signed the deed of conveyance with me, the present Judge. The instrumental witnesses were: Domingo Bustillos, Jose Flores and Bruno Huizar, besides the witnesses to my proceedings with whom I act in the customary form; to which I bear witness.

Manuel Ximenes,

(Rubric)

Witness:

Victoriano Zepeda,

(Rubric)

Antonio Garcia,

(Rubric)

Witness:

Ygnacio Arocha,

(Rubric)

INDEX
LAND GRANTS AND SELLS

<u>LGS NO.</u>	<u>GRANTEE (S)</u>	<u>GRANTOR (S)</u>	<u>DATES</u>
		<u>M.</u>	
438.	JOSE MARIA MONJARAS,	GERTRUDIS DIAZ,	Jan. 10, 1832.
439.	JOSE GABRIEL MARTINEZ,	MANUEL MARTINEZ, AND MARIA ANTONIA DE AVILA,	Jan. 6, 1833.
440.	PONCIANO MUÑOZ,	JOSE PINEDA,	Feb. 19, 1833.
441.	PEDRO MARTINES,	MEXICAN GOVERNMENT,	July 18, 1833.
442.	JUAN McMULLEN,	REFUGIO DE LA GARZA,	July 24, 1834.
443.	MANUEL MARTINEZ,	CANDIDO GUERRA,	Sept. 25, 1834.
444.	MANUEL MENCHACA,	HEIRS OF ANTONIA CASANOVA,	Oct. 29, 1834.
445.	JUAN McMULLEN,	MARIA JACOBA TRAVIESO, MELCHOR TRAVIESO, and JUSTO TRAVIESO,	Nov. 14, 1834.
446.	PEDRO MARTINEZ,	MARIA JUANA BUSTILLO,	Dec. 30, 1834.
447.	PEDRO MARTINEZ,	JULIANA FUENTES,	Jan. 12, 1835.
448.	JOHN McMULLEN,	MEXICAN GOVERNMENT,	Feb. 25, 1835.
449.	SAMUEL A. MAVERICK,	MARIANA LEAL DE RAMON,	Feb. 26, 1835.
450.	MANUEL MENCHACA,	HEIRS OF CASANOVA,	Mar. 22, 1835.
451.	PEDRO MARTINEZ,	DOLORES GARZA,	June 15, 1835.
452.	ELUL MELTON,	JOSE ANTONIO DE LA GARZA,	Sept. 7, 1835.
453.	SAMUEL A. MAVERICK,	YGNACIO CHAVEZ and MANUEL CHAVEZ,	Sept. 23, 1835.
454.	SAMUEL A. MAVERICK,	PEDRO MARTINEZ and GERTRUDIS DIAZ	Dec. 30, 1835.

SALE OF 11 SITIOS OF LAND BY THE
 PRIEST REFUGIO DE LA GARZA
 TO JOHN MACMULLEN

1834

THIRD SEAL
 TWO REALES

FOR THE BIENNIUM OF
 1832, 1833 AND 1834

Flores,

[Rubric]

In the City of San Antonio de Bexar, July 24, 1834,
 before me, Ygnacio Chaves, First Alderman of the Illustrious
 Ayuntamiento and Judge of first instance because of the ill-
 ness of the incumbent, personally appeared the priest Refugio
 de la Garza of this city, who is well known to me and declared:

That he conveys and assigns at public sale, by right of
 inheritance, now and forever to John MacMullen, a resident of
 this said city, 11 sitios of land which he acquired by pur-
 chase from Antonio Garcia, as appears in the deed of convey-
 ance which he Refugio de la Garza hereby delivers to the pur-
 chaser, John MacMullen. The said land amounting to the said
 11 sitios was surveyed as follows:

The survey began at the Loma de Padron which is identi-
 fied by a mesa covered with brushwood and thistle; and from
 the said Loma extending North to South to the Ford of the
 Creek of the Alamos where monuments were placed at the edge

of the road which leads to the Presidio of the Rio Grande; and following the said road the line leads towards the West as far as the Patahuia Creek where a monument was placed; and returning towards the North to the road which leads out of the canyon to the Loma Alta where a rock monument was placed a short distance from the solar of Baltasar Perez an adjacent land owner; thence to the East to the said Loma de Madron where another monument was placed. The measurements of this land correspond to those set forth in the deed of possession which is filed in the archives of this city to which the grantor refers;

The land is granted with all its rights of ingress and egress, uses, customs, rights and easements;

The grantor warrants that the land is clear of tax, mortgage, note, lien or any encumbrance special or general, to the purchaser, John MacMullen, his children, heirs, successors or whoever with lawful title may represent his rights, for the price and sum of 1,100 pesos receipt of which he acknowledges to his entire satisfaction from the said purchaser.

Wherefore Garza waives the laws of delivery and proof of payment; the laws of the Non Numerata Pecunia with the laws of the four years of continued deceit and the laws of the Royal Ordinance passed in the Cortes at Alcala de Henares, which regulate transactions where land is bought, sold or exchanged for more or less than its just price and the vendor agrees

that he will not invoke any of these laws in his favor.

From this instant forever he divests himself of, assigns and surrenders all dominion, rights, rights of action, proprietorship, ownership, title or recourse which he had acquired in the 11 sitios of land. Thus he conveys, assigns and transfers all these rights to the said purchaser, his children, heirs and successors so that as property of his own he may possess, enjoy, exchange, sell or mortgage it, at will or at his pleasure.

He confers authority on the said purchaser to demand and assume possession of the said land personally or by court action whenever he considers it necessary and binds himself to the firmness, validity and security of this conveyance and with his property now in hand and to be acquired in such manner that if any claim, demand, dispute or lawsuit should be filed because of this conveyance he will intervene to defend the said suit until he has won it and left the purchaser in quiet and peaceful possession of the said 11 sitios of land which Garza has sold him. And if he should not comply with these conditions because he cannot or will not, he agrees that for this simple act, he will refund the said 1,100 pesos which he has received and also pay all costs, damages, debts and deterioration which may have resulted; and the grantor agrees that to enforce this provision the purchaser may rely only on his naked oath without further proof even if the law

require further proof.

And that he may be commanded and compelled to observe these conditions the grantor agrees that they may be enforced with all the rigor of the law and by way of execution as if upon a judgment entered in a competent court, consented to and never appealed under which terms he had acquired the land. The grantor waived his own rights of forum, domicile and residence, the law Circumvenerit de Jurisdictione Omnium Judicum including the provisions of the general Civil Code.

Thus the grantor executed this deed and signed it. The instrumental witnesses were: Ambrosio Rodriguez, Juan Andres Lombrano and Bruno Huisar, besides the witnesses to my proceedings with whom I act in the customary manner, to which I bear witness.

Ygnacio Chaves,

/Rubric/

Witness:

Victoriano Zepeda,

/Rubric/

Refugio de la Garza,

/Rubric/

Witness:

Jose Francisco Flores,

/Rubric/

Collector of general taxes of the Department of Bexar, July 24, 1834.

The purchaser has paid into this administration the fee as agreed in this instrument.

Flores,

/Rubric/

de cui posesion como quier y pacificamente sin contradiccion alguna, y dho franco Chaso
en señal de verdaderas posesion tiene Cabas, Clavos estaceros, puros linderos arancornatos, y
tiene linderos por todos los quatro vientos como legitimo dueño tenedor y poseedor a dho solar el qual
le dio con todas sus entradas y Salidas, arcos, Costumbres, derechos, y servidumbres, quanto
a y tiene, y le pende pertenecer y linda dho solar por el Oriente con Caladellio por el Poniente
con Caladellio de la Acequia, por el Sur con solar de Antonio del Rio, y por el Norte con las
tierras de los propios y fueras testigos a dha posesion Juan de Dios Antonio Llamas
y gerónimo rio vecinos agregados a dha villa y para
por ante nos de day for =

Biz Araya
nuevo

ante mi

e haca ocha
Crisp 2 de Calileog

The State of Texas

County of Bexar I, Saml. Smith County Clerk of Bexar County, do hereby Certify, that the
Attached writing contained on three and one quarter pages, found on file in the County Clerk
office of Bexar County among the original Spanish and Mexican Archives of Bexar County, was
daily recorded the 14th day of July A.D. 1877 at 10 past 5 o'clock P.M. in the general records
of Bexar County in Volume No. 2, pages 262, & 263 (Spanish) which writing was recorded by
virtue of an order and decree of the Commissioners Court of Bexar County, made and entered in
the minutes of said Court at its February Term A.D. 1877 and in accordance with the Laws
of the State of Texas regulating the transcribing of Public records.

Witness my hand and the impress of the seal of the
County Court of Bexar County, affixed at office in
San Antonio the day and year last above written.

Saml. Smith County Clerk Bexar County

By Juan C. Barrera Deputy

En dha Villa de San Juan de los Rios a veinte y un dias del mes de junio de mil ochocientos sesenta y
dos años ante mi D^{no} Ang^l de Morales y navarro Leut. Genl. de los N. E. y Cap^l Genl.
de esta Prov. de Tep. y Nuevas Filipinas e sus Pres. convenciones y permit. conde mandos militares
de Pausacola Coaguila y con as^l del nuevo Reyno de Leon por sus mag^{es} J. P. de la Cruz y
la peticion de dho. el Contador de dha

Gen^l Gobernador y Capitan genl. Domingo Castelo natural de los Reynos de Castila
y de cinco años en el presidio de San Luis de las Animas y en esta Villa de San Juan de los Rios

FROM TAKEN, 1941, FROM SPANISH ARCHIVES
BEXAR COUNTY

y allanmo loasado oy dia en ella y sin tener un solar propio en donde vivir por cuyo motivo
ante V.^o con todo respeto me presento y digo que por q.^{ta} tener mi suegra una suerte de
tierra contigua a esta poblacion y por la parte del Pimiento linda dha suerte con el Arroyo de
San Pedro y por q.^{ta} se halla alli un pedazo de tierra firme y despoblado se ade servir V.^o me
dian te justicia mandar a darme un solar de ochenta varas en dho paraje para poder te-
ner suistencia en esta tierra y tambien por que viviendo yo alli y no otro oiga y tenga
mi suegra menos perjuicio en sus sembrados por todo lo qual a V.^o pido y suplico se
sirva mediante como llebo pedido que en acerto asi recibiere bien y merea confustion o
tro si digo que se ade servir V.^o de almitirme en el presente papel comun por no abarlo
de ningun sello y señalamiento de queros y juro no ser desmaliado

Domingo Castelo

Y por mi vista la huvo por presentada y admitida en el presente papel comun sin perjuicio de
Real havor y siendo siendo lo que esta parte expresa ser cierto en su anterior escrito cuando la V.
Comodidad de estos moradores extension de esta Pion y que los Vasallos de esta Pion con
la mayo conveniencia que previenen R.^o Leyes en su R.^o Nombre y usando de las facultades
de q.^{ta} en qui reside y de la especial com.^o me halla del puegalo privativo de esta nueva España para
repartir tierras, aguas, Caballerias, herminas y solares lo haze merced judicial.^{ta} en forma el su
plicitante D.^o Baltardo digo D.^o Dom.^o Castelo para el susdicho esdicho y subsecor o q.^{ta}
de ellos causa o tro unirse de sesenta varas en cuadro para Casa Comal y huerta
en la parte y lugar que menciona en su Pedim.^{to} sin perjuicio de tercero que mejor
tro tenga en calidad de que no la pueda vender ni enagenar asta cumplido el termino
prevenido P.^o R.^o leyes de su pueblo y ponga arboles plantios y Pueblito dentro del termino
de la Ley con o peracion. q.^{ta} pasado y no haviendolo executado se declarara por yerno y E
riaco y se encomendara a otro qualquiera persona benemerita que lo pida y mande al
Alguasil M.^o de esta Villapava a la parte y lugar en que la petis.^{ta} Antea denta contiene y meta
en poses.^{on} del expresado solar de cuenta V.^o en cuadro al susdho Castelo segun costumbre de
medidas del con sillas.^{on} de los deanos de la Circunferencia p.^{ta} si tubier.^{on} que contradicula
tro y dada que sea dha Pion con lo q.^{ta} me devolviera original p.^{ta} en su vista determinar en
Justicia Asi lo dicte mando y firmo Actando ante mi como fue requerido con test.^{es} de
As.^{os} Alfalta de es.^{os} pub.^{os} y R.^o de todo lo que doy fe = D.^o Jph. Baltardo me vale

Angel de Maalos

Kavarete

Alfalta
F.^o An.^o Solis

de Ao.
Christoval de los
Santos Coe

**AN INFORMAL CATALOGUE
OF THE
RED NUMBERED MISCELLANEOUS FOLDERS
LOCATED IN THE SPANISH ARCHIVES
OF THE
BEXAR COUNTY COURTHOUSE**

**COMPILED BY ROBERT L. TARÍN, JR.
1991**

44.
 - a) Census of Mission Nuestra Señora de la Purísima Concepción de Acuña, June 14, 1809 (copy of original Spanish and typed translation).
 - b) Census of Mission San Francisco de la Espada, June 15, 1809 (copy of original Spanish and typed translation).
 - c) Census of Mission San Juan Capistrano, June 7, 1809 (copy of original Spanish and typed translation).
 - d) Census of Mission San José y San Miguel de Aguayo, June 12, 1809 (copy of original Spanish and typed translation).
45. Álamo Countdown, by Richard G. Santos, 1989 (news articles).
46. Original Grantee, Patentee, B́exar County, Texas, Land Titles, by Mrs. Frances Terry Ingmire & Mr. Robert Lee Thompson.
47.
 - a) Census of Mission San Antonio de Valero, December 25, 1804.
 - b) Census of Mission San Juan Capistrano, December 31, 1804.
48.
 - a) Census of Mission San Juan Capistrano, 1819, B́exar Archives microfilm, roll 58, frames (?).
 - b) Census of Mission San Francisco de la Espada, 1817, B́exar Archives microfilm, roll 58, frames 910-912.
49. County Clerk of B́exar County, Inventory List.
50.
 - a) Census of the military and civilians at the Presidio of La Bahía del Esṕritu Santo, December 1810.
 - b) Census of La Bahía, 1817, B́exar Archives microfilm, roll 60, frames (?).
51. Domingo Castelo land of mission ranchos, San José y San Miguel de Aguayo and San Francisco de la Espada missions (?), Spanish Archives, Book No. 2, pp. 263, 264, General Land Office, Austin, TX, and Vol. 50, page 25.
52. Corridor between San Antonio and Goliad, Texas, by AACOG, 1989 (pamphlets, letters, and news articles).
53.
 - a) Census of Mission San Francisco de la Espada, December 4, 1819.

PERSONAL NAME INDEX

- Ables, L. Robert: 9
Alessio Robles, Vito: 356,
357, 363, 418
Allen, W. J.: 393
Almada, Francisco R.: 306
Almaraz, Félix Díaz, Jr.: 201,
257, 479
Alsbury, Juana Navarro. *See*
Navarro y Alsbury,
Juana
Ambler, J. Richard: 478
Andreassen, John C. L.: 184
Andrews, Richard, Capt.: 399
Ángeles, Pedro de los: 14
Armas: 554
Armstrong, Bob: 119
Arneson, Edwin P.: 265
Arocha: 554, 566
Arocha, Ana María de: 572
Arredondo, Joaquín de: 191,
192
Austin, Mattie Alice. *See*
Hatcher, Mattie Austin
Austin, Stephen F.: 8
Austin, William T.: 8
Baker, T. Lindsay: 2
Baquer, Mariano Alonso: 512
Barker, Eugene C.: 68, 110,
416
Barney, Robert O.: 132
Barrera: 503
Bass, Feris A., Jr.: 464
Bean, Frank D.: 186
Bean, Roy, Judge: 31
Becerra, Francisco: 16
Beerman, Eric: 32
Beltrán: 191
Benayides, Adán, Jr.: 168,
177, 410, 485
Benson, Nettie Lee: 298
Berlandier, Jean Louis: 215
Betancourt, María Robaina de.
See Robaina de
Betancourt, María
Bolton, Herbert E.: 117, 265
Boné, Georges de, Professor:
322
Boone, Daniel: 272
Bouchu, Francis, Father: 29
Bradshaw, Benjamin S.: 186
Brasseaux, Carl A.: 559
Brown, David H.: 491
Brown, Kenneth M.: 440
Buckley, Eleanor Claire: 416
Bueno, Anastacio, Jr.: 197
Buquor, María de Jesús
Delgado. *See* Delgado
Buquor, María de Jesús
Buquor, Pasquier Leo: 501
Burleson, Edward, General: 8
Bustillo: 527
Cabello, Domingo: 380
Cabrera: 505
Cadena: 568
Cahill, Helen: 22
Callaghan: 367
Callihan, D. Jeanne, Dr.: 178
Calvert, James S., Mrs.: 287
Calvillo: 561
Campbell, T. N.: 146
Capers, W. T., Bishop: 458
Carballo, Carmen W. de: 458
Carson, James D.: 2
Carvajal: 78, 298, 517, 524
Carvajal, José Antonio: 431
Casanova. *See* Pérez Casanova
Casas: Juan Bautista de las:
305
Cassiano, José: 530
Castañeda, Carlos Eduardo:
300, 469
Castelo, Domingo: 51
Catalani: 368
Cavazos Garza, Israel: 426

FEB 16 1983

GENERAL LAND OFFICE, AUSTIN, TEXAS

I, GARRY MAURO, Commissioner of the General Land Office of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the Spanish title as appears on page 2 of Volume 50 which said volume is kept in the Spanish Archives of this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said office the day and date first above written.

Garry Mauro
GARRY MAURO

Commissioner of the
General Land Office

GLO-R-04-(1-82)

5. - A.

51.
50 A

Mission

Protest filed by.
Hon. Alexander S. S. S.
July 17/81 -
see Enclosure from of 17th.

of
San José

Authentic Copy of the Title
for Lands granted by the Gov. of Spain
to the Indian Community of the Mission of
San José. — Situated on both sides of
the River Medina. — N. La. Grant. —
18th Novr 1766.

For Remarks see the Reverse of this Title.

Remarks.

Domingo Castelo a resident of the Town of San Fernando, in the Province of Texas petitioned the Cabildo of the said Town for the Grant of Eleven leagues of land at the "San Lucas Springs" (Leagues to the North West of the said Town.

The Petition was considered by the Mission of San Jose, and by the Authorities of the Government ordering it to be put up at public sale to the highest bidder, - on the 18th November A.D. 1766. the lands were awarded to the Indian Community, under the Tutelage of the said Mission for \$100. for the Eleven Leagues, and \$50 in addition for the favor of being exempted from the operation of the Order to forwards to Mexico, and submit the Proceedings to the review of the Supreme Council of India: and for its ratification. -

The Amt. of Govt. dues paid into the King's Treasury at Mexico on the 22^d Nov. 1766. the Copy of the Receipt whereof is on folio 45. of this Testimony and 95 of this File.

Indian Communities, under the Tutelage of a Mission, preferable in the Sale of King's domains to other purchasers. — View — "Recopilacion de Indias" — Law XIX — Title XII — Book 4 — "Párrafo de Compraventuras." — J. J.

Testimonio de la L^{ta} de los autos de ^{cia} en
de tierras hecha por D.ⁿ Domingo ^{vezino} Pastel
de la villa del S.ⁿ Fernando Jurisdicción de la
ciudad de Tejas, Remate y Merced que de dicho
que son onza y media de Ganado mayor, ^{vezino} es de
Indios del Pueblo y Merced de ^{vezino} S.ⁿ C.^o



Villa ocho leguas enue Doniente a norte en
la frontera de esta Villa en las raras de las
des pobladas y Realengas como a S. S. les comen-
ta, por lo qual a S. S. pido ruego y Suplico
vcsirvan (mediante Justicia) de mandar
vermede la Justificacion de vez asi lo enpresen-
do en este micscripto por tal Realengo y no haver
estado poblado dicho Vito por ninguna otra
Pezonaxino por mi. Por lo qual. A S. S. pido y
suplico vcsirvan de mandax proveer como
Uero pedido que en hazerlo asi. Hize bien
y Merced, sirviendose S. S. Justicia mediante
de admitir este micscripto en el presente papel
comun por no haverlo de ningun vello, y
Juro este micscripto no ser de malicia y en lo
necesario S. Domingo Castelo _____

Futo Tristo por nos, lo huvimos por presentado
y admitido en el presente papel comun por las
razones que en presa, Tenazencion a lo que
esta parte pide. Certificamos al Rey nuestro
Señor (que Dios guarde) Al Comdo Señor Pi-
rrey de esta nueva España, sus Reales Audien-
cias adonde esta fue representada: Sucescuro

The Payson Indians of Northern Texas

SPECIAL PUBLICATION NO. 1
NORTHERN TEXAS ARCHAEOLOGICAL ASSOCIATION

1971

THE PAYAYA INDIANS OF SOUTHERN TEXAS

by

T. N. Campbell

Special Publication, No. 1
Southern Texas Archaeological Association

Published by the Association at San Antonio, Texas
1975

CONTENTS

Introduction	1
Basic Payaya Sources	2
Payaya Name Variants	3
Previous Payaya Studies	4
European Observations of Payaya Settlements	4
Payaya at Spanish Missions	11
Payaya Linguistic Affiliation	14
Payaya Territorial Range	16
Payaya Culture	17
Ruecking's Payaya-Cluster Concept	20
Concluding Remarks	23
Bibliography	27

Distributed by the Southern Texas Archaeological Association,
123 East Crestline, San Antonio, Texas 78201

INTRODUCTION

Documents written by Europeans who first explored and then later established settlements in the southern part of Texas, particularly south of the Edwards Plateau, contain formal identifying names for a remarkably large number of American Indian groups. Most of these were hunting and gathering peoples who have come to be referred to loosely as Coahuiltecans, which implies linguistic and cultural relationships with numerous formally named groups in adjoining northeastern Mexico. For any particular one of these Indian groups, either in northeastern Mexico or in southern Texas, it is difficult to make meaningful statements because relatively little effort has been made to collect, collate, analyze, and interpret the information available in European documents, many of which have yet to be published. The reasons for this minimal effort are varied. The first Europeans were not sufficiently interested in any one of these groups to record very much about them; what Europeans did record was incidental to other interests and is now widely scattered in numerous documents; and most modern students seem to assume that not enough information was recorded to make a data recovery effort worth while. Despite the handicaps, it is premature to characterize the Coahuiltecans as a whole until each one of the presumed constituent units is given individual research attention.

The following essay represents an attempt to focus attention on one such group, the Payaya, who in the late 17th and the early 18th centuries were most frequently associated with the area that now includes the city of San Antonio. What is presented here is based on such data as have been discovered thus far about the Payaya. It should be regarded as an advanced progress report, since many documents that may contain information on the Payaya have yet to be examined, and it should also be regarded as an effort to demonstrate that such tedious and time-consuming studies are worth doing. The last word on the Payaya is not likely to be written for some time to come.

In considering southern Texas and its Indian populations during the latter part of the 17th century, when the natives began to be better known to Europeans, it should not be assumed that the Indians were fully representative of peoples who lived there during the late prehistoric period. In the closing years of the 17th century the Indians of southern Texas already knew much about the Spaniards of northeastern Mexico, who had been established there for at least a full century. Many Indian groups of northeastern Mexico had been broken up by European-introduced diseases and wars with colonizing Spaniards, and some of the remnants of such groups had moved across the Rio Grande into present-day Texas. Furthermore, the Spanish frontier of northeastern Mexico was not the only frontier that affected the Indians of southern Texas. There was also a southward- and southeastward-moving Athapaskan or Apache frontier. By 1684 there is clear evidence in the itinerary of Domínguez de Mendoza (Bolton 1916:321, 331-333, 335-338; Williams 1962) of aggressive Apache movements from the southern Plains into the western part of the Edwards Plateau. Mendoza had to leave the plateau earlier than he had intended because the Apaches were making off with too many of his horses.

In 1690 Mazanet, who accompanied Alonso de León from Coahuila northeastward to the Hasinai of eastern Texas, mentioned that parties of Apaches had already reached the grasslands north of the Colorado River downstream from Austin but had not penetrated the wooded area farther east (Gómez Canedo 1968:161). Mazanet also said that Apaches were living west of the Hasinai but gave no further details. The next year, 1691, Casañas, a missionary among the Hasinai, confirmed Mazanet's last remark by saying that the Hasinai already knew several Apache groups and had fought with them (Casañas, in Swanton 1942:251). After 1700 the increasingly dominant theme in the more northerly part of southern Texas was Apache pressure, for eventually the entire Edwards Plateau became another *Apachería*. Such successes as the San Antonio missions had after 1718 were largely due to the territorial encroachments of the Apaches. In 1727 the missionary Vergara (in Haggard 1942:77) wrote that the Payaya and other Indians who came to the first two San Antonio missions "were converted for fear of the Apaches."

So far as the area west and southwest of San Antonio is concerned, the general picture is fragmentation of native populations between northward-moving Spaniards and southward-moving Apaches, with a consequent squeeze that induced remnants of many peoples to move farther eastward. This partially explains why so many ethnic groups were initially recorded in the lower section of Texas. San Antonio became the first Spanish settlement of southern Texas in part because it was a good place for missionary work among disturbed Indian populations, most of whom, when weighing Spaniards against Apaches, seem to have regarded Spaniards as the lesser of two evils. It is not surprising to read, in Spanish documents of the time, that the first Indians seen around San Antonio were "docile" and well disposed toward Spaniards. They were docile for very good reasons.

The preceding paragraphs, which attempt to show a contrast between the late prehistoric Indians and the late 17th century Indians of southern Texas, also serve to show a contrast between the Indian world of at least a part of southern Texas as pictured by Cabeza de Vaca (1527-1535) and the Indian world of the late 17th century. Despite Cabeza de Vaca's inability to conceive of his Indians as well-adjusted to their local environments, it is evident from his accounts that these Indians were able to solve most of their problems and survive biologically. One gets the impression that Cabeza de Vaca was describing an ecological equilibrium. His Indians were not yet having to face serious encroachment by foreign populations, either European or American Indian. By the end of the 17th century the Indians of southern Texas were already beginning to face what most hunting and gathering peoples of the world have had to face: population decline, territorial displacement, segregation and ideological pressure, loss of ethnic identity, and absorption by invading populations. Southern Texas is a good area for studying the decline and fall of fragile hunting and gathering societies.

BASIC PAYAYA SOURCES

The primary sources which yield information on the Payaya Indians cover a period of approximately 100 years--from 1688, when their name seems to have first been recorded, to 1789, when their ethnic identity was lost

during the last days of one of the San Antonio missions, San Antonio de Valero. The documents which tell the most about their pre-mission life were written prior to 1730, and the best ones prior to 1718. Of these, the most informative sources are those which record eyewitness accounts of Payaya in specific localities at specific times, and even these are disappointingly lean in descriptive detail. After 1730 nearly all that can be learned about the Payaya is found in mission-related documents, which reflect rapid acculturation in a segregated mission environment. In the later baptismal, marriage, and burial records of Mission San Antonio de Valero they eventually cease to be referred to as Payaya individuals and are merely recorded as Indians (indios), to distinguish them from Europeans and genetically mixed individuals whose names also occur in the same records.

PAYAYA NAME VARIANTS

As the result of fairly common usage over a period of some 75 years, Payaya has come to be accepted as a standardized orthographic form for the name of one ethnic group in southern Texas. Its meaning remains unknown. With stress on the second syllable, it seems to represent reasonably well the sounds heard by Europeans, mainly French and Spanish, when Payaya individuals repeatedly uttered an identifying name for themselves. Assuming some knowledge of both French and Spanish phonetics, most of the orthographic variants found in written records are readily recognized as being related to the form Payaya.

Below is given an alphabetized list of Payaya name variants which I have thus far encountered in Spanish sources and their English translations. These are acceptable through contextual analysis and comparisons of various documents. Both singular and plural forms, if actually used in the sources, are included. Bibliographic citations are not feasible because well over 100 separate sources are involved.

Mepayaya (Mepayayas)	Payaja
Nepayaya	Payalla
Paia	Payas
Paiaia	Payatas
Paiaies	Payay
Paialla	Payaye (Payayes)
Paiaya (Paiayas)	Payayos
Pajaja	Paytay
Pallalla	Pazaga
Pallalles	Peyaya
Pallaya	Peyaye (Peyayes)
Papayo	Piyai
Payaes (Payaez)	Tilpaya
Payagua (Payaguas)	Tilpayai
Payai (Payaies)	Tilpayay (Tilpayayaes)
Payaia	

Some of the above variants are undoubtedly distortions arising from bad handwriting in original documents and from carelessness among the early professional copyists, not to mention modern carelessness and clerical

and printing errors. Modern students often express impatience with long lists of synonymous group names, which is understandable; but it should be realized that lists of authenticated variants are essential for developing reliable identities for all those poorly known Indian peoples whose names in documents are rendered in such confusing variety.

Only two variants, Pailhailles and Paillailles, appear in the French sources examined. These obviously record essentially the same sounds as indicated by most of the Spanish variants.

In the Handbook of American Indians (Hodge 1910, 11:218, 1118) four name variants linked with the Payaya should be corrected. Three of these--Payaga, Payasa, and Payayasa--are misprints that should all be read as Payaya; the fourth, Payseyas, refers to the Pausay, not to the Payaya.

PREVIOUS PAYAYA STUDIES

The first summarizing statement on the identity, territorial range, and known ethnohistory of the Payaya Indians was prepared for the Handbook of American Indians (Hodge 1910, 11:217-218). Written by H. E. Bolton, an able and scholarly historian who was especially interested in the northern frontier of colonial Spanish North America, it consisted of some 215 words, accompanied by a bibliography of nine sources, mostly unpublished manuscripts, and a list of 15 names considered to be orthographic variants of the name Payaya. Bolton's brief article was historically oriented and said nothing specific about Payaya culture, not even that the Payaya were originally hunting and gathering Indians. The Payaya were, of course, mentioned in other Handbook articles, all written by Bolton, but these mainly referred to the Payaya role in missions (Hodge 1907, 1:844-845, 847; 1910, 11: 92-93, 183, 209, 354, 424-426, 569-570, 980). Since 1910 little has been added to Bolton's statement, although Ruecking (1955a:349-350) has paraphrased Bolton and sought to relate the Payaya to other Indian groups of the same area, a matter to be discussed later. Ruecking (1953, 1954b, 1955a,b) also attempted to develop a composite ethnography for Coahuiltecan Indians. This was based primarily on published data for groups that ranged south of the Rio Grande, and very little Payaya information was used. In recent years a number of new documents have become available, adding appreciably to what may be said about the Payaya.

EUROPEAN OBSERVATIONS OF PAYAYA SETTLEMENTS

The reports of Europeans who actually visited Indian settlements in southern Texas usually indicate or at least imply that these were temporary settlements or encampments, and such settlements are often referred to as rancherías. Sometimes settlements are reported as being inhabited by individuals attributed to a single ethnic group, but more frequently the reports specify occupation by two or more ethnic units, or what may be called shared encampments. This variation in ethnic composition provokes another question: under what circumstances did individuals from a single population unit camp alone, and under what circumstances was an encampment shared? Unfortunately, no European ever asked an Indian such a question; or if so, the answer was never recorded.

Since it is difficult to conceive of any ethnic group wanting to maintain exclusive encampments under all circumstances, it appears reasonable to assume that both unshared and shared settlements have always been characteristic of the hunting and gathering peoples of southern Texas, even in the prehistoric period. What seems to be especially significant is the relatively high frequency of shared encampments during the early historic period. Perhaps this is explainable as the result of disturbances produced by well-organized invading populations, such as Spaniards and Apaches. If the population of a native group was still large enough for the people to feel secure, at least temporarily, its settlements might be unshared at times; or its numerical strength might attract individuals and families from one or more nearly extinct remnant groups. However, if a given area was being ranged by small remnants of several groups, these would feel safer in a shared encampment.

Mazanet-Jarri, 1688-1689. The earliest record of the Payaya appears to be under the names Tilpayai and Piyai, which occur in documents pertaining to a mysterious Frenchman captured by Spaniards in 1689. This man, known to Spaniards as Juan Jarri (in French probably Jean Géry) was evidently a deserter from the La Salle expedition (1685-1687) who made his way westward from La Salle's Fort St. Louis near Matagorda Bay on the Texas coast. The records suggest that Jarri acquired considerable influence, religious as well as political, over many Indian groups in southern Texas, particularly south of the Edwards Plateau. It is fairly clear that he was captured in the general vicinity of Guerrero, Coahuila, some 30 miles down the Rio Grande from Eagle Pass, Texas.

We first learn of Jarri through the missionary Mazanet, who in 1688 was serving at Mission Caldera (near modern Candela, Coahuila). Mazanet heard of Jarri from Indians at the mission and persuaded a Pacpul Indian leader to go northward and find out just where Jarri was then living. The Pacpul returned and reported that the Frenchman was seen north of the Rio Grande near the Sierra de Sacatsol in an encampment shared by Indians representing at least eight named groups--Mescal, Yorica, Chomen (Jumano), Machomen, Sampanal, Pacuache, Tilpayai and Ape (Hape) (Bolton 1916:356-357; Gómez Canedo 1968:8-9).

According to Mazanet, the Indian encampment near the Sierra de Sacatsol was some 20 leagues (about 52 miles) north of the Rio Grande and some 60 leagues north of Mission Caldera. Bolton (1916:297, footnote) thought that the Sierra de Sacatsol may have been the present Anacacho Mountains of southwestern Kinney County, an isolated elevation some six miles long. It is doubtful if the word sierra would have been used for such a short ridge. It seems more likely that the Sierra de Sacatsol referred to the heavily eroded southern margin of the Edwards Plateau, which is a short distance farther north. When approached from the south, the margin of the plateau looks like an elongated range of low mountains with a serrated crest. It is of course impossible today to determine the longitude of Jarri's Sierra de Sacatsol settlement. However, when Jarri was later taken into Spanish custody in 1689, he was then in an encampment near Guerrero and the names of four Indian groups present were recorded, three of which were also present at the camp near the Sierra de Sacatsol. These were Mescal, Jumano, and Hape (Bolton 1916:389-390). All this suggests that the Pacpul crossed the Rio Grande near Guerrero and that the Sierra

de Sacatsol camp was probably somewhere just south of the Edwards Plateau margin in either Kinney or Uvalde County of today.

The Tilpayai recorded by Mazanet have long been identified as Tilijae instead of Payaya (Hodge 1910, 11:750, 1156), which is not phonetically justifiable. When the name Tilpayai is compared with over 30 recorded orthographic variants of Tilijae, it will be seen that not one of the Tilijae variants contains the letter *p*. The equation of Tilpayai with Payaya is reinforced by a list of 19 Indian groups known to Juan Jarri and obtained from him after he was captured and later interviewed by Spaniards in Mexico (León y otros 1961:219). On this list is the name Piyai and no other name that even remotely resembles Tilijae. The difference between the recordings of Tilpayai and Piyai may be explained by the fact that Tilpayai was obtained from the Pacpul Indian and Piyai from Juan Jarri.

Mazanet, 1690. In 1690 the Tilpayai were again recorded, this time in a letter written by Mazanet to the Conde de Galve, recently published for the first time by Gómez Canedo (1968:159-165). This document specifies locations for numerous Indian groups south of the Edwards Plateau that were encountered by Alonso de León's expedition of 1690 to Matagorda Bay and to the Hasinai country of eastern Texas. Few of these groups were mentioned in the letter of Mazanet to Carlos de Sigüenza and in Alonso de León's itinerary, both translated by Bolton (1916:353-423). When Mazanet's letter to the Conde de Galve is used in conjunction with the original map showing León's route to eastern Texas (reproduced by Bolton 1916, facing page 370), the result is a substantial increase in knowledge of the territorial ranges of Indian groups in southern Texas as of the year 1690. Mazanet reports six Indian groups on the Medina River: Tilpayai, Cauya, Semomam, Saracuam, Pulacuam, and Anxau (Gómez Canedo 1968:160). According to León's itinerary (Bolton 1916:408), the Medina was crossed twice, on April 19 and again on April 20. Although Mazanet is none too clear about the six Medina groups sharing the same encampment, they probably did because he refers to them as "los indios que viven en dicho puesto." Prior to Gómez Canedo's publication of this letter, five of the six names were known only from an official summarizing report of 1716 (Velasco 1958:318) which simply listed all the Indians reported in 1690 by Mazanet as living between Coahuila and eastern Texas, but did not indicate where each was encountered. Bolton and later writers on the Payaya did not know of Mazanet's informative letter to the Conde de Galve and, as a consequence, errors have been perpetuated that grew out of speculation about the territorial ranges of many Indian groups.

If we note the Medina River as shown by the detailed route map of León's 1690 expedition to eastern Texas, it will be seen that the locality where Mazanet's six Indian groups were reported was along that section of the Medina River which flows from west to east near the present boundary between Medina and Bexar counties. Since this is the area where the Payaya were reported as living at various times during the next two decades, the synonym of Tilpayai and Payaya becomes even more acceptable.

Mazanet, 1691. The first eyewitness accounts of the Payaya under that name occur in documents of the Terán de los Ríos expedition to eastern Texas in 1691-1692, particularly in the diaries of Terán and Mazanet

(Gómez Canedo 1968:176-177, 238-239; Hatcher 1932:14, 54-55). In mid-June, 1691, this expedition visited a Payaya settlement on the San Antonio River at a point somewhere within the present limits of the city of San Antonio. Although today a precise location cannot be firmly established, historians continue to discuss the matter. I am inclined to accept the argument of Habig (1968:160) that the Payaya encampment was near Mission San Juan Capistrano. At any rate, this is the only unquestioned record of Payaya along the San Antonio River until the first mission was established at San Antonio in 1718.

This Payaya settlement was described as being in a wooded area near the river. It is of interest to note that Mazanet referred to the Payaya encampment as a ranchería, whereas Terán used a plural form, ciertas rancherías, which suggests that he was the better observer, that is, he saw the clustering of shelters dictated by natural open spaces in a wooded locality. The records do not actually refer to housing of any kind, and the only reference to population size is Mazanet's remark, which may not necessarily refer to this particular settlement alone, that the Payaya constituted a large group (es nación muy grande). From this about all that can safely be concluded is that the Payaya were probably among the more populous Indian groups in Coahuila and Texas then known to Mazanet.

After Mass was performed in the encampment, European goods were distributed among the Payaya: rosaries, glass beads, various kinds of knives, and tobacco. Mazanet also presented a horse to the Payaya head man. Although this is the first record of horses and European "trade goods" among the Payaya, it should not be assumed that European horses and artifacts had never been seen before. As noted earlier, Spanish colonists had been living in northeastern Mexico for at least a century prior to 1691.

Salinas Varona, 1693. On his return to Coahuila from a trip to eastern Texas in 1693, Gregorio de Salinas Varona encountered three Payaya encampments some 30 miles southwest of modern San Antonio (Gómez Canedo 1968: 302-303, 306). His diary makes it possible to say that the three settlements were all west of the Medina River in what is now southeastern Medina County. After leaving the Medina River, Salinas Varona visited these encampments in rather close sequence along his route southwestward, and he passed the third and last one before he crossed lower Hondo Creek just above its junction with the Frio River. No population estimates for the three rancherías were recorded, nor were any descriptive remarks made other than that the first settlement encountered was near a spring. The time was summer, the first two settlements being visited on July 1, the third on July 2. When Salinas Varona had earlier passed through this same area he saw no Indians of any kind between Hondo Creek and the upper San Antonio River (May 15-20).

These Payaya encounters probably explain the origin of a Spanish place name, El Arroyo de los Payayas, first mentioned in documents some 25 years later. On April 21, 1718, Martín de Alarcón, on his way from Coahuila to San Antonio, crossed El Arroyo de los Payayas six leagues (about 15 miles) before he reached the Medina River (Hoffmann, 1935:47; 1938:316). This is where Salinas Varona saw Payaya Indians in early July, 1693. The records of the Alarcón expedition do not mention Indians of any kind being seen on or near El Arroyo de los Payayas. However, it appears likely that by 1718 the Payaya had largely abandoned the more exposed western part of their

range because of Apache attacks. Some of the Payaya entered Mission San Antonio de Valero of San Antonio in that year. Nine years later, in 1727, Pedro de Rivera, the great frontier inspector, followed Alarcón's route and on August 1 recorded a stream with the same name in the same area (Rivera y Villalón 1945:111). Rivera also saw no Indians along El Arroyo de los Payayas, but he did say that the locality was much favored by the Payaya (su más continua habitación). It is very doubtful if this last remark applies to the year 1727, for by that time most of the surviving Payaya had taken up residence at Mission San Antonio de Valero, having been converted to Christianity, as the missionary Vergara so frankly stated, because they feared the Apaches.

My own interpretation is that El Arroyo de los Payayas, as recorded by the Alarcón and Rivera documents, received its name in the latter part of the 17th century and is probably derived from the experience of Salinas Varona and possibly other Spanish travelers whose movements were never officially recorded. I think that El Arroyo de los Payayas refers to the most prominent of the southeastward-flowing headwater tributaries of San Miguel Creek, namely, the stream which on recent maps is designated San Francisco Pérez Creek. If archeologists want to find early historic artifacts at least in part attributable to the Payaya Indians, the area covered by the upper headwaters of San Miguel Creek is one good place to begin the search. The entire San Miguel drainage has a total airline length of some 75 miles and empties into the Frio River in northern McMullen County. Just how far down the San Miguel drainage the Payaya ranged in the late 17th century remains problematical.

In his Handbook article Bolton wrote of the Payaya as "...living in the latter part of the 17th century on the San Antonio River... In 1691 Father Massanet...passed through their village..." This was written before Bolton knew that Salinas Varona's diary had recorded visits to three Payaya settlements just west of the Medina River. Unfortunately, Bolton's statements have led some writers to assume that the Payaya originally lived only along the San Antonio River, that their population was so small that all of them normally lived in one settlement, and that their San Antonio "village" was a permanent settlement. These assumptions, now that we have the Salinas Varona diary, obviously need modification.

Mendoza, 1703. In 1703 Felipe de Mendoza, who came from Spanish Florida by way of French Louisiana, wandered lost afoot and alone in Texas for some time. In a statement made later in Mexico Mendoza claimed that, after crossing the Colorado River, he moved on farther westward and reached a settlement of "Paillailles," where he spent eight days. Among these Payaya he found a man who spoke both Spanish and Mexican (Nahuatl) and who directed Mendoza to Presidio San Juan Bautista on the Rio Grande, which he reached after wandering about uncertainly for eleven days. If this statement is reliable, and it seems to be, since Salinas Varona interviewed Mendoza and authenticated his geographic knowledge of Texas, then Mendoza's Payaya were probably either on the upper San Antonio River or near the Medina River where Salinas Varona had seen them ten years before (Mendoza 1703:77-78; summarized in Weddle 1968:68-70).

Espinosa, 1709. In 1709 Isidro Felix de Espinosa, a missionary, recorded the journey of a small party of Spaniards from San Juan Bautista on the Rio Grande northeastward to a point on the Colorado River not far downstream from present-day Austin. On April 11 the Spaniards visited a small Payaya encampment on the left bank of the Medina River southwest of San Antonio (Maas 1915:52; Tous 1930b:4-5). From the descriptive details recorded it is evident that the Payaya were encamped on that section of the Medina that flows due eastward, or somewhere near the present boundary between Medina and Bexar counties, where Mazanet had reported Tilpayai in 1690. This Payaya settlement was said to be in a clearing in the woods along the river. Here Espinosa inserted a statement that along the Medina River were many pecan trees whose nuts were used for food by all the Indians who ranged its banks. Three leagues farther on toward San Antonio an unspecified number of Payaya individuals was encountered, apparently from the encampment just visited. Still farther on the Spaniards met five "Pampoa" (Pampopa) who were said to be on their way to the Payaya's Medina River camp. Shortly after this, still traveling within sight of the Medina River, the Spaniards came to a Pampopa encampment. This east-west section of the Medina River is another good locality which archeologists might profitably search for artifacts attributable to an early historic Payaya occupation.

Espinosa, 1716. On June 12, 1716, when the Ramón expedition was on its way to re-occupy eastern Texas, a large Indian encampment known as Ranchería Grande was visited near the junction of Little River with the Brazos River in Milam County (Foik 1933; Tous 1930a). Bolton has collected data on the Ranchería Grande phenomenon (in Hodge 1910, II: 354; Bolton 1915:42-44, 142-150) and has shown that it was primarily an Indian refugee encampment. In 1716 this Ranchería Grande had an estimated population of 2,000 Indians, mainly from northeastern Coahuila and the adjoining part of Texas, who had left an intolerable situation in an area increasingly dominated by Spaniards from the south and Apaches from the north. The list of Ranchería Grande groups named by Espinosa (Tous 1930a:17) includes Cantona, Ervipiame, Mescal, Mesquite, Pamaya, Payaya, Sijame, Ticmamar, and Xarame, and additional groups were undoubtedly also represented. Except for the Cantona, apparently a local Tonkawan group, all these Indians were from the area south of the Edwards Plateau, both in Coahuila and Texas. With Ramón when he visited Ranchería Grande in 1716 were nine Spanish missionaries, some of whom had served at the Rio Grande missions below present Eagle Pass, and these friars recognized individual Indians they had known personally on the Rio Grande. Some of these Indians were labeled as former frontier trouble-makers; others were identified as runaway neophytes and apostates from the Rio Grande missions.

Just how many Payaya were present at Ranchería Grande in 1716 we do not know, but perhaps not very many, since Espinosa used the phrase "some Payaya." It should be pointed out that a similar aggregation had been visited before, in 1707, at which time it was on the Colorado River somewhere downstream from modern Austin; but Payaya were not reported there. Ranchería Grande does not add much to the Payaya record, but it does reveal something about the tensions in southern Texas in the early 18th century.

The Ramón expedition documents mention horses and dogs at Ranchería Grande, and they also say enough to indicate that Ranchería Grande was associated with a wooded stream valley in the Blackland Prairie region, originally a tall-grass prairie, where bison were reported to be numerous. This helps to explain the subsistence base for a settlement of some 2,000 Indians. This relatively large population in turn provided some protection from the Apaches who by 1716 were in firm control of the hill country of central Texas just west of the Blackland Prairie.

Derbanne-St. Denis, 1717. In 1717 Louis Juchereau de St. Denis led a small party of Frenchmen, later joined by a few Spaniards and 26 Hasinai Indians, from Natchitoches southwestward through the Hasinai country to present San Antonio and on to Presidio San Juan Bautista on the Rio Grande. After crossing the Brazos River and fighting off an attack by Apaches, the Hasinai returned to their own villages and the Europeans went on to encounter a few Payaya in a grassland area. The recorded itinerary data (Derbanne) indicate that the encounter must have been somewhere east or northeast of what is now Austin (Bridges and De Ville 1967; Margry 1888, VI:206). These Indians took the party to a nearby encampment, at which the travelers spent one day and two nights. This Payaya camp was said to be six leagues (about 15 miles) north of the Colorado River, possibly in present northeastern Travis County, which lies in the north-south oriented strip of dark soils marking the Blackland Prairie region. Some of the Spaniards in the party traded for dressed bison skins, which suggests that the Indians were there for a spring bison hunt (the month was April).

All of the above comes from the Derbanne diary of the journey. Later in the same year, 1717, in a declaration recorded by Spaniards in Mexico (Shelby 1923:176-177), St. Denis gave additional information about the encampment. "For a time," said St. Denis, "there reside on the banks of the San Marcos (present Colorado River) the following nations, La Payaya--Pamaya--Tzatoó--Emeeé-Tziames." These four groups, the last two of which have composite names, are readily identifiable as Payaya, Pamaya, Sana and Toho (Tzatoó), and Emet and Sijame (Emeeé-Tziames). Farther on in the same declaration St. Denis added this statement: "These four wander from this river (the Colorado) to the Medina, always as vagrants."

The remarks made by St. Denis seem to indicate that Derbanne simplified the picture by reporting only the name of the numerically dominant group, the Payaya, in this encampment north of the Colorado River. Derbanne's account is a day-by-day record, and he mentions no other Indian groups encountered in the area. In other words, the probability is high that the reported Payaya encampment was one which the Payaya were sharing with Pamaya, Sana, Toho, Emet, and Sijame. This seems especially reasonable when it is recalled that the St. Denis party had fought off Apaches only a short time before. This joining of forces for better protection against Apaches is compatible with the historical context of the time. It may also be noted that St. Denis's statement about the territorial range of the Payaya agrees well with information on their range as reported in earlier documents.

PAYAYA AT SPANISH MISSIONS

In the preceding section attention was focused on the Payaya outside of missions. Here an attempt will be made to summarize the leading facts about the Payaya at three missions: San Francisco Solano, San Antonio de Valero, and Nuestra Señora de la Purísima Concepción de Acuña (Mission Records, n.d.).

San Francisco Solano. Payaya were present at Mission San Francisco Solano of extreme northeastern Coahuila, which was founded in 1700, and which in 1718 was transferred to San Antonio, where it became known as Mission San Antonio de Valero. But the Payaya were evidently an insignificant element in the recorded Indian population at Solano. Of some 45 ethnic groups identifiable in the surviving but incomplete mission records (baptisms, marriages, and burials), the Payaya group is represented by only two individuals. One of these was Marcela, a female said to be about 25 years of age, baptized in 1706; and the other was Antonio, a male of unspecified age, baptized in 1707. The largest group represented at Solano during the 18-year period of its existence was Xaramé, with some 90 identifiable individuals. However, of the approximately 475 individuals recorded at Solano, a substantial number, 131, cannot be identified as to ethnic origin. Some of these may have been Payaya. This is reinforced to some extent by a reference in 1700 to 14 Payaya males who were killed in an attack on Mission Solano by unidentified hostile Indians, apparently not Apache (Olivares 1700:49). All of this suggests that the Payaya normally ranged too far east for many of them to seek protection at the Rio Grande missions. Nearly all of the recorded Payaya settlements were east of lower Hondo Creek, which is some 175 miles from the average location of the Solano mission (this mission was moved three times during its existence in Coahuila). But it also indicates that shortly after 1700 at least some of the Payaya were beginning to feel insecure enough to take refuge in a mission protected by the soldiers of Presidio San Juan Bautista, which was founded in 1703.

San Antonio de Valero. Most of what can be learned about the Payaya experience in Spanish missions is connected with Mission San Antonio de Valero of San Antonio, founded in 1718. This is the only long-lived mission in southern Texas for which reasonably complete baptismal, marriage, and burial records have survived. These three kinds of records were kept separately, the entries being serially numbered and dated. Beyond that the entry format varies considerably through time. Some numbered entries are illegible and others are either missing or do not specify ethnic identity. Sometimes errors in ethnic identification, often correctable, were made by the various missionaries responsible for the entries, and this is undeniably shown by internal evidence when successive entries for the same individual are compared. It is relatively simple to cross-check the ethnic identities of many Payaya individuals, since their names were repeatedly recorded, not only when they and their children were baptized, married, and buried, but also when they were designated as godparents for children baptized or as witnesses at marriages. Despite the inadequacies, Valero has the best basic mission records available, and from these it is possible to ferret out various kinds of information, mainly demographic, selected aspects of which will be presented here.

At Valero, Payaya was the largest ethnic group represented. If one constructs a mission census through analysis and comparison of all entries, it is possible to identify at least 184 individuals as Payaya. According to the missionary identity rule, all children of a Payaya father were considered to be Payaya and were so recorded, although at times erroneously. The only exception to this rule was when the father of an occasional illegitimate child was unknown to the missionaries, in which case the child of a Payaya mother was identified as Payaya.

The earliest identifiable Payaya entry is for the year 1719; the latest, a somewhat doubtful case, is for the year 1789, which gives a time range of 70 years. Santos (1966-1967:158), who used only burial records, obtained a Payaya population count of 122 at Valero, allowing for a few ethnic group names which he apparently misread as "Papayo." This indicates that many Payaya individuals were baptized and married at Valero but were not buried there; and it also shows the value of using, when available, all three types of records in mission census construction. The Valero proportions--122 for burial records (given by Santos) and 184 for all records combined (given here)--suggest that burial records, if used alone, give only about 66% of total mission population for a lengthy period. It must be realized, of course, that a Payaya who came to the mission but left before being baptized or married might never appear in mission records. There is no way to control this factor.

The figure of 184 identifiable Payaya represents the entire 70-year period. Just how many Payaya were present at Valero in any one year cannot be stated very precisely. However, an impressionistic answer can be obtained by carefully checking the records for standard census decade-years and tallying the individuals for whom there is documentary proof of their living presence during each of those years. The following tabulation presents the results of such an effort:

1720	26	Payaya
1730	41	"
1740	39	"
1750	37	"
1760	31	"
1770	5	"
1780	2	"

After making generous allowance for record inadequacies, it seems likely that in any particular year the total Payaya mission population never exceeded 60. In the tabulation it may be noted that after 1760 there is a notable decline. This reflects two things: (1) decline in the general mission population because of a high death rate (discussed below) and little or no replacement by outside recruiting, and (2) loss of interest by the missionaries in recording ethnic-group identity. After 1760 the missionaries gradually began to identify many Indians as merely indios, and they rarely entered adequate detail on parentage, which is essential for carrying ethnic identities forward in time.

The Valero records provide information on the life expectancy of Indians in San Antonio missions. In these documents the recording of age is somewhat spotty, and the only reliable age figures are for individuals who

were born in the mission and were shortly afterward baptized there, and who also died in the mission. For individuals, particularly adults, who were not born in the mission, estimated ages are sometimes given.

For 80 Payaya individuals of both sexes there are fairly good figures for age at time of death. Of these, 36 are males and 44 are females. The age at death of males ranges from a few days to 80 years, and for females from a few days to 71 years. But the average age at death of the males is 15 years, and of females 10 years. In other words, it seems that the average Payaya at Valero barely managed to reach early adolescence. Since there are no comparable figures for Payaya during the pre-mission period, it is not possible to say whether mission life shortened or lengthened life expectancy.

If one concentrates on the first 10 years of the individual life span, it is evident that childhood was the critical period. Of the 184 Payaya individuals recorded for the entire 70-year period, at least 61 died before reaching the age of 10 years. And of these 61 cases, 41 were children who died before reaching the age of two; 14 died between the ages 3-5; and six died between the ages 6-10. Thus it appears that as many as one out of every three Payaya individuals may have died before he was 10 years old.

The Valero records rarely indicate causes of death. Two Payaya males were reported killed by Apaches (1746, 1752), and one was killed by unspecified Indian enemies (1765). Whatever the causes of death, it is clear enough that Mission San Antonio de Valero was a decidedly lethal place for the Payaya and other Indian inhabitants.

Only a limited amount of information on Payaya marriages can be extracted from the Valero records. Data on age at first marriage are scarce and not very reliable. About all that can be said is that both sexes seem to have married as soon after puberty as mates could be found, and one gets the definite impression that females found mates more readily than males. Widows and widowers usually remarried, if mates could be found, and such remarriages sometimes occurred within a few months after the death of a spouse. In a few cases, if a person lived long enough, there might be a succession of spouses. The largest number of spouses recorded for any one individual is four. Divorces were of course never recorded, since divorce was not sanctioned by the church.

In his various Handbook articles on missions and mission Indians, Bolton sometimes argued that the earliest records at a mission often refer to specific intergroup marriages prior to mission entry, and that such pre-mission marriages signified group intermarriage preferences in a presumably aboriginal context, thereby suggesting especially close relationships between certain groups, particularly among the Coahuiltecan. This is not supported by the Payaya records at Valero. What really controlled group intermarriages during the mission period, and also apparently for at least two decades preceding mission foundation, was availability of mates during a period of marked population decline. Both outside and inside the mission the Payaya most frequently intermarried with nearby groups having the largest populations at the time. During the entire 70-year mission period Payaya married individuals from at least 25 other ethnic groups represented

at Valero, mainly groups considered to be Coahuiltecan, but also including, especially later in time when Coahuiltecan mates were scarce, Karankawans (Coco and Karankawa), Tonkawans (Mayeye), and Athapaskans (Lipan Apache and other unspecified Apaches), not to mention groups of unknown linguistic affiliation.

In the Valero records it is possible to identify 48 Payaya males who lived long enough to be married, but only 33 of these had children that can be identified. The average number of children per Payaya family was four (figure rounded). The number of children per family ranged from one child (10 cases) to 10 children (one case).

Practically nothing is found in the Valero records that throws light on the Payaya pre-mission kinship system and family structure, nor on any facet of native sociopolitical organization. The Payaya mission families were essentially Spanish-type families, which is indicated by the limited genealogies that can be constructed and also by the naming system. In mission records all Payaya are identified by Spanish names. More commonly these are single or double given names, such as Brígida or Damián, Juana María or Pablo Mauricio. Family names, as Miguel Hernández Arcon or María Josepha de Lamas, become more frequent with the passage of time. Occasionally a name recorded by the missionaries will signify proficiency in some skill or activity, for example, Jacobo el Carpintero (carpentry) or Manuel el Cantor (singing). In the mission Indian village a simplified set of Spanish-type civil officials performed such duties as were necessary and, since the Payaya were relatively numerous, Payaya males often held such offices as gobernador, alcalde, fiscal, and oidor. The missionaries invariably recorded the civil office held by any male.

Nuestra Señora de la Purísima Concepción de Acuña. With one exception, no Payaya individuals were recorded at any of the San Antonio missions other than San Antonio de Valero. This exception is Mission Nuestra Señora de la Purísima Concepción de Acuña, usually referred to as Mission Concepción, which was moved from eastern Texas and established at San Antonio in 1731. Only the marriage records of Mission Concepción have survived, and these carry the name of one Payaya woman, Josepha, a widow said to be from the nearby Mission San Antonio de Valero, who in 1739 married Juan Baptista, a Patumaco Indian who was formerly an alcalde in the Concepción Indian village. This single entry reveals the ambiguity of Bolton's statement (in Hodge 1910, 11:93) that the Concepción marriage records indicate the initial entry of Payaya at this mission in 1739, implying that other Payaya individuals were later married there, which is not the case. Evidently Payaya individuals rarely transferred from the San Antonio mission of their original choice, Valero.

PAYAYA LINGUISTIC AFFILIATION

Although it is generally accepted that the Payaya spoke the language now known as Coahuilteco (Swanton, 1940:55), the evidence which supports this judgment has never been summarized.

Only two words of probable Payaya origin have been recorded. One of these is the ethnic group name, Payaya, whose meaning is unknown. However, it

is possible that a clue to its meaning lies in the recorded Comecrudo word, payauya'p, "brave or wild" (Swanton 1940:90). Comecrudo is regarded as a Coahuilteco dialect. The other word is yanaguana (or yanawana), which was recorded by Mazanet in 1691 (Gómez Canedo 1968:238). Yanaguana refers either to the San Antonio River (Bolton's interpretation, in Hodge, 1910, 11:217,245) or to a specific locality along that river within the present limits of the city of San Antonio. Chabot (1931:15), who wrote extensively on the early history of San Antonio, referred to yanaguana as the name of the Payaya "village" visited by Mazanet, but this does not seem to be acceptable because all known Payaya "villages" were only temporary settlements or encampments. The name more likely refers to the locality where a Payaya settlement happened to be at the time. Habig (1968:160) has recently stated that yanaguana means "refreshing waters," which may be true, but he does not identify the source of his information and I have not been able to confirm the translation. In his study of recorded Coahuilteco speech samples from southern Texas and northeastern Mexico, Swanton (1940:5, 55) noted Mazanet's linkage of this name with the Payaya, but after making many detailed lexical comparisons he did not suggest even a probable basic meaning for yanaguana. However, Swanton never expressed any doubt about Payaya and yanaguana being Coahuilteco words.

The best evidence for the Coahuiltecan affinity of Payaya speech lies in several specific statements made by missionaries who had served in northeastern Coahuila and southern Texas and undoubtedly knew something about native languages. In his diary of 1691 Mazanet said that, after leaving the Payaya settlement on the San Antonio River, his party of Spaniards traveled northeastward to a stream that seems to be the present Cibolo Creek, which now forms the boundary between Bexar and Comal Counties. At this point in his diary Mazanet noted that all the Indian groups encountered between Mission Caldera (near present Candela, Coahuila) and this stream (Cibolo Creek) spoke the same language. This appears to receive support from the fact that with Mazanet was a Christianized Pacpul Indian from northeastern Coahuila who explained to the Payaya, apparently in his own language, the significance of the Mass performed in their village on the San Antonio River (Gómez Canedo 1968:238). Further confirmation is provided by Espinosa (1964:758), who in 1746 wrote that the Payaya of Mission San Antonio de Valero spoke the same language as the Indians at Mission San Francisco Solano, near the Rio Grande in northeastern Coahuila, where some of the Payaya had formerly been in residence.

All this is further reinforced by statements made in 1760 by another missionary, Joseph Guadalupe de Prado, in Bartholomé García's Manual for administering Catholic rituals in the Coahuilteco language (García 1760: iv-v; also cited in Troike 1959:1), to the effect that Coahuilteco was the most common language spoken by Indians from Candela northeastward to the San Antonio River and that it was used by friars in Franciscan missions of that region. Fray Joseph, it may be noted, had 22 years of missionary experience in Coahuila and Texas. This indirect evidence is not as satisfactory as having a significant recorded sample of Payaya speech for analysis and comparisons, but it seems good enough to support the statement that the Payaya Indians probably spoke a dialect of Coahuilteco.

PAYAYA TERRITORIAL RANGE

When we review the data from documents that report the Payaya in native-style temporary encampments, it will be seen that between 1688 and 1717 ten such settlements were recorded. The first point to note is that the encampment localities are all distributed along the route commonly used by Spaniards in traveling from Coahuila northeastward to the Caddoan area of eastern Texas and vicinity. If the Spaniards had used other routes in addition to this one, particularly routes that passed farther to the north or to the south of San Antonio, other Payaya settlements might have been recorded and thus would provide something more informative than the present linear distribution of Payaya settlements.

Linked with this route bias is the fact that all the precisely dated observations of settlements (eight cases) were made during warm seasons, specifically between April 9 and July 2. Since Europeans of the time normally traveled by horseback, and horses needed water and grass, travel was timed for spring and early summer warmth and rainfall. The records involved do not report droughts in southern Texas, either local or widespread. Hence there are no records of where the Payaya camped during the late summer, fall, and winter phases of their seasonal subsistence round; or where they camped in times of climatic stress, such as droughts. At other times of the year the Payaya may have sometimes been in very small, widely dispersed encampments because of food shortages; or, when food was locally abundant, in fairly large aggregations appropriate for certain social and ceremonial activities. The diary covering the earlier, eastward-bound portion of Salinas Varona's trip of 1693 indicates that at times the Payaya could not be seen at all along the commonly used European travel route.

It may also be noted that eight of the 10 encampments can be linked with fairly specific localities, and that between 1690 and 1709, a period of nearly 20 years, five of the eight encampments are associated with a compact area in modern Medina and Bexar counties. In this area, except for the one dubious case of Pampopa visitors to a Payaya encampment in 1709, the Payaya apparently did not share their camps with other groups. But before 1690 the Payaya shared encampments from the Medina River westward, and after 1709 they were sharing encampments well to the northeast of San Antonio. The settlement sample is so small that one hesitates to attach too much significance to patterns that may be detected, but such data as are available suggest that between 1690 and 1709 the Payaya near the Medina and upper San Antonio rivers were fairly numerous and were able to exploit the resources of that area without being too seriously threatened by Apaches. If this was actually the case, an explanation can be offered for the relative freedom from Apache attacks. In the San Antonio area during this period there was no reservoir of Spanish horses and other loot to attract Apaches. The missions and other settlements of eastern Texas were abandoned by the Spaniards in 1693 and, although re-occupation was being considered by 1709, nothing was accomplished until 1716. According to this hypothesis, the Payaya before 1690, because they lived too far to the east, were minimally affected by the unrest connected with Spanish settlements near the Rio Grande in northeastern Coahuila, and afterward had a relatively quiet time for about two decades, which eventually ended with the formal re-establishment of Spanish settlements in

eastern Texas in 1716 and the founding of San Antonio in 1718. After 1716, with supply trains going to and from eastern Texas, there were horses to be had by Apaches along the entire Spanish travel route, and this attraction was intensified by the beginnings of a livestock industry around San Antonio.

It may further be noted that the Payaya settlements are confined to a relatively narrow strip of territory, consisting mainly of grasslands and fairly open woodlands well suited to grazing and browsing animals, that extends from the upper San Miguel Creek drainage in southeastern Medina County northeastward to eastern Travis County or, if the limited presence of Payaya at the *Rancharía Grande* is included, to eastern Milam County. If the recorded settlements are plotted on a map which shows the major geographic regions of Texas (for example, Anonymous 1975), it will be seen that the Payaya were most closely associated with parts of two formally named regions--the southern part of the Blackland Prairie and the northeastern part of the South Texas Plain. These settlement localities are all near the eastern and southeastern margins of the Edwards Plateau region. Since the Blackland Prairie between San Antonio and Austin is notably narrow, the Payaya settlements were also not far from the western and southwestern margins of the Post Oak Belt, which parallels the Blackland Prairie. The positions of recorded Payaya settlements with respect to these regions indicate access to a wide variety of ecological niches.

The same conclusion may be drawn when one plots the Payaya settlements on Blair's map showing biotic provinces of Texas (Blair 1950:98). The Payaya had access to the plants and animals of three such provinces--Tamaulipan, Balconian, and Texas. Whether or not the Payaya actually exploited their full environmental potential remains unknown.

PAYAYA CULTURE

As is all too evident, the documents which record observations of Payaya settlements during the period 1688-1717 reveal disappointingly little descriptive detail on the aboriginal Payaya culture. Such information as is available will be summarized here and amplified by inferences made from other data considered to be pertinent.

The Payaya were unquestionably a hunting and gathering people who lived only in temporary settlements. Some of their encampments were unshared, but others were shared with individuals and families from one or more other distinctively named groups. Reports of unshared encampments need to be cross-checked for reliability whenever possible, for a single report of an unshared encampment is not as convincing as several such reports, and each case is strengthened when there is agreement between the reports of two observers of the same encampment on the same occasion.

We know nothing specific about the length of time any Payaya encampment was occupied before being abandoned, or its population size, or the internal space allocations when Payaya and non-Payaya shared the same camp. Nor do we have any satisfactory information on housing, such as house type and form, construction materials, and number of families or

individuals commonly associated with a single housing unit. The records do indicate that Payaya encampments were near a water supply (springs and streams) and also near a wood supply (natural open spaces in a wooded area). Use of nuts from pecan trees evidently drew encampments to certain stream valleys in autumn, when nuts were harvestable. Salinas Varona (1693) recorded three Payaya settlements which were simultaneously occupied in early July and which seem to have been irregularly distributed along his travel route for a distance of less than 25 miles, thus providing at least some impression of settlement density in summer. Another source refers to a Payaya encampment close enough to a Pampopa encampment for exchange of visits.

Although the earlier documents never actually mention the Payaya hunting specific animals, they frequently refer to the abundance of game in the area, especially bison, and in precisely the same localities where Payaya settlements were encountered between 1690 and 1709. For example, in 1691 Mazanet repeatedly recorded bison seen along the route of the Terán expedition (Hatcher 1932:54-55). On June 11, after crossing Hondo Creek above its junction with the Frio River and reaching the headwater tributaries of San Miguel Creek, he wrote that "on this day there were a great number of buffaloes." The next day, June 12, in the general vicinity of the Medina River he reported "...a beautiful prairie where there were great numbers of buffaloes and deer." Then on June 13, shortly before arriving at the Payaya encampment on the San Antonio River: "On this day there were so many buffaloes that the horses stampeded and forty head ran away." Mazanet continued to refer to frequency of the same game along the route northeast of San Antonio. This circumstantial evidence makes it difficult to avoid the conclusion that the Payaya must have made use of bison for food and artifacts when the animals were available. Later sources, as previously noted (accounts of Espinosa, 1716 and Derbanne-St. Denis, 1717) indicate or imply bison hunting by Payaya in the grasslands between the Colorado and Brazos rivers northeast of San Antonio, and the processing of bison hides is also mentioned.

The only Payaya food-gathering activity specified in the documents is collecting nuts from pecan trees. This was recorded by Espinosa in 1709 in connection with his observation of a Payaya encampment on the Medina River. He referred to the abundance of pecan trees along the river and stated that the nuts provided a common foodstuff for all the Indians who at times encamped along its course (Tous 1930b:4). Later in the same document (pp. 10-11) Espinosa described the resources of the entire region traversed (Rio Grande to Colorado River) and presented informative details on the pecan and its uses. As at least one-half of his route lay within the maximum known Payaya territorial range, it can be safely inferred that what he says applies to the Payaya. Espinosa's brief, generalized statement is an important source of information on the probable role of the pecan in the subsistence patterns of various indigenous groups in southern Texas.

The earlier Spanish documents consistently refer to pecans in Texas as walnuts, but it is clear enough that Espinosa refers to what is now known as the pecan, for he describes the nut as elongated and notes that it varies considerably both in size and shell hardness. According to Espinosa, the Indians of the area gathered pecans in great quantities. Some of the nuts were shelled and eaten shortly after being collected,

but large amounts were also stored, evidently unshelled, in underground pits of unspecified sizes. Espinosa says that pecans were used for food the greater part of each year and also that some were consumed the following year. This may reflect the well-known fact that pecan trees in a given locality, because of variations in spring frost timing, do not have uniform yields every year. The implication is that the Indians may have been aware of this and stored more nuts in years of heavier yield, anticipating a possible lighter yield the next year.

These Indians were said to be skilled in removal of the nut shells without breaking the paired nut meats. If such nut meats were not eaten at once, they were not stored but temporarily contained in two different ways. The meats were placed in small skin bags or pouches or, less commonly, perforated and then threaded on long pieces of string. Although Espinosa does not so indicate, these methods of containing small amounts of a rich, concentrated food are very compatible with travel.

The various activities associated with collection, storage, and preparation of pecans for consumption, as described by Espinosa, should be of interest to archeologists because it opens new vistas in the recovery and interpretation of data. Will it be possible for archeologists to recognize former pecan-shelling activity areas by fragments of shells fortuitously preserved by carbonization in fires and by clusters of certain kinds of tools that may have facilitated pecan shelling without breaking nut meats or perforation of nut meats, likewise without breakage? Just where in or near a given archeological site could pecans be cached to best advantage, and can former storage pits now be recognized through careful excavation? What kinds of tools were used for digging pits? Is it possible to find evidence that storage pits were lined with certain kinds of identifiable materials to protect the nuts from excessive soil moisture? Could empty storage pits sometimes have been used for flexed burials? And of some significance to settlement pattern theory is whether a tendency to store large quantities of pecans near the sources of supply along streams was a factor partially controlling the frequency of temporary settlements in valleys as opposed to uplands; or, whether certain sites would be occupied longer or be more frequently revisited during one annual seasonal round because excess food was stored there.

Horses are rarely mentioned in documents pertaining to the Payaya, and it may be inferred that they probably had few horses until some time after 1700. This is suggested by the record of Mazanet's gift of a horse in 1691 to a Payaya leader in the San Antonio encampment, along with his failure to mention horses among any Indian groups seen between the Rio Grande and the San Antonio River. If the Payaya had been rich in horses at that time, the documents probably would have mentioned it, as well as raids on the Payaya by horse-hungry Apaches. It appears likely that the Payaya began to acquire more horses after Spanish expeditions again became more common after 1700. By the time of Ramón's visit to Ranchería Grande in 1716, the Payaya there probably owned some of the horses reported among the assembled refugee groups. Increasing interest in horses is certainly indicated by an incident that occurred in 1718 when Alarcón's party was on the Guadalupe River, apparently near modern Seguin. Alarcón's Payaya guide absconded with the Spanish horse he was riding (Hoffmann 1935:59). After this the Payaya were of course involved with livestock at the San Antonio establishments.

RUECKING'S PAYAYA-CLUSTER CONCEPT

In the 1950's Frederick H. Ruecking, Jr., made a pioneering attempt to impose more order on the rather amorphous body of published data concerning the early historic Indian groups of southern Texas and adjoining northeastern Mexico. One of his major objectives was to identify all groups that were probably Coahuiltecan in language and culture and sort them out in space as well as in time. He became particularly interested in identifying sets of Coahuiltecan groups which seem to have been associated with specific areas when those areas first became known to Europeans and before extensive population displacements occurred and missions were established. For this he used a simple concept which he called "band-cluster." Ruecking defined band-clusters as "groups of bands (that) can be isolated...by (1) historic association, (2) geographic proximity, (3) cultural similarity, (4) linguistic affiliation, and (5) similarities in band names" (Ruecking 1954a:1).

Our concern here is with one of Ruecking's band-clusters, the Payaya-cluster, which he conceived of as a set of Indian groups who ranged over a roughly circular area centered on present San Antonio, Texas (Ruecking 1955a:Map 6, p. 27). In this Payaya-cluster Ruecking placed eight Indian groups: Aguastaya, Camama, Mesquite, Pakawa, Payaya, Sijame, Siupam, and Ticmamar (Ruecking 1954a:4-5). His basis for selecting these eight groups is indicated by the following statements: "This cluster is based upon repeated references to the association of three bands, the Meskitexa (Mesquite), Awastaya (Aguastaya), and Payaya proper. All (other) bands in this cluster are mentioned with one or all of these (three) bands. All Payaya-cluster bands were found in the same geographic locale" (Ruecking 1955a:24).

Here an attempt will be made to test the validity of the Payaya-cluster by critically reviewing, for each of the seven groups linked with the Payaya, the data used or not used by Ruecking. If a Payaya-cluster actually existed in the San Antonio region, it should be clearly demonstrable by data from European documents written before 1718, when the first mission was established at San Antonio. These pre-mission documents should indicate at least some interaction between the various groups forming the cluster, such as cooperation in subsistence activities or mutual visiting between encampments, something to indicate that they were in contact over a considerable span of time. If the documents indicate that some groups were recent migrants or refugees from another area, the cluster concept is appreciably weakened.

Since Ruecking identified three basic or core associations--Aguastaya, Mesquite, and Payaya--the Aguastaya and Mesquite may be considered first. For the Aguastaya no pre-mission data exist and, to my knowledge, no document has been found which indicates an aboriginal range. The earliest observation recorded is that of Pedro de Rivera (1945:111, 124), which refers to the year 1727. At that time a number of Aguastaya, along with some Mesquite and Payaya, and undoubtedly many others whose group names Rivera did not bother to mention, were said to be congregated in two settlements near the San Antonio missions then in existence, San Antonio de Valero and San José. Ruecking evidently assumed that the settlements noted by Rivera were native-style encampments instead of

Spanish-induced mission villages which Rivera's account unquestionably indicates. In pre-mission times the Aguastaya may have been associated with the immediate San Antonio area and with the Payaya, but this cannot be proved by documentary evidence now available.

In addition to the Rivera document noted in the preceding paragraph, Ruecking linked the Mesquite with the Payaya on the basis of Espinosa's account of 1716 (erroneously given by Ruecking as 1709), which reported individuals from both groups in the large encampment known as Ranchería Grande. As previously noted, Ranchería Grande included a large number of refugee groups from northeastern Coahuila and the adjoining part of Texas, some of whose group names had been known to Spaniards since 1675. Ruecking regarded the Mesquite of Ranchería Grande as unrelated to the Mesquite farther to the southwest, and he even coined a new name, Meskitexa, to indicate this separate status. This is not justifiable, since the Mesquite were earlier reported as ranging an area more or less midway between San Antonio and the Eagle Pass-Laredo section of the Rio Grande (Maas 1915:37). Otherwise the only known associations of Payaya and Mesquite were in the San Antonio missions. Ruecking's "repeated references to the association" of Aguastaya, Mesquite, and Payaya in the San Antonio area actually turn out to be mainly repeated citations of one misinterpreted source, the account of Rivera, and the core association emphasized by Ruecking consequently loses much of its significance.

This leaves five groups for consideration--Camama, Pakawa, Sijame, Siupam, and Ticmamar. All references to the Camama are obviously derived from a single primary source, a report of the Solís inspection of Texas missions in 1767, almost 50 years after the first mission was established at San Antonio. In this report the Camama are listed among eight Indian groups--Aguastaya, Camama, Cana, Mesquite, Pampopa, Pastia, Tacame, and Xauana--for which Mission San José was said to have been established at San Antonio in 1720. The Solís report has been translated several times into English, in whole or in part, and some of the translations are misleading in that they give the erroneous impression that the Indian groups named all lived in the immediate vicinity of the mission. For example, Kress and Hatcher (1931:51) translate as follows: "...The nations among whom this mission...was founded...", whereas the original Spanish text reads "Las naciones con que se fundó esta Misión..." (Solís 1767:280). Solís said nothing about the pre-mission territorial ranges of any of these groups. In fact, the only evidence we have for the actual existence of the Camama is the bare mention of the name by Solís. It appears likely, since no other European seems to have referred to a Camama group in southern Texas, that Camama is a distortion by Solís of some other name which he saw in the San José records. To say, as Ruecking does, that the Camama may be placed in a Payaya constellation is going far beyond the evidence.

Ruecking (1955a:333-334), following the Handbook of American Indians, disregards evidence that the Pacao and Pacoa were probably separate groups with similar names (García 1760:title page) and combined the two under the name Pakawa. He seems to have placed his Pakawa in the Payaya-cluster because he gave a literal interpretation to Espinosa's remark that when Mission San Francisco de la Espada was established at San

Antonio in 1731 there were "in sight" (a la vista) three Indian groups: Pacao, Pajalat, and Pitalac (Espinosa 1746:459). Bolton (in Hodge 1910, 11:435) long ago pointed out that Espinosa's statement is misleading because the three groups named were then ranging the lower Frio and Nueces rivers south and southwest of San Antonio. It is difficult to understand how Ruecking managed to accept the Pacao (his Pakawa) for the Payaya-cluster and at the same time to exclude the Pajalat and Pitalac. The Pajalat turn up in his Orejon-cluster, and the Pitalac end up with no cluster association at all. Such inconsistencies do not strengthen the case for a Payaya-cluster.

Initially Ruecking (1954a:4-5, 20) included the Sijame in his Payaya-cluster without qualification, evidently because he then believed that the Sijame were first known from an account of 1709 (Tous 1930b:5, 13) which reported them as sharing an encampment with Siupam and Sulujam at present San Antonio. But in 1955 Ruecking (1955a:367-368), after becoming aware that the Sijame were at missions in northeastern Coahuila as early as 1698 (Morfi 1856:367-368; Portillo 1888:277, 440, 448; Rivera y Villalón 1945:131) and that the Sijame at San Antonio in 1709 were refugees from Coahuila and adjoining Texas, did not entirely abandon his earlier position, saying that "they may have been associated with the Payaya-cluster." In Ruecking's defense it may be said that his record on the Sijame is better than that of Bolton in his Handbook article on the Sijame (in Hodge 1910: 11:569-570). Bolton ignored the Coahuila evidence, failed to note the Sijame at San Antonio in 1709, and first picked up the Sijame at Ranchería Grande in 1716. Bolton even suggested that the Sijame may have been a Tonkawan group of central Texas, which today seems quite far-fetched.

As for the Siupam, Ruecking apparently placed these in his Payaya-cluster solely because in 1709 they were seen with the Sijame and Sulujam near present San Antonio, as noted above. But doubts are raised by other sources (not seen by Ruecking) which place the Siupam considerably to the southwest of San Antonio, and one of the sources refers to the preceding year, 1708 (Griffin 1969:166; Maas 1915:36-37). The only link of the Payaya with the Siupam is apparently through an overlapping of territorial ranges after some displacement of the Siupam.

Ruecking was unable to cite any European observations of Ticmamar anywhere in the San Antonio area prior to establishment of missions there. His association of the Ticmamar with the Payaya is based on the fact that in 1716 both were present, along with other refugee groups, at Ranchería Grande. As noted above, many of the refugees, including the Ticmamar, were from northeastern Coahuila and vicinity, where they had been known by Spaniards since 1675. For some reason Ruecking considered the Ticmamar of Ranchería Grande as unrelated to the Ticmamar of the Coahuila area, a position which cannot be defended.

The preceding review indicates that the Payaya-cluster concept does not stand up very well when the documentary evidence is subjected to critical scrutiny. Of the seven groups presumed to be associated with the Payaya in the San Antonio area, two (Aguastaya and Camama) cannot be definitely linked with the San Antonio area at all, and the remaining five are

peoples displaced from areas farther west and southwest who did not appear in the San Antonio area until after 1700. The records do not confirm actual contact of the Payaya with any of these groups except in later times well to the northwest of San Antonio and in the San Antonio missions. If the seven dubious associates are removed from the Payaya-cluster, the Payaya alone remain.

Perhaps the time has come to assess Ruecking's Payaya-cluster for what it really is, the result of an innovative but largely unsuccessful effort to grapple with the complex demographic and historical realities of the San Antonio area. It is based upon the questionable assumption that the late 17th- and early 18th-century documents refer to fairly stable populations in an area still largely insulated from the disruptive effects of Spanish and Athapaskan expansion. Ruecking's argument is marred by uncritical use of published documentary sources. Despite its deficiencies, Ruecking's work nevertheless has value because it gives point to one fundamental issue, namely, that a time and place identity must be very carefully constructed for each named Indian population unit before interacting groups can be recognized in a given area during a given period. These critical remarks are directed to the Payaya-cluster only, not to other clusters proposed by Ruecking. Each cluster must be evaluated separately on the basis of such documentary evidence as can be found.

The nearest thing to a Payaya-cluster, in Ruecking's sense, consists of the six groups reported by Mazanet in 1690 on the Medina River: Tilpayai (Payaya), Cauya, Semomam, Saracuam, Pulacuam, and Anxau. Ruecking, of course, could not have known about this particular association, since Mazanet's letter was still not available at the time of his research. However, so little is known about the last five of the six Medina River groups that no useful purpose can be served by speaking of the set as a Payaya-cluster.

CONCLUDING REMARKS

In this monographic presentation an attempt has been made to view the Payaya Indians in as broad a perspective as data recovered from written records will permit. The amount of data recovered from documents thus far has turned out to be greater than was anticipated when the search began, and to this extent the effort has been satisfying. It is now possible to say more about the Payaya than could be said earlier, but there are still great information gaps that at present can be filled only by hypotheses and restrained speculation.

In this study emphasis has been placed on the unfortunate position of the Payaya and their neighbors with respect to the collision courses of two advancing frontiers, Spanish and Athapaskan or Apache. The southern and southeastern margins of the Edwards Plateau roughly mark the zone of Spanish-Athapaskan confrontation in the late 17th and early 18th centuries. The Payaya and other more northerly Coahuiltecan, caught between the two, and probably already reduced in population size by epidemics of European diseases, were no longer able to maintain themselves satisfactorily as hunters and gatherers amid so much confusion and uncertainty. The Payaya remnant, along with remnants of other groups, eventually gave up its

former way of life and accepted Spanish protection in missions. Some Payaya may have joined their enemies, the Apaches, or even Indian groups farther east in Texas, but on this subject the documents are silent. If one cares to speculate, it may be interesting to ask how much longer the Payaya would have lasted in the San Antonio area if Apaches of the southern Plains had not acquired horses from Spanish colonists in New Mexico and expanded into central Texas, and if the French had not moved into the lower Mississippi valley, inducing the Spaniards to colonize Texas earlier than they might have otherwise.

Since so much of the basic information is connected with European observations of Payaya native-style temporary settlements, a careful effort has been made to summarize all the significant data recorded, and also to give reasons for specific interpretations made in connection with each observation. However, it was not feasible to present detailed arguments for judgments made about the routes followed by various European traveling parties. This would have required too much citation of geographic observations recorded in the documents, and these arguments will have to be presented elsewhere.

Perhaps the most valuable part of the settlement observation summary is the inclusion of new records that enlarge the known territorial range of the Payaya and show that the core area was not along the upper San Antonio River, as has been supposed, but southwest of the city of San Antonio along the Medina River and the upper watershed of San Miguel Creek, an area with a maximum dimension of some 40 miles, partly in the South Texas Plain and partly in the Blackland Prairie region. With more precision in the location of known Payaya settlements, it becomes possible for archeologists to select localities where the residues of Payaya occupations are more likely to be found, and these are localities not yet covered by large urban settlements.

The settlement observations also introduce the problem of interpreting unshared and shared settlements, and it has been hypothesized that shared encampments became more common as population declined in size and Apache threats increased.

The value of mission baptismal, marriage, and burial records as sources of information on specific Indian groups has been demonstrated, and their regular use is recommended, particularly for recovery of demographic data. However, these records must be processed in various ways before valid information can be extracted. Only by use of such records was it possible to discover that the Payaya had the largest mission Indian population at San Antonio de Valero and that the principal reason for Payaya population decline in that mission was a high mortality rate among children. It was somewhat surprising to learn how few historians of missions in southern Texas have made serious use of these basic mission records. Although the missions were frontier institutions designed for displaced Indians, historical studies are not notably informative about the Indian groups represented at each mission, and these same studies reveal little understanding of the especially traumatic adjustments that had to be made by hunting and gathering peoples who entered those missions.

Thus far it has not been possible to recover very much information on Payaya pre-mission culture, mainly a few details concerning settlements and indirect evidence of the roles of bison and the pecan in the subsistence system. Espinosa's consistently-overlooked description of pecan nut collection, storage, and preparation for consumption as food has special significance for archeologists now working in southern Texas, and this has been noted. The data on Payaya culture, although minimal, raise questions about Ruecking's composite description of Coahuiltecan culture, which is based principally on data drawn from northeastern Mexico. The Payaya data suggest that perhaps more caution should be displayed in extrapolating data from one large, better known area (northeastern Mexico) to an equally large but more poorly known area (southern Texas).

Little is known about the Payaya language, but the evidence which suggests that the Payaya probably spoke a dialect of Coahuilteco has been summarized. An up-dated list of authenticated Payaya name variants has been presented as an aid to those who may have occasion to read the primary documents, either in the original language or in English translation. This list may also be helpful to those who read the works of local and regional historians, in which there is sometimes confusion about the identity and cultural relationships of Indian population units.

One regrettably destructive aspect of this study of the Payaya has been the generation of serious doubts about the validity of Ruecking's concept of a Payaya-cluster. This presumed association of Coahuiltecan groups in the San Antonio area does not meet the requirements of the major criteria upon which it is said to be based, that is, historic association and geographic proximity. The Payaya-cluster merely identifies groups, other than the Payaya, whose territorial ranges cannot be established by documentary evidence or who were displaced from other areas and only entered the San Antonio region at various times after 1700.

One residual question, the question of Payaya origin, has to be approached speculatively. When they became fairly well known to Europeans, the Payaya were associated with a stretch of territory along the inner edge of the coastal plain near the south-southeastern margin of the Edwards Plateau. They could always have occupied this same area and hence be thought of as representing a continuity from the prehistoric period. If so, the demonstration must come from detailed archeological studies. The Payaya could also have come from some other area prior to 1688 and have displaced or merged with earlier populations native to this area. Here it is perhaps pertinent to note that the pre-1688 documents which contain names of Indian groups seen or heard of in surrounding areas never include a name that can be recognized as a variant of the name Payaya. This negative ethnohistoric evidence leaves the Payaya still associated with the same area.

Since their recorded settlements were so near the margin of the Edwards Plateau, it seems plausible to think that the Payaya range must have included at least some lands on the plateau, particularly that portion referred to as "hill country" northwest of San Antonio, access to which may eventually have been denied to them by invading Apache groups. The only documentary evidence which even suggests this is a place name was

recorded in 1756. In that year Bernardo de Miranda was sent from San Antonio to inspect the San Saba mines, presumably located somewhere along the lower Llano River. His route took him through what he called Payaya Pass (Puerto de los Payayas), which he said was 10 leagues or roughly 25 miles from San Antonio (Hackett 1934, 11:126-127). This probably refers to the passage of upper Cibolo Creek out of the Edwards Plateau, now followed by a modern highway. We do not know how long before 1756 this place name came into local Spanish use and therefore cannot put much emphasis on its significance. All it does is suggest that at some time the Payaya may have used the pass on hunting or food-collecting trips into the plateau. It thus appears that the answer to the Payaya origin question, if indeed it can be answered, rests in the hands of imaginative archeologists.

As the record now stands, of all the presumed Coahuiltecans who at some time or other were observed by Europeans in the vicinity of San Antonio, the Payaya have the strongest claim to being the principal indigenous Indian group. If it is possible to determine the approximate territorial range of the Payaya at the close of the 17th century, it should also be possible to do the same for other Indian peoples of southern Texas, particularly those whose names are frequently mentioned in the primary written documents.

BIBLIOGRAPHY

Abbreviations used:

AGN	Archivo General de la Nación, México.
BAE-B	<u>Bureau of American Ethnology, Bulletin.</u> Washington.
SHQ	<u>The Southwestern Historical Quarterly.</u> Austin.
TCHS	<u>Preliminary Studies of the Texas Catholic Historical Society.</u> Austin.
TJS	<u>The Texas Journal of Science.</u> San Marcos.
UTAA	The University of Texas at Austin, Archives.

Anonymous (1975). Texas Geographic Regions. TSNL Review 1(1):5. Texas System of Natural Laboratories, Austin.

Blair, W. Frank (1950). The Biotic Provinces of Texas. TJS 2(1):93-117.

Bolton, Herbert Eugene (1915). Texas in the Middle Eighteenth Century. Berkeley.

_____. (1916). Spanish Exploration in the Southwest, 1542-1706. New York.

Bridges, Katherine, and Winston De Ville (1967). Natchitoches and the Trail to the Rio Grande: Two Early Eighteenth-century Accounts by the Sieur Derbanne. Louisiana History 8(3):239-259.

Chabot, Frederick C. (1931). San Antonio and Its Beginnings. San Antonio.

Espinosa, Isidro Felix de (1746). Crónica apostólica y seráfica de todos los colegios de propaganda fide de esta Nueva-España, parte primera. México.

_____. (1964). Crónica de los colegios de propaganda fide de la Nueva España. Academy of American Franciscan History, Washington.

Foik, Paul J. (1933). Captain Don Domingo Ramón's Diary of His Expedition into Texas in 1716. TCHS 2(5).

García, Bartholomé (1760). Manual para administrar los santos sacramentos de penitencia, eucaristia, extrema-uncion y matrimonio... México.

Gómez Canedo, Lino (1968). Primeras exploraciones y poblamiento de Texas (1686-1694). Publicaciones del Instituto Tecnológico y de Estudios Superiores de Monterrey, Serie: Historia 6. Monterrey.

Griffen, William B. (1969). Culture Change and Shifting Populations in Northern Mexico. Anthropological Papers of the University of Arizona 13. Tucson.

Habig, Marion A. (1968). The Alamo Chain of Missions: A History of San Antonio's Five Old Missions. Franciscan Herald Press, Chicago.

- Hackett, Charles Wilson, editor (1934). Pichardo's Treatise on the Limits of Louisiana and Texas 2. Austin.
- Haggard, J. Villasana (1942). Spain's Indian Policy in Texas: Translations from the Bexar Archives. SHQ 46(1):75-82.
- Hatcher, Mattie Austin (1932). The Expedition of Don Domingo Terán de los Ríos into Texas. TCHS 2(1).
- Hodge, Frederick Webb, editor (1907, 1910). Handbook of American Indians North of Mexico. BAE-B 30. 2 vols.
- Hoffmann, Fritz Leo (translator) (1935). Diary of the Alarcón Expedition into Texas, 1718-1719, by Fray Francisco Céliz. Quivira Society Publications 5. Los Angeles.
- _____. (1938). The Mezquía Diary of the Alarcón Expedition into Texas, 1718. SHQ 41(4):312-323.
- Kress, Margaret Kenney, and Mattie Austin Hatcher (1931). Diary of a Visit of Inspection of the Texas Missions Made by Fray Gaspar José de Solís in the Year 1767-68. SHQ 35(1):28-76.
- León, Alonso de, Juan Bautista Chapa y Fernando Sánchez de Zamora (1961). Historia de Nuevo León, con noticias sobre Coahuila, Tamaulipas, Texas y Nuevo Mexico. Estudio preliminar y notas de Israel Cavazos Garza. Biblioteca de Nuevo León, 1, Centro de Estudios Humanísticos de la Universidad de Nuevo León, Monterrey.
- Maas, P. Otto (1915). Viajes de misioneros franciscanos a la conquista del Nuevo Mexico. Sevilla.
- Margry, Pierre (1888). Découvertes et établissements des Français dans l'ouest et dans le sud de l'Amerique Septentrionale (1614-1754): Mémoires et documents originaux 6. Paris.
- Mendoza, Felipe de (1703). Declaración de Felipe de Mendoza, Mexico, Oct. 24, 1703. AGN, Provincias Internas 28 (Bolton Transcripts, UTAA 2Q203(466):75-78).
- Mission Records (n.d.). Baptismal, marriage, and burial records for Missions San Francisco Solano, San Antonio de Valero, and Nuestra Señora de la Purísima Concepción de Acuña are in the San Fernando Archives, San Antonio, Texas (see Santos, 1966-67). Photostat and microfilm copies are in the Texas Catholic Archives, Austin, Texas.
- Morfi, Juan Agustín de (1856). Viage de indios y diario del Nuevo-Mexico. Documentos para la Historia de Mexico, tercera serie, Tomo 1:305-487. México.
- Olivares, Antonio de Santo Buenaventura y (1700). Carta del Padre Olivares del Río Grande (a Fray Felipe Galindo), Dec. 13, 1700. AGN, Provincias Internas 28 (Bolton Transcripts, UTAA 2Q203(466):48-51).

- Portillo, Esteban L. (1888). Apuntes para la historia antigua de Coahuila y Texas. Saltillo.
- Rivera y Villalón, Pedro de (1945). Diario y derrotero de la caminado, visto observado en el discurso de visita general de precidios situados en las Provincias Internas de Nueva Espana. México.
- Ruecking, Frederick H., Jr. (1953). The Economic System of the Coahuiltecan Indians of Southern Texas and Northeastern Mexico. TJS 5(4):480-498.
- _____. (1954a). Bands and Band-clusters of the Coahuiltecan Indians. Student Papers in Anthropology, The University of Texas 1(2):1-24.
- _____. (1954b). Ceremonies of the Coahuiltecan Indians of Southern Texas and Northeastern Mexico. TJS 6(3):330-339.
- _____. (1955a). The Coahuiltecan Indians of Southern Texas and Northeastern Mexico. M.A. Thesis, The University of Texas at Austin.
- _____. (1955b). The Social Organization of the Coahuiltecan Indians of Southern Texas and Northeastern Mexico. TJS 7(4):357-388.
- Santos, Richard J. (1966-67). A Preliminary Survey of the San Fernando Archives. Texas Libraries 28(4):152-172.
- Shelby, Charmion Clair (1923). St. Denis's Declaration Concerning Texas in 1717. SHQ 26(3):165-183.
- Solís, Gaspar José de (1767). Diario que hizo el Padre Fr. Gaspar José de Solís en la visita de las misiones de la Provincia de Texas. AGN, Historia 28 (Miscellaneous transcripts, UTAA 2Q177:248-297).
- Swanton, John R. (1940). Linguistic Material from the Tribes of Southern Texas and Northeastern Mexico. BAE-B 127.
- _____. (1942). Source Material on the History and Ethnology of the Caddo Indians. BAE-B 132.
- Tous, Gabriel (1930a). Ramón Expedition: Espinosa's Diary of 1716. TCHS 1(4).
- _____. (1930b). The Espinosa-Olivares-Aguirre Expedition of 1709: Espinosa's Diary. TCHS 1(3).
- Troiike, Rudolph C. (1959). A Descriptive Phonology and Morphology of Coahuilteco. Doctoral dissertation, The University of Texas at Austin.
- Velasco, Dr. (1958). Dictamen Fiscal, México, y Noviembre 30 de 1716. Boletín del Archivo General de la Nación, Tomo 29(2):311-344. México.

Weddle, Robert S. (1968). San Juan Bautista: Gateway to Spanish Texas.
University of Texas Press, Austin and London.

Williams, J. W. (1962). New Conclusions on the Route of Mendoza, 1683-1684.
West Texas Historical Association Year Book 38:111-134. Abilene.

HUNTER-GATHERER MORTUARY PRACTICES *during the Central Texas Archaic*

LELAND C. BEMENT



HALF
PRICE **BOOKS** Our
Price

Hunter-Gather List
11-05 G Price 37.50



357314

Preface

The Edwards Plateau of central Texas is known for its long sequence of prehistoric hunter and gatherer societies. Beginning over 10,000 years ago, this band society mode persisted in central Texas until the arrival of the Spanish in the 1500s, even though neighboring groups such as the Caddoans to the east, Puebloans to the west, and Plains Villagers to the north became sedentary and adopted corn horticulture five centuries before European contact. Subsistence (procurement systems), technology, and settlement patterns of the Edwards Plateau hunter-gatherers have been reconstructed through the study of the material culture uncovered by eight decades of archaeological investigations. Missing from these reconstructions has been a study of the mortuary practices. The inability to locate more than a few burials in habitation sites or single interments under burial cairns has prevented the reconstruction of all but the most meager of burial programs. The largest number of burials from the Edwards Plateau region have been recovered by landowners excavating sediments from vertical shaft sinkholes. The commercialization of extensive cavern networks in the limestone bedrock of the region and the concentration of rich topsoils in their entrance shafts kindled a public as well as private interest in these features. Subsequent excavation of these shafts inadvertently uncovered the remains of prehistoric burials—sometimes as many as fifty individuals. Although such finds were reported to the archaeological community during the 1960s, the lack of contextual information precluded all but descriptive analysis of the retrieved skeletal remains. Thus, there has been little opportunity for systematic excavation and analysis.

This situation is compounded by the difficulty in identifying mortuary sinkholes. Sinkhole shafts are hard to find in a landscape where cracks and crevices are commonplace. When located, these sites are fraught with perils such as rattlesnakes, poisonous spiders, and pre-

A more striking statistic is that the 294 beads, placed end to end, would create a single strand 6 meters (19.7 feet) long. The concentrations of beads in level 22 of excavation units m and k would create an estimated strand 1.5 and 1.1 meters long, respectively.

The bone bangle is fashioned on the proximal half of the left radius of a badger (*Taxidea taxus*). The epiphyseal end was not removed, and the radius was truncated by the groove and snap technique. Polish and shallow abrasions in the natural fossa between the epiphysis and radial tuberosity indicate the bone was attached to a necklace or bracelet by a narrow thong or string.

DISTRIBUTION OF BEADS. Bone beads were found in levels 22 through 29, most occurring in levels 23, 24, 25, and 27. These levels are on either side of the depositional break between the black clay of Unit I and the brown clay of Unit II.

Although it is recognized that the small size of the beads ($x = 18.9$ millimeters) makes them prime candidates for vertical movement, their presence on both sides of a distinct depositional boundary suggests that identical technology and use were components of a cultural tradition that utilized the sinkhole before, during, and after the climatic shift indicated by the depositional changes—a span of nearly 1,000 years.

Deer Antler Billet: $n = 1$. A fragment of deer antler was recovered in association with the human skeletal remains. The antler fragment is composed of the beam of the antler from its base to 5 centimeters beyond the eye tine (Figure 9d). The tine had been removed flush with the beam, and the crenellations at the base of the antler beam have been removed for the majority of the circumference. The distal end of the antler fragment is rounded, removing any sign of the means of cutting or breakage. A facet tangential to the truncation on the inside curve of the beam is similar to the striking facet identified on billet punches and hammers (Michaels 1987:115). This facet forms as a result of percussion with stone material, suggesting this antler fragment was intentionally fashioned and used as a soft hammer or billet probably in the production (reduction) of flaked stone tools. The small size of this tool, 12.9 centimeters long, 3.0 centimeters wide, 1.9 centimeters thick, and 45.2 grams weight perhaps indicates that this billet was used in the final shaping or reduction of thin lithic tools (e.g., projectile points).

Deer Antler Segments: $n = 39$. A total of 39 deer antler fragments have been recovered from the sinkhole deposits. They consist of portions of the beams, tips, and bases of shed antlers and range in length

9. Summary and Conclusions

Summary of the Bering Sinkhole Analyses

Bering Sinkhole is a natural cavern in the Cretaceous limestone of the Edwards Plateau in central Texas. Access into the cavern is limited to a precipitous drop through a hole in the ceiling at the south end of the cavern chamber. Beginning approximately 7,500 years ago, the hunter-gatherer inhabitants of the area dropped or lowered their dead through the opening and left the bodies exposed, or partially buried under rock thrown in afterward, on a debris cone surface initially over 6 meters below the sinkhole entrance. Natural deposition, and the repeated use of the site in the disposal of the dead for at least 5,500 years, eventually filled the cavern to within 3 meters of the surface entrance. Excavations to date of the stratified deposits of the debris cone have recovered the partial remains of at least 62 individuals, representing all age groups and both sexes. The majority of the individuals had been buried as fully fleshed corpses. Also included are the remains of at least 6 cremations and 1 bundle burial. Approximately 50 percent of the debris cone and 15 percent of the deposits adjacent to the cone have been removed.

The 5,500-year span of human burial deposits reflects portions of all five Archaic phases defined by Weir (1976) for the central Texas cultural region. Bering Sinkhole provides the opportunity to compare biological and ritual aspects of Archaic cultures to the culture systems model developed by Weir.

Bering Sinkhole is not close to any of the habitation sites in the area. The nearest known habitation site is .75 kilometer south of the sinkhole, and a larger site complex of multiple large burned rock middens is located approximately 2.1 kilometers from the sinkhole. Neither site has received archaeological investigation, although the larger site has produced artifacts representing Late Paleoindian through Late Prehistoric time periods. Lithic debitage and worked cobbles, the

result of lithic procurement of the fine-grained cherts that outcrop on the hill slopes, are scattered across the hill slopes and interfluvies near the sinkhole.

The excavated materials from Bering Sinkhole were analyzed using a multidisciplinary approach combining site formation analysis, faunal analysis, taphonomy, material culture analysis, and human remains analysis toward the goal of macrotemporal characterization of cultures and the identification of long-term shifts in cultural systems in central Texas.

The results of the faunal analysis bolster and somewhat refine the model of Holocene paleoenvironmental reconstruction that proposes a general drying trend beginning over 7,000 years ago and continuing throughout the Holocene, interrupted approximately 2,500 years ago by a mesic period. The remains of desert cottontail and Florida cottontail rabbits from deposits dating to most of the Holocene—except the period from 2,500 to 1,500 years ago, when only the remains of the more mesic-adapted Florida cottontail were found—suggest that the xeric conditions had ameliorated during this time. That a period of heightened xeric conditions occurred just prior to 3000 B.P. is suggested by the recovery of the terrestrial snail *Glyphyalinia umbilicata* in deposits before 3400 B.P. and after 2500 B.P.

Accompanying the drying trend was a decline in soil depth and conditions. By 4500 B.P., the deep sandy soil-adapted gopher *Geomys* was replaced by *Pappogeomys*, which inhabits shallower soils. And even this gopher disappeared by 3100 B.P. leaving only *Thomomys*, which inhabits shallow rocky soils.

Material culture analysis involved artifacts made of stone, bone, antler, turtle, freshwater shell, and marine shell. All of the lithic artifacts conformed to classes previously defined in the central Texas region. Projectile point types were Martindale, Uvalde, Travis, Bulverde, and Frio, representing only a fraction of the number of types defined for the Archaic of central Texas. Although projectile points were not very numerous in the sinkhole ($n = 10$), their distribution provided very limited insight into the seriation of some types that often co-occur in habitation sites. In this regard, the two Martindale points were found in deposits below the single Uvalde point. These two types of points are often found side by side in the same strata in habitation sites. The situation at the sinkhole suggests that Martindale dart points may predate Uvalde points in at least this area of central Texas, although the extremely small sample size may be misleading.

Travis dart points, often accompanied by Nolan points in habitation sites, were the only projectile point type from the Clear Fork Phase

in the sinkhole. In this instance, of course, the sinkhole data cannot suggest—in the absence of Nolan points—whether Travis predated Nolan, but rather that the two types do not always co-occur in central Texas. The distribution of Bulverde and Frio dart points support the sequence proposed for central Texas (Weir 1976).

With the exception of the cache of large bifaces and a drill, the remaining lithic artifacts, composed of unifaces, bifaces, hammerstones, and cores, are not noteworthy in a utilitarian sense; however, their presence in a burial context is significant in characterizing the burial programs. This is discussed later. The cache of 14 large, early stage bifaces and 1 drill is significant in a number of ways. Through statistical analysis of technological and idiosyncratic attributes, it was determined that at least 3 flintknappers were responsible for the manufacture of the bifaces. Such group investment in burial offerings suggests the high-quality cherts and fine workmanship were of economic and ritual importance. Further support of this is found in the archaeological record in areas south and east of the Edwards Plateau, where biface blanks of Edwards chert have been recovered. These bifaces were traded to chert-poor areas. The recovery of a number of biface caches from Loma Sandia on the Gulf Coastal Plain provides further evidence that Edwards cherts were important trade items.

Bone artifacts were awls, pins, engraved implements, and tubular beads. The awls and pins were made from deer bone, and deer-sized bone was used to make the incised bone implements. The beads were made from rabbit and turkey long bones, and a single bone bangle was made from a badger leg bone. The awls were apparently utilitarian items, whereas the pins and beads were articles of personal adornment. The engraved bone implements are similar to specimens found in burial contexts in areas east of the Edwards Plateau (Hall 1981, n.d.). Hall (1988:170) has proposed that the design elements on bone batons or pointed implements are group signifiers, and, through intersite comparisons of designs, he postulates that area-specific designs could be identified. The zigzag line and short bar design on the sinkhole specimens are different from the designs found at other sites discussed by Hall. Whether this design is individual-specific, site-specific, or area-specific cannot be determined at the present time. The sinkhole specimens predate the implements discussed by Hall (1988) by approximately 500 years. Those discussed by Hall (1988) are Late Archaic or San Marcos-equivalent age, while the sinkhole implements belong to the terminal Round Rock Phase.

Antler artifacts consist of one antler billet used in the reduction of lithic tools and numerous antler tines, antler fragments, and beams still attached to the animal's skull cap. The numerous fragments un-

doubtedly represent complete antler racks that have partially disintegrated in the damp sinkhole conditions. Some of the fragments are badly burned. Deer antler racks have been recovered from burial contexts in the large burial sites of southeast Texas and smaller sites or individual interments along the Balcones Escarpment (Bement 1987; Hall 1981; Lukowski 1988; Taylor and Highley n.d.). In most instances, numerous racks, sometimes still attached to the skull, were laid directly on top of the corpse in the burial sequence. Burned antler is also common in these instances. With the exception of cases where the antler is worked into a specific tool, antlers recovered from burial contexts are best explained as the result of ritual activity.

A single artifact of turtle carapace was recovered from the sinkhole. This implement may have been a bowl or hair ornament or may have served as both. Turtle shell containers have been found in burial contexts at Horn Shelter (Young 1985:39). There, 5 carapace bowls were found in various associations with the burials. Three of the carapace artifacts were stacked and placed under the head. The Horn Shelter specimens are dated to the Late Paleoindian period. At Bering Sinkhole, the carapace artifact was recovered from the San Geronimo Phase burials. The hypothesis that the Bering specimen served as a hair ornament stems from the recovery of a long, slender bone pin from directly under the smashed carapace. The bone pin was of sufficient length and thinness to pass between the narrow gaps in the costal plates of the carapace. In such a position, the pin and the carapace could have functioned as a barrette or hair ornament. The removal of the vertebral arches from the inside of the carapace is consistent with alteration necessary for the artifact to function as a bowl.

Unaltered freshwater mussel shell valves have been recovered from burial contexts of various ages (Turpin 1992; Taylor and Highley n.d.). The function of the shell halves is not known, although it has been hypothesized that they served as containers, plates, or spoons.

Marine shell ornaments have drawn considerable attention in North American archaeology. This attention stems from the recovery of numerous large shell pendants from burial contexts across the southeastern United States, along the Mississippi River drainage system, and in southeast Texas. The Texas sample alone contained exotic artifacts from as far away as Arkansas and possibly Florida (Hall 1981:303). The pendants, made of conch shell, may have come from the Florida rather than the Texas coast (Hall 1981:295). However, the origin of these objects remains to be demonstrated. The 2 conch shell pendants from Bering Sinkhole were recovered from the Early Archaic San Geronimo Phase deposits. One is made from the outside whorl of the conch, and its form is identical to ones recovered from

Late Archaic contexts in southeast Texas (Hall 1981). The second pendant is made from the columella of the conch. Columella pendants are also common during the Late Archaic of southeast Texas; however, the form of the Bering pendant is unlike any recovered from Late Archaic contexts. The Bering pendant required that the columella be trimmed to a rectangular tablet rather than its original cylindrical form. The significance of the Bering conch pendants lies in the considerable age of the technology used in fashioning such items that until now has been attributed solely to Late Archaic peoples.

Small marine shell beads are relatively rare in assemblages from Texas, although when found they are usually from burial contexts (Hall 1981). Their relative rarity is probably a function of their small size. That more are found in burial contexts is probably attributable to the special recovery techniques often employed by archaeologists in burial fill analysis.

The material culture recovered from the sinkhole is a mixture of utilitarian, personal adornment, trade, and ritual items. The sinkhole has provided new data concerning the possible age and function of some of the artifacts that have wide distributions in Texas.

Analysis of the human skeletal remains included consideration of taphonomy, paleodemography, paleoepidemiology, and paleodiet with the goal of reconstructing the biological aspects of the populations living in this area of the Edwards Plateau. The skeletal remains provided the means of identifying the various strata of sinkhole use through the plotting of long bones that allowed the projection of depositional surfaces across the borders of individual excavation units. While the wet conditions of the sinkhole deposits preserved some aspects of bone morphology, the destructive forces of gravity, animal gnawing, and water transport disarticulated and dispersed the skeletal elements to such a degree that it was impossible to reconstruct individual skeletons. The dispersed and intermingled condition hampered age and sex determinations that rely on the use of different bone and tooth attributes from the same individual to produce reliable results.

A minimum number of 62 individuals of both sexes and all age-groups were recovered from the sinkhole deposits. The presence of both sexes and all age-groups in the various deposits indicate that the burial facility was available to all members of the society and not limited to a certain segment. The egalitarian nature of the mortuary facility is consistent with the societal reconstruction of central Texas hunter-gatherer groups determined by site and tool assemblage analysis (Weir 1976:140).

Riders across the Centuries

Horsemen of the Spanish Borderlands

Drawings and Text by José Cisneros



Biography by John O. West

Western Heritage Award Winner, Cowboy Hall of Fame



El Señor Cura

c. 1805

FROM THE TIME that Hernán Cortés brought Christianity to Mexico in the sixteenth century, religion has played an important part in the lives of the Mexican people. And throughout the history of Mexico, almost every activity has been regulated or influenced by either the cordial or antagonistic relations between Church and State.

The inevitable conflicts and confrontations between those two institutions began with the servitude and abuse of the natives by some of the newcomers who proved to be greedy and unscrupulous. During that era, the missionaries not only defended the Indians, they also established schools and other institutions in an effort to improve conditions for them.

One of the more unfortunate events that greatly affected the northwestern frontier including Chihuahua, Sonora, Arizona and Baja California, was the expulsion of the Jesuits. Those men of the Church, who had labored long and hard to help the Indian tribes in that region, were expelled and herded out of the country at a predetermined day and hour that was decreed by Carlos III. All of this was done swiftly, unexpectedly and in complete secrecy, thus denying the Jesuits the right to trial, or even to protest. Their schools, which at that time were the best in Mexico, as well as their churches and missions, were abandoned without warning, at the stroke of the royal pen.

Another significant event in which members of the church hierarchy had a very active part was in drafting of the Declaration of Independence from Spain. The most prominent leaders — Miguel Hidalgo y Costilla, José María Morelos y Pavón, and Mariano Matamoros — were Catholic priests.

Spanish Officer

Early XVIII Century

THE EIGHTEENTH CENTURY brought considerable changes into the colony of New Spain. In the matter of military attire, it witnessed, by way of Spain, the introduction of Dutch or Walloon uniforms brought by Flemish troops sent by the crown to revitalize her army. These uniforms, in turn, imitated the French style which was becoming predominant throughout Europe.

The wide brimmed hat, sometimes upturned on one side, replaced the cap or helmet. The coat was tight-fitting above the waist, knee length and flaring out over the hips. It buttoned down the front and had long, full cuffs turned back and fastened with buttons to show the coat lining — thus distinguishing one regiment from another — which was the origin of regimental facings. Two large pockets were set low on the front of the skirts. Under the coat went a thigh-length waistcoat. The legs were clad in loose breeches with ruffles at the knees. Hair was worn long and loose.

Two distinctive features in the Spanish military attire of this period was the red sash, worn by officers across the corselet, and the Burgundy or Saint Andrew's Cross, displayed on banners or standards instead of the traditional royal coat of arms of Castile and León.



Franciscan Missionary

XVIII Century

THE PRESENCE OF SPAIN in the Southwest was enhanced by the strong support and assistance of the Franciscans. They marked their paths with institutions, monuments and customs that have survived through the centuries. In their journeys they followed Estéban the Moor and Francisco Vázquez de Coronado; they were with Antonio de Espejo and with the Adelantado Don Juan de Oñate. They traversed the land with the soldiers and without them. In their burning zeal to conquer souls, their efforts sometimes culminated in martyrdom.

No group of men had more influence in the founding of the pivotal cities in the Spanish period than the members of the Order of Friars Minor. San Francisco, San Diego, San Antonio, Los Angeles, Guadalupe del Paso del Norte, Ciudad de la Santa Fé de Nuestro Padre San Francisco — all attest and proclaim with their sonorous Spanish names the Franciscan heritage of their origin.

Junípero Serra, Agustín Rodríguez, Antonio Margil de Jesús, Alonso de Benavides, and García de San Francisco are a few of the names in the long and illustrious roster of great *poverellos*, benefactors of the Southwest.

Although in their mission establishments they were surrounded by livestock and all kinds of domestic animals, the statutes of their order and their religious triple vows of poverty, chastity and obedience prevented them from riding horses, except on very extraordinary circumstances.



Spanish Officer

Early XVIII Century

THE EIGHTEENTH CENTURY brought considerable changes into the colony of New Spain. In the matter of military attire, it witnessed, by way of Spain, the introduction of Dutch or Walloon uniforms brought by Flemish troops sent by the crown to revitalize her army. These uniforms, in turn, imitated the French style which was becoming predominant throughout Europe.

The wide brimmed hat, sometimes upturned on one side, replaced the cap or helmet. The coat was tight-fitting above the waist, knee length and flaring out over the hips. It buttoned down the front and had long, full cuffs turned back and fastened with buttons to show the coat lining — thus distinguishing one regiment from another — which was the origin of regimental facings. Two large pockets were set low on the front of the skirts. Under the coat went a thigh-length waistcoat. The legs were clad in loose breeches with ruffles at the knees. Hair was worn long and loose.

Two distinctive features in the Spanish military attire of this period was the red sash, worn by officers across the corselet, and the Burgundy or Saint Andrew's Cross, displayed on banners or standards instead of the traditional royal coat of arms of Castile and León.



DOCUMENTARY SERIES NO. 7
LETTERS AND MEMORIALS
OF
FRAY MARIANO DE LOS DOLORES Y VIANA
1737 - 1762

Documents on the Missions of Texas from
the Archives of the College of Querétaro

Transcript of the Spanish Originals
and English Translation

by

Fr. Benedict Leutenegger O.F.M.

With Introductions and Notes

by

Fr. Marion A. Habig O.F.M.

Old Spanish Missions Historical Research Library at
Our Lady of the Lake University
SAN ANTONIO, TEXAS

1985

4.

October 8, 1745

To: Acting Mayor Juan Joseph de Montes de Oca

This "petition" is not a request but a reminder and an offer. Fr. Mariano paid the mayor of Villa de San Fernando a visit on October 8, 1745, and presented this short document to him and the town council (cabildo). It recalls two occasions when the mission Indians assisted the Spanish settlers in repelling attacks by large forces of Apaches and saved the presidio and villa or its defenders from destruction; and it assured the presidio and villa that the mission Indians would come to their aid when they would need their help in the future.

The first attack was made on September 18, 1731 (not 1732, as Fr. Mariano says). A force of 540 Apaches approached the villa. They stole 60 horses. Captain Juan Antonio Pérez de Almazán and 26 soldiers who had gone in pursuit of the raiders were completely surrounded. Then, "miraculously," the Apaches took to flight. What happened? Dunn and Castañeda¹ write that the Apaches feared that the trapped soldiers would be getting help from the presidio. What really happened, according to Fr. Mariano, was that the mission Indians were on the way to rescue Pérez de Almazán and his men. The Apaches saw them coming and they fled.

The second attack was made during the night of June 30, 1745, by a force of 350 Apaches (including women and children). The settlers and soldiers were not prepared to defend themselves; and if the mission Indians had not immediately come to the aid of the villa and routed the attackers, it could well have suffered the same fate as La Salle's Fort St. Louis in 1689.²

En la Villa de S^{ta} Fernando de la
Governazion de Texas y Nuevas
Philipinas en ocho dias del mes
de octubre de este año de mil
setesientos quarenta y cinco.
Ante el Señor D^{ño} Juan Joseph de
Montes de Oca Alcalde ordinario
de segundo voto de esta dha
Villa se presento la Peticion de
abajo. Por el Mui R^{do} P^{re} frai
fran. Maria Ano de los Dolores
Ministro de la Mission de el
Señor San Antonio en nombre de
todos sus Indios de dho Pueblo.

Señor Alcalde Ordinario

Fr. Maria Ano Francisco de
los Dolores Pred^{or} Ap^{co} de la
S^{ta} Cruz de Queretaro, y Minis-
tro de la Miss^{on} de S. Antonio
de Valero, sita en esta Provin-
cia de Texas; al dho Colegio per-

In the Villa of San Fernando of the
government of Texas and the New
Philippines, on October 8, 1745 in
the presence of Señor Don Juan
Joseph de Montes de Oca, acting
mayor and in the second place of
this Villa, the following petition
was presented by Very Rev. Fr. Fray
Francisco Maria de los Dolores,
missionary of San Antonio, in the
name of all the Indians of that
pueblo.

The present Señor Mayor

Fr. Maria Ano Francisco de los
Dolores, apostolic preacher of
Santa Cruz de Queretaro and mis-
sionary of the Mission San Antonio
de Valero, situated in this Pro-
vince of Texas and belonging to
said College, in the name of the
Indians of that mission and in the

teneciente, en nombre de los Yndios de dha Miss^{on}; en la mejor forma, que aya lugar en derecho, y a los dichos Indios con venga, parezco ante Vm. y digo:

Que siendo precisso, que a la Magestad del Rey N.S. (que D^s g^e) y a sus Reales Ministros conste juridicamente por sus Reales Justicias de los servicios, que sus Vasallos en beneficio de la Real Corona, han executado; para la impetracion de algunas gracias, privilegios o essenciones. Siendo constante que los hijos de esta Miss^{on} de S. Antonio se han mostrando siempre leales vasallos, permaneciendo firmes en la obediencia, y sugeccion, que desde su conversion prestaren; continuando con los Españoles buen trato; sin que alguno aya causado a dhos Españoles en sus personas y bienes la menor delacion, antes si cuydando los y defendiendolos en todas las ocassiones, que se han hallado en peligro de las naciones enemigas: como sucedio el año de mil, setecientos, y treinta y dos en que ocurrio tanta numero de Apaches, que saliendo al Campo el Capitan D. Juan Antonio Perez de Almazan con su compañía y no pudiendo resistir las fuerzas del enemigo, se vieron en grandissima conflicto; por hallarse dho Capitan, y los mas de la Compañia mal heridos. Y a no haver ocurrido los Yndios de esta Mision no solo los huvieran saqueado, y destruydo este Presidio de S. Antonio: y con solo ver los enemigos a la gente de este Pueblo, aun reconocido por ellos la ventaja de llevar quasi vencido la Compañia, no tuvieron animo de probar con ellos su valor; antes luego al punto vergonzosamente huyeron; por constarles de los animos esforzados de estos Naturales. Quienes en todas las campañas y resurgimientos, que hasta oy se han executado contra esta nac^{on}

best form appropriate to its right and to said Indians, I come before Your Honor to say:

Since it is necessary that for His Majesty the King our Lord (may God keep him) and his roayl ministers, it is clear juridically by their royal judges of services performed by his vassals for the benefit of the royal crown for asking some favors, privileges or principles. It is evident that the natives of this Mission of San Antonio have shown themselves always loyal vassals, firm in their obedience and submission since their conversion; they have continued in good relations with the Spaniards and no one has caused them or their belongings the least problem; rather they have looked out for them and defended them on every occasion when they were threatened by hostile tribes, as happened in 1732 when such a large number of Apaches appeared on the scene. Captain Don Juan Antonio Perez de Almazan³ with his company went out to the field and could not overcome the forces of the enemy; they were engaged in serious conflict and Captain and most of his company were seriously wounded. If the Indians of this mission had not entered the conflict, all would have been killed and the Presidio of San Antonio ransacked and destroyed. For the enemy just to see the natives of this pueblo, even though they realized that they were superior by having destroyed the company, they did not have the courage to test their valor against the natives; at that moment they fled in disgrace in the face of the great spirit of these natives. They were the ones who up till now in all the campaigns and uprisings have come out against the Apache tribe, followed their tracks and spied upon their ranches with great loyalty and such manly spirit that without them not even the Spaniards would have entered,

Apache, han servido de seguidores de rastros, y Espias de las Rancherias con tanta fidelidad, y animo tan varonil, que sin ellos, ni los Españoles se huvieran internado, y en caso de haverlo echo, a mas de no haver conseguido las Victorias, que se han logrado, o a salir con vida, huviera sido con fuga vergonzosa. Y ultimamente haviendo el dia treinta de Junio de este presente año de mil setecientos y quarenta y cinco venido a la madrugada bastante numero de Apaches o entrarse a este Presidio de S. Antonio y Villa de S. Fernando, estando desprevenidos los Españoles del Presidio y Villa como cosa nunca executado, teniendo pronto la noticia, con tal velocidad y esfuerzo concurreron los Yndios de este Pueblo con armas y Caballos a resistir a los enemigos Apaches, que ellos expelieron, y arrojaron, apremiandolos de forma que consiguieron assi el librar de su furia a los Españoles, y que no executaran la desolacion, que intentaron: como tambien ponerlos en fuga, dandoles muerte a algunos de ellos, y hiendo otros mal heridos. De todo lo qual, para que en los tiempos venideros puedan representar a donde mas les convenga, para los fines, que hallasen convenientes, se ha de servir Vm. presentar esta mi peticion a los Señores en junta de Cabildo, para que cada uno de por si certifique lo que acerca de lo referido les constare. Por tanto a Vm. pido y suplico se sirva de mandar executar como llevo pedido, que es justicia etc.

Fr. Maria Ano, franco de
los Dolores

and even if they had, they would not have been victorious or saved their lives; they would have retreated in shame. Finally, on June 30 of this year of 1745, a large number of Apaches came at dawn and entered this Presidio of San Antonio and the Villa of San Fernando; the Spaniards of the presidio and Villa were taken by surprise, as this had never happened before. Being quickly informed, with speed and force the Indians of this pueblo rushed in with arms and horses to resist the Apache enemy. They drove them out and forced them in such a way that the Apaches lost their anger against the Spaniards and did not carry out the destruction they had intended. The enemy was put to flight; some were killed and others wounded. On future occasions, therefore, they can present what is best to gain the goals intended. May Your Honor see to it that this my petition is brought before the Lords in the council meeting, so that each one certifies on his own what is evident to him. I ask Your Honor and plead that you would be so kind as to order the carrying out what I have requested, for it is just etc.

Fr. Maria Ano Francisco de
los Dolores

NOTES

1. Castañeda, op. cit., III, 37-38.
2. Castañeda, op. cit., III, 48-49.

REASSESSING CULTURAL EXTINCTION:



CHANGE AND SURVIVAL AT MISSION SAN JUAN CAPISTRANO, TEXAS

Edited by
Alston V. Thoms



Contributing Authors

Adán Benavides
Patricia A. Clabaugh
Jeffery H. Cohen
Charlotte E. Donald

Jennifer L. Logan
J. Bryan Mason
D. Gentry Steele
Alston V. Thoms

Reports of Investigations No. 4

A Joint Publication of:
Center for Ecological Archaeology
Texas A&M University
and
San Antonio Missions
National Historical Parks, Texas
National Park Service

2001

Table 7. Native American group affiliation of individuals in residence at Mission San Juan.

Schuetz (1980b, c)	Campbell and Campbell (1996)	Francis (1999)	Rock (1999)
Borrado	Borrado	Borrado	Borrado
Chayopin [Sayopine, Chaiopin]	Chayopin [Sayopine, Chaiopin]	Chayopin [Sayopine]	Chayopin [Sayopine, Chaiopin]
Guanbrauta-Aiaguia	Camasuqua (Pamaque ^a)		
Malaguita [Maraguitas, Malahuites]	Guanbrauta-Aiaquia	Malaguita	Guanbrauta-Aiaguia
	Malaguita		Malaguita
			["Maraguitas, Malahuites"]
Orejón [Orejones]	Orejón	Orejón [Orejones]	Manos de Perro
			Orejón [Orejones]
			Olojas (^a Pitalac [Pitalaque, Alobaja, Pacitalac])
Pacaos			Pacabos
Pajalat [Pajalate]	Pajalat	Pajalat	Pacaos
Pamaque ^a	Pamaque ^a	Pamaque ^a	Paguacans [Pasnacan, Pane]
Pana	Pana	Pasnacan [Panascan]	Pajalat
Pasnacan [Pasnacan]	Pasnacan		Pamaque ^a
	Peana		
Piguique ^a [Pihuique]	Piguique ^a [Pihuique]	Piguique ^a [Pihuique]	
Pitalac [Pitalaque, Alobaja, Pacitalac]	Pitalac [Pitalaque, Alobaja, Pacitalac]	Pitalac [Pitalaque, Alobaja, Pacitalac]	Piguique ^a [Pihuique]
Salcedo			
	Sarapjon (Pamaque ^a)		Pilatos
	Tacame	Tacame	
	Taguaguan (Pamaque ^a)		
Tilijae [Alijae, Filixaye, Tilijayas, Tiloja, Titijay, Toluja, Teloxa]	Tilijae [Alijae, Filixaye, Tilijayas, Tiloja, Titijay, Toluja, Teloxa]	Tilijae [Alijae, Filixaye, Tilijayas, Tiloja, Titijay, Toluja, Teloxa]	Sanipaos [Sanipas]
	Tinapihuaya (Pamaque ^a)		
Venado [Benado]	Venado [Benado]	Venado [Benado]	Tilijae [Alijae, Filixaye, Tilijayas, Tiloja, Titijay, Toluja, Teloxa]
Vallejo	Viayan (Pamaque ^a)		Tlascalan
			Venado [Benado]
			Viayan

[] indicates name variants

^a indicates collective nameNote: *Handbook of North American Indians* was used for standardized spelling of group names.

Table 8. Names and tribal affiliations of mission Indian land grantees from San Juan.

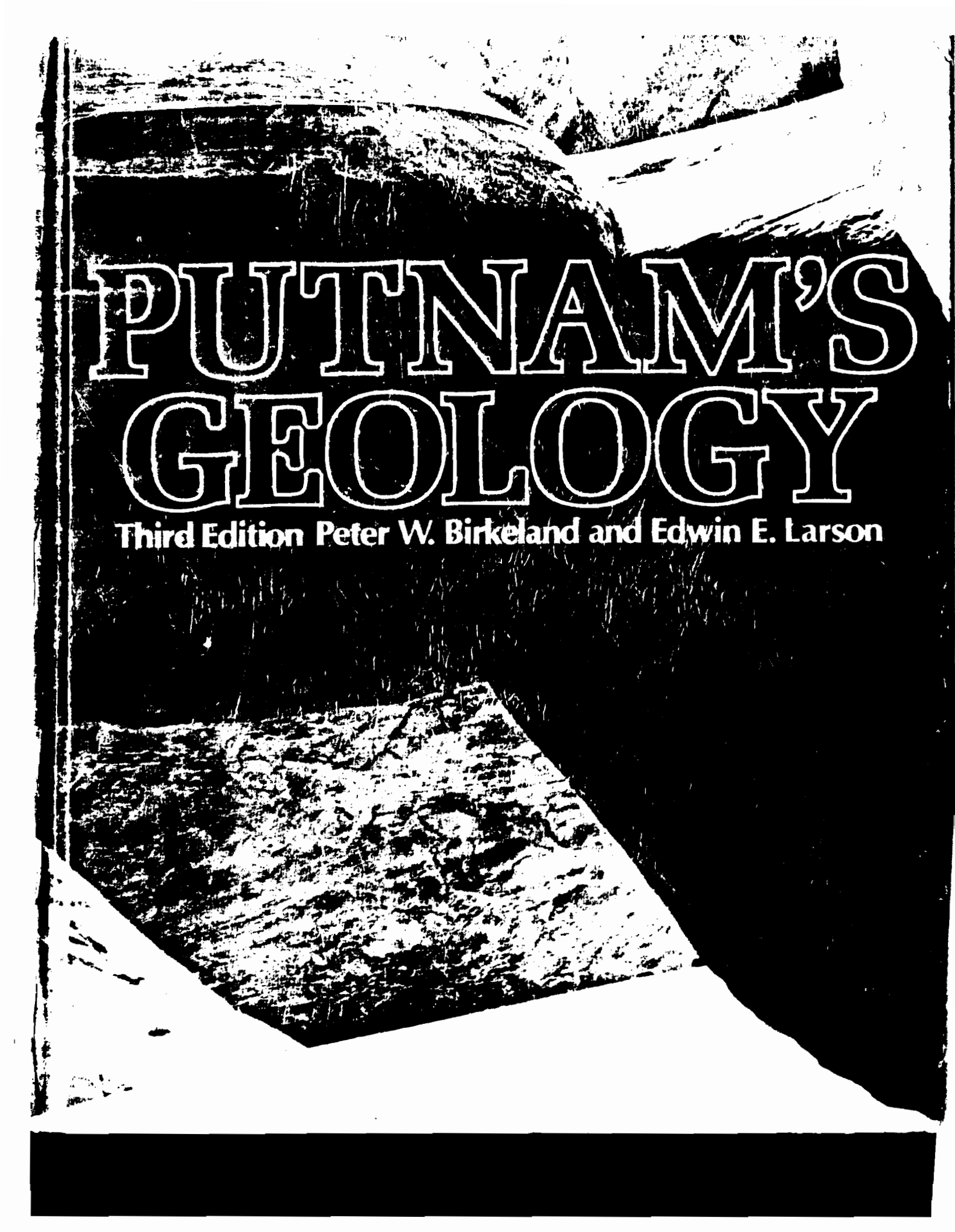
Name	Tribal Affiliation	Date	Document	Source
*Bustamante, Luis	Orejón	1793	Census	Schuetz (1980b:10)
*Bustillos, Antonio	Pamaque-Piguique	1793	Census	Schuetz (1980b:10)
*Castañeda, Marcelino	Pamaque-Piguique	1793	Census	Schuetz (1980b:10)
*de la Cruz Texada, Mariano	Tribal affiliation unknown	1793	Census	Schuetz (1980b:10)
*del Prado, Mathias	Chayopin	1793	Census	Schuetz (1980b:10)
*Díaz, José	Pamaque-Piguique	1793, 1797	Census	Schuetz (1980b:264, 1980c:10)
*Flores, Salvador	Malaguita	1793, 1824	Secularization Record	Schuetz (1968:58-59, 1980c:10),
*Quiñonez, José Ventura	Malaguita	1793	Census	Schuetz (1980c:10)
*Rivera, Conrado	Pamaque-Piguique	1793	Census	Schuetz (1980c:10)
*Rivera, José María	Pamaque-Piguique	1793	Census	Schuetz (1980c:10)
*Valle, José Cayetano	Guanbrauta?	1794, 1795, 1798, 1815, 1817	Censuses	Schuetz (1980b:264, 1980c:10)
*Ximenez, Mathias	Venado	1793, 1794, 1824	Secularization Record	Schuetz (1968:58-59, 1980c:10)

Table 9. Ethnic make-up of San Antonio and its missions from available statistical reports, 1790 and 1792.

Ethnic Categories	Villa of San Fernando		Mission Valero		Mission Concepción		Mission San José		Mission San Juan		Mission Espada	
	1790 ^a	1792	1790	1792	1790	1792	1790	1792	1790	1792	1790	1792
Europeans	--	13	0	0	0	0	0	0	0	0	0	0
Spaniards	780	666	15	15	4	14	26	27	8	4	14	32
Indians	269	289	82	36	48	24 [63 ^b]	93	80	43	25	66	38
Mestizos	30	--	--	--	--	--	--	--	--	--	--	--
Mulattos	--	213	4	19	3	9	21	17	6	22	8	7
Of Broken Color	324	--	--	--	--	--	--	--	--	--	--	--
Slaves	17	--	--	--	--	--	--	--	--	--	--	--
Other Castes	--	121	6	0	8	11	14	0	12	0	6	0
Total:	1420	1302	107	70	63	58	154	124	69	51	94	77

^a Includes population of Presidio of San Antonio de Béxar.[^b] Count from 1792 "Indians Only" statistical report for Mission Concepción.

-- Category not used in statistical report.



PUTNAM'S GEOLOGY

Third Edition Peter W. Birkeland and Edwin E. Larson

Kuor

PUTNAM'S GEOLOGY

THIRD EDITION

PETER W. BIRKELAND EDWIN E. LARSON

New York  Oxford University Press  1978

GEOLOGIC ROLE OF GROUND WATER

Karst

The landscape that may develop in a region underlain by limestone differs in a multitude of ways from one characteristic of less soluble rocks. Parts of China display such a landscape well (Fig. 15-13). But perhaps the best-known region of that type is the Karst, the portion of Yugoslavia bordering the Adriatic, the Dalmatian Coast. It is one of the picturesque coasts in the world, with the sea penetrating far inland in long, fiord-like inlets. They are separated by barren, whitish limestone ridges and islands that contrast vividly with the wine-dark waters of the sea—to use the 2700-year-old imagery of Homer. Karst, in fact, is the name

given to similar topography formed by the solution of rocks everywhere.

Dalmatia is one of the historic coasts of Europe. The once-forested slopes of the now barren hills of what was then known as Illyricum provided timbers for the galleys of Rome, and later for the wide-ranging vessels of the Venetian Maritime Republic. Today it is a harsh, stony land, and it is difficult to visualize the widespread forests and soils that once mantled its slopes before destruction by overcutting, overgrazing, and active erosion.

The region has one of the heavier rainfalls of Europe, yet it is strikingly devoid of surface streams. Limestone—if joints and other fractures abound—is so permeable that rainwater

Fig. 15-14. Sinkhole topography in Indiana. John S. Shelton



sinks rapidly into the ground. A stream will flow for short distances, disappear underground, and then reappear several kilometers away as a river emerging full-born from a giant spring. Such a limestone terrain is pocked with large numbers of closed depressions, some large, some small. Commonly the depressions are floored with clay, and that thin accumulation of reddish soil is likely to be all that is available for agriculture. In Yugoslavia the larger depressions may be several kilometers across—large enough at any rate to shelter a village and its surrounding patchwork of fields. The origin of the large depressions is uncertain. While they are partly caused by removal of material by solution, they also appear to be the result of the folding and faulting of the underlying limestone.

Smaller, closed depressions in Yugoslavia and elsewhere are almost certainly caused by solution. Some of them extend downward into the earth through near-vertical shafts, which commonly lead to deep caverns. In North America such solution pits are called *sinkholes*, and some may hold small lakes if they are floored with a layer of clay (Fig. 15-14). Should the clay seal be broken, then the lake will drain away through solution channels into the underlying limestone.

Sometimes sinkholes serve as natural wells. Their steep sides extend downward for scores or even hundreds of meters, until they intercept the water table which stands as a pool of water, somber and green, at the bottom. Renowned examples of such formation are the *cenotes* of Yucatan. Mexico's Yucatan Peninsula is a nearly level limestone plain, devoid of surface streams because the rainwater sinks almost immediately into the ground. When the peninsula was the site of the Mayan Empire, the dense agglomerations of people at such cities as Chichén-Itza were dependent upon so slender a supply of water as the dank fluid at the bottom of a limestone sink. No wonder that, to preserve that tenuous link with survival, a maiden burdened down with bangles and ornaments was ceremoniously hurled into the cenote each year in order to assure a continued supply.

Sinkhole formation is still an active process, as some unfortunate landowners have discovered. It is a vexing geologic hazard common to many areas in Florida and in other parts of the country where it causes damage to homes and building foundations (Fig. 15-15) and makes the maintenance of stable road beds for highways very difficult. Research is now being directed at finding ways to locate areas that are prone to sinkhole formation, so that future damage can be avoided. One method of study is aerial photography with remote-sensing devices. Data thus obtained may reveal thermal and vegetation patterns that could indicate the presence of caverns subject to collapse.

Geysers and hot springs

By far the most spectacular manifestation of ground water is its appearance at the surface in the form of geysers and hot springs. Certainly they are the leading attraction of Yellowstone National Park, and it is a rare household that does not include a member who has seen Old Faithful run through its repertoire. Yellowstone is not the only geyser area in the world; in fact, the extensive one of Iceland gives its name to this sort of aqueous outburst, since all are named for a large Icelandic spring, *geysir* (Fig. 15-16). Another large and touristically attractive geyser region is the Rotorua region of North Island in New Zealand. It is currently being developed as a source of thermal power.

Although the actual process that goes on in an erupting geyser is something of a mystery, enough is known of the physical laws operating that a plausible explanation can be offered. Incidentally, its general elements are much the same as the one advanced by the German chemist Robert Wilhelm Bunsen, whose burner is known to every student of chemistry.

A generally held view is that ground water percolating downward in a geyser area comes in contact at depth with a source of heat. That source may be cooling volcanic rocks, or steam, or other gases given off by magma. Even though the water at the bottom of a tube may be heated to 100°C (212°F) it does not boil

The Mephisto

THE MEPHISTO

THE MEPHISTO



THE MEPHISTO



ABOUT THE AUTHOR

Del Weniger is chairman of the Biology Department of Our Lady of the Lake University in San Antonio, where he has taught for twenty-four years. He earlier taught at the University of Houston and at Oklahoma Panhandle A&M University.

Fortunate in having early training in ecology, he organized the first course in ecology offered in San Antonio and still teaches it. He has not only been active in studying our Texas environment, but has worked to preserve it, doing ecological consulting work for both federal and local agencies and a number of Texas ranches, has served on the State governing boards of The Nature Conservancy and the Sierra Club, and heads the Science and Education Committee of the San Antonio Botanical Center. He has also contributed by speaking to many groups about the Texas scene.

As a botanist, he is author of the major

works, *Cacti of the Southwest* and *Cacti of Texas and Adjacent States*, as well as of numerous articles and research reports.

He has been honored with a Texas cactus, *Echinocereus wenigeri* named after him. In 1970 he received an award "As one of Texas' Outstanding Authors and Author of the Year's Best Book by a Texas Publisher" from Theta Sigma Phi. He was a co-author of the book awarded by the Texas Historical Commission "The 1978 Official Texas Award for the best publication of the Year in Local or Regional Texas History entitled, 'San Antonio in the Eighteenth Century.'" He was the recipient of the *Socio Emerito* award bestowed by the *Sociedad Mexicana de Cactologia*, Mexico, D.F. In 1980 he received an award by Texas Woman's University for past significant publication on Texas native plants.



Theodore Gentilz: *Camp of the Lipans*. While Gentilz never details the grassy vegetation of the prairie, he paints here a lovely scene with the scattered trees of the prairie included.

— *Courtesy of the Witte Museum, San Antonio*

picture of its situation which we would not otherwise have. He wrote, "... after commencing our march for home, we struck the Nueces, though unknowing to us, within four miles of the Laredo crossing. Had we known this fact, infinite trouble might have been spared us ... None were lost in crossing the river, but we had now to encounter a marshy bog, two miles wide, and filled with numerous sloughs, which we were all day crossing — fifty horses were lost in this bog, including General Somervell's."¹⁷⁷

Lieutenant Michler was much more fortunate than all the others when he crossed the Nueces in 1849. His ford, so luckily found, was probably near the boundary of McMullen and Live Oak Counties. He wrote: "At the point where we struck the Nueces, a splendid rocky ford was found ... There was no river bottom land to pass through [in approaching the river from the south side] — perfectly clear prairie, free from all timber, bordering immediately upon the river at this point. Above and below, at a short distance from the ford, the timber in the bottom was heavy and thick ... On this side [the north side] there was but a narrow strip of heavy timber and bottom land, about twenty yards in width, and then you rise to a mezquite flat ... The water of the Nueces here presents a muddy appearance, contrasting greatly with the clearness of its water at its crossing of the wool road."¹⁷⁸

In Live Oak County, the Nueces receives its first important tributary. It is the Frío River, which drains a large area and which is itself a complex system. To find the sources of this river one has to go all the way back up into Real and Bandera Counties, and the early travellers avoided this rough and dangerous Indian stronghold, so we have no early reports of its beginning.

Where most explorers first struck the Frío was usually in what is now Uvalde County. At this level there were already two important branches of the Frío. The eastern is considered a tributary, the Sabinal River, and the western is considered the main Frío. French described these two streams as he found them in June of 1849: "... the Sabinal — a clear, cool, delightful, running stream, with banks bordered with large trees, suitable for building purposes. Leaving the Sabinal [going west], the country is more rolling and diversified ... With but little change, the road continues its westerly course across the Comanche creek, and thence to the Río Frío, 13.87 miles. We found in the Río Frío no running water. Its banks are high, presenting in places a wall of limestone of considerable height; and evidences of its being swollen to a stream of large size, at times, were visible."¹⁷⁹ When Beale crossed these

two rivers in June of 1857, he found the Sabinal, "a fine stream of water in large pools, and very clear and sweet," but says, "we arrived at the Río Frío, and found the water not such as the name would indicate, and confined at the crossing to one large pool,"¹⁸⁰ this confirming the contrast between the two streams which must have been typical in the dry season. However, Hughes must have found the Frío during a wetter season when he crossed it at or near the same place in September of 1846, for he wrote, "Arrived on the Frío ... a deep and beautiful stream, the water pure and cold."¹⁸¹ Gregg crossed the Frío at about the same place less than a week after Hughes, and leaves a real indication of the amount of water in it at that time, as well as of its very changeable nature: "... to Río Frío, with large gravelly bed, but not running the fourth of the water of the San Antonio, at present; yet subject to great rises."¹⁸²

After these two streams combine, they flow as the Frío River down into the county named after it. In Frío County the river receives from the east a tributary rich in history, if apparently not in water. This is Hondo Creek, on whose branches some of the earliest German settlements were located.

Captain French left us the best report on Hondo Creek and its branches, experienced as he moved west through Medina County in June of 1849. He wrote: "From Castroville the road leads over some gentle hills, and thence through a tract of land pretty well timbered, until it opens out into what is here known as a 'hog-wallow' prairie ... Beyond this prairie is a slightly elevated ridge, from the top of which, spread out before him, the traveller sees the beautiful valleys of the Quihi and the Hondo, pent in by the blue hills in the distance. The valley of the Quihi is sparsely covered with timber, principally mezquite and oak ... In midsummer the stream ceases to flow, but the water at intervals collects in never-failing pools ... On reaching ... [the Hondo], however, we found it but the dry bed of a river, with occasional ponds of water ... Rising from the Hondo, the road stretches over a prairie country to the Seco, crossing a 'hog-wallow' that we found nearly impassable. The Seco, at this season, like the two previous streams, afforded no running water, notwithstanding the late rains. Two miles below the crossing, on the left bank, there is a settlement of Germans, at Dermis [D'Hanis]. Here, as at Vandenburg, great inconvenience arises from the want of water, and while we were encamped on the banks, the people had to drive all their cattle two miles to a pond found in the bed of the stream."¹⁸³

This is a dismal picture of less than reliable streams, and it is confirmed by others — for in-

stance, by Beale, who wrote of his experience in June of 1857, "... we encamped on the Hondo . . . Supper over, I went to the stream, which I found to be fine, clear water, in large pools, but not running at this time."¹³⁴

As if it were not bad enough to have the streams intermittent, the settlers of this region may have had to put up with a stream which swallowed itself and disappeared before them. The story is a strange one, but there are just enough indications it might be true to prompt us to repeat it here.

It was Julius Froebel who told the story in 1853. He wrote that there were subterranean water courses in this area, "... many of which never find an outlet to the surface. Sudden as well as gradual changes appear to take place in these water-courses, the water in one spot removing an obstruction, and in another creating some new one. Mr. P., an engineer of San Antonio, told me the following fact: — The Río Verde, a river now entirely dependent on the atmosphere for its supply of water, and which falls into the Río Hondo, was formerly a permanent, clear, and broad stream, several feet deep; people settled on its bank; when, it all at once disappeared, nor did it appear again. A deep well, dug near it, at first yielded some water, but afterwards became dry. Suddenly, one night, a regular torrent broke forth from it with a tremendous noise, but it flowed only for a few hours; in the morning the well was again empty. At noon the torrent gushed forth anew. This continued for several hours, since which time it supplies very little permanent water. Of course I cannot vouch for the accuracy of these statements."¹³⁵

Froebel's story is second hand, and so not presented here as eye-witness evidence like that making up the bulk of this work. And the only other account of this strange failing of a stream I have found is in an even less substantial and later source — just the kind I am usually avoiding in establishing our pictures of Texas as it was. However, it seems important to present these stories, since if they are true, they would explain much which is known fact.

The source of this second version of the drying up of Verde Creek is an unsigned article appearing in print in 1930. It details some early experiences of one Xavier Vance. The part which has bearing on Vandenberg and Verde Creek is the following: "Xavier Wanz, (pronounced Sevier Vance) was born in Strassburg, Alsace, in 1844, and came to Texas with his parents as part of Castro's Colony in 1845 . . . His parents left Castroville, went fifteen miles further west and settled at a place called Vandenburg, four miles Northwest from the present village and settlement of New Fountain . . . When the settlement was made here the creek then called Lucky, but now

Verde, was a bold, running stream, and derived its name from its many evergreens that grew along its bank and always gave it a verdant appearance. This settlement began prosperously, but all at once a strange thing happened, which caused Vandenburg to be abandoned and the houses which they had so carefully and substantially built to go to decay. This was the sudden drying up of the Verde Creek. It broke out again, however, four miles below, and most of the people moved there and started another village and called it New Fountain, suggested by the new flow of water. A few remained at the old town and hauled water."¹³⁶

Now let's see how these stories, unlikely as they seem, square with known facts.

The first fact is that this valley is actually underlain by the Edwards formation, which has at this point just gone underground and is still near the surface. This formation is famous for being a massive limestone layer eaten through with myriads of water-worn passages up to cavern size. These would be Froebel's subterranean watercourses. It is remarkable that he so accurately understood the underground geology.

The second fact is that a settlement called Vandenburg, or Vandenburg, was made on the bank of Verde Creek exactly as stated by both authors, and that this settlement was abandoned, just as stated by both.

We do not have other contemporary statements about the quality of Verde Creek when Vandenburg was flourishing. However, these German immigrants did not usually settle as a community and stay long enough to laboriously build their stone buildings where there was insufficient flowing water, so it seems we must assume that when they built Vandenburg, Verde Creek was an adequate flowing stream at that point.

The next known fact is that Vandenburg was abandoned, just as both authors maintain. We don't know why, but this sort of an abandonment points toward some unanticipated failure of an essential resource, and so constitutes a valid presumption that the accounts of these two writers were true as far as the radical and permanent change in Verde Creek is concerned.

It is also known that a new settlement was actually made below old Vandenburg on Verde Creek, and that it was called New Fountain. If the name of this new settlement means anything, it must indicate a new flow of water — a new spring — occurred at that point, and so this name seems to be incidental evidence for the unknown later writer's story.

An outstanding feature of a Karst region like this is the underground channels constantly formed

and changed by the flow of water through them. Common occurrences are sink holes caused by sections of rock undermined and collapsing into eroded voids. These events radically change the flow of water both underground and on the surface. These facts leave the distinct possibility that such a collapse occurred somewhere underneath Verde Creek, opening a new channel which suddenly swallowed the creek somewhere above Vandenburg, and that the water formerly in the creek was then conducted to the surface again at a point further downstream. This would produce a new spring, merely another of the myriad such springs thus formed, but this one unique in that it burst out right in front of the settlers and so worthy of the name, New Fountain. Even the strange action of the well at Vandenburg would be understandable as the rocks below were rearranged by the force of the water forming its new channels.

We thus have in these stories not wildly impossible imaginings, but rather accounts of strange but

clearly possible events which may have been experienced by the early settlers and which may have affected the history of these settlements drastically. The fact that the evidence all points toward the truthfulness of these stories and that they offer plausible explanations of otherwise unexplained historical events and names, should influence our judgments upon many early accounts which seem on the surface sensational or unlikely.

Soon after receiving whatever waters these creeks can spare, the Frio River now combines with what is considered a tributary to it from the west. This is the Leona River, which arises in the small distance between the already constituted Frio and Nueces Rivers back up in Uvalde County. Its watershed, less than 10 miles wide where it starts, would never have been large enough to produce anything more than another intermittent creek, but this stream is fortunate to receive the waters from one of the State's great springs. This is Leona Spring, already mentioned, which prompted the founding of



The Leona River in 1848, sketched by Seth Eastman.

—Courtesy of McNay Museum, San Antonio

Texas Speleological Survey

All Information contained on this site is © copyright by the Texas Speleological Survey - all rights reserved unless otherwise shown.

Web Space provided by the Texas Natural History Collection at the Texas Natural Science Center at The University of Texas Austin. For further information email site designer/webmaster Butch Fraley.

Home About TSS Contact Us Publications Site Map Site History Links

Overview of Texas Caves & Karst

by William R. Elliott, Ph.D.

© Texas Speleological Survey, All Rights Reserved

The TSS defines a cave as a naturally occurring, humanly enterable cavity in the earth, at least 5 m (15' 6") in traverse length, and where no dimension of the entrance exceeds the length or depth of the cavity.

Note: This definition is used by the Texas Speleological Survey to classify karst features, but five meters is not universally accepted. Other states and the Texas Commission on Environmental Quality have different standards.



Orion Knox in the entrance room of Electro-Mag Cave, Sun City, Williamson County, Texas.

- photo George Veni

At least 9,000 caves, sinkholes and springs are known in Texas, distributed in karst regions covering about twenty percent of the state. Karst is a terrain formed by the dissolution of bedrock, and generally is characterized by sinkholes and caves that channel water underground. Texas caves and karst aquifers are important economic, scientific, and recreational resources.

Karst requires soluble rocks, and Texas has many karst regions (see map). The majority of Texas caves occur in the Cretaceous limestones of the Edwards Group, Glen Rose, and Austin Chalk, distributed in the Balcones Fault Zone, the Edwards Plateau, the Stockton Plateau, and the Cibolo Creek and the Guadalupe River basins. In the Llano Region, the Ellenburger Group carbonates (Ordovician age) are intensely

cavernous. Permian reef limestones in West Texas contain important caves. Two gypsum karst areas (Permian age) occur north of Van Horn, Culberson County, and in fourteen counties in Northwest Texas. Some unusual caves occur in "pseudokarst" (false karst), where caves did not form primarily by dissolution in groundwater. Examples of pseudokarst are granite (Enchanted Rock Cave, Llano County), volcanic tuff and conglomerate (Big Bend), sandstone, travertine, shale, caliche, and other materials. Many caves are being degraded, filled, or quarried by humans before their contents can be adequately studied.

Long caves: At least 103 Texas caves are longer than 300 m (984 ft.). Honey Creek Cave is the state's longest at 32 km (20 mi.), and is still being actively explored. The cave is a tributary to the Guadalupe River, and it extends under Comal and Kendall counties. Powell's Cave System, a complex of three caves in Menard County, is at least 21 km (13 mi.) long and "growing" as cavers continue to map it.

Deep caves: At least 104 caves are deeper than 30 m (99 ft.). Sorcerer's Cave (Terrell County) is the deepest at 170 m (558 ft.). The largest cave in terms of volume may be Fern Cave (Val Verde County), estimated at about 300,000 cubic meters (10 million cubic ft.).

The scientific resources of Texas caves are many. Hundreds of ancient species, specially adapted to an energy-efficient life in permanent darkness, are scattered through the karst of Central Texas. Cave-adapted salamanders, catfishes, shrimps, isopods, amphipods, snails, spiders, harvestmen, pseudoscorpions, beetles, millipedes, centipedes, and other types have been described. Most of these eyeless "troglobites" occur in the Balcones Fault Zone, where geologic isolation in faulted, river-dissected karst blocks has resulted in an evolutionary history like that of an archipelago. Some of these species are endangered by land development, overuse of groundwater, pollution, and pests such as the red imported fire ant.

About two dozen Texas caverns harbor a total of about 100 million Mexican free-tailed bats from April to November every year. These migratory bats consume 6,000 to 18,000 metric tons of insects annually in Texas. The largest known mammal colony in the world is the colony of 20 million or more Mexican freetails in Bracken Bat Cave, Comal County. Bats are

recognized as important but are feared by many nevertheless. A 1917 state law protecting bats was rescinded during a rabies scare in 1957. Several other insectivorous bat species inhabit hundreds of Texas caves, but have been killed or driven out of some caves by vandals. Bat Conservation International moved its headquarters to Austin in 1986 and has been educating the public on the ecological importance of bats.

About twenty-five Texas caves have yielded important fossils of vertebrate animals. Extinct species, such as the scimitar cat, dire wolf, Columbian mammoth, ground sloth, glyptodon, spectacled bear, and flat-headed peccary, dened in, fell in, or were eaten in Texas caves. Radiocarbon dates up to 23,000 years before present have been recorded. Bats have utilized Texas caves for many millennia. The remains of small mammals found in cave soil and flowstone strata have chronicled the climatic shifts in Texas since the ice ages ended about 11,000 years ago. Central Texas was a cool, moist environment until about 3,000 years ago. Burrowing mammals, such as moles and gophers, were common. With the increasing aridity there was a massive loss of soil. A second episode of soil loss was caused by the loss of fire ecology and the overgrazing by domestic animals that continues to this day.

Paleoindians utilized Texas cliffs and rockshelters for "animal kills." As long as 12,400 years ago, Bonfire Shelter near the Rio Grande received animals driven off the cliff. People processed the carcasses in the shelter. Kills of mammoth, bison, and horse occurred several times. In the Archaic Period (9,000-1,000 years ago) many shelters in the Lower Pecos River and Devils River area were inhabited by hunter-gatherers. Fine pictographs may still be seen in Fate Bell Shelter at Seminole Canyon State Historical Park near Comstock. Pit burials, where the dead were dropped into deep sinkholes, also have been documented. Important archeological materials no doubt remain to be found in caves and are protected by law.

Early scientific work in Texas caves began in 1896 with the description of the Texas blind salamander *Eurycea rathbuni* from an artesian well at San Marcos. Important bat guano caves were documented in 1901; the caves had been sources of nitrates for gunpowder but became fertilizer mines for citrus and vegetable farms. Serious speleology in Texas began with the 1948 publication of ***The Caves of Texas*** by the National

Speleological Society (NSS). Caving groups (grottos) formed in the 1950s and systematic documentation of the state's caves began, first by the grottos and the Texas Cave Survey, then by the Texas Speleological Survey (TSS), founded in 1961. NSS conventions were held in Texas in 1964, 1978, and 1994; the 2009 NSS Convention will be held in Kerrville in conjunction with the 15th International Congress of Speleology. Today's Texas Speleological Association includes eleven grottos in major cities. Caves are conserved and managed by the Texas Cave Management Association, The Nature Conservancy, Texas Parks & Wildlife Department, Bat Conservation International, and many private landowners. The State Caverns Protection Act protects caves from vandalism and destruction. Another statute protects landowners from liability for injuries to cave visitors, unless they have paid for access to the cave.

The Edwards Aquifer, which extends from Brackettville to north of Austin along the margin of the Edwards Plateau, is a karst aquifer that supplies drinking water to 1.5 million people in the San Antonio area. As pumping begins to exceed natural recharge and water levels decline, several rare species and the human economy are threatened. The Comal and San Marcos rivers, which originate from large karst springs, are important in maintaining the Guadalupe River ecosystem all the way to the San Antonio Bay estuary on the Texas coast.

Texas caves abound with natural delights. Seven show caves are open to the public: Cascade Caverns and Cave Without A Name (both at Boerne), Caverns of Sonora (Sonora), Inner Space Cavern (Georgetown), Longhorn Cavern (Burnet), Natural Bridge Caverns (New Braunfels), and Wonder Cave (San Marcos). Caverns of Sonora is considered by many experts to be the most beautiful cave in the world. The other caves offer an amazing variety of beautiful speleothems (mineral formations), fossils, and history. Wild Caving tours are now offered at Colorado Bend State Park, Kickapoo Caverns State Natural Area, and West Cave (a botanical preserve and travertine cave near Austin).

BIBLIOGRAPHY:

Elliott, W. R. 1994. Texas' caves. Texas Almanac, Dallas Morning-News. p. 109.

Elliott, W.R., and G. Veni (eds.). 1994. The Caves and Karst of Texas. 1994 Convention Guidebook. National Speleological

Society, Huntsville, Alabama. 342 pp. + viii + 13 maps.

Mohr, C. E. (ed.). 1948. The Caves of Texas. National Speleological Society, Bulletin 10. 137 pp.

Turpin, S.A. (ed.). 1985. Seminole Sink: Excavation of a vertical Shaft Tomb. Texas Archeological Survey, Research Report 93, Univ. of Texas at Austin. 216 pp.

Revised from The New Handbook of Texas, 1996, Texas State Historical Association.

Revised statistics from the TSS database - January 22, 2006

[Top of Page](#)

Cenoté

East of the major Chichén Itzá ruins is a dark underground world the Mayans called Cenoté. They are deep water filled sinkholes formed by water percolating through the soft limestone above. Since the porous soil held little water, these underground bodies were extremely important to the city. A visit to one is a spine chilling experience. Entry is through a vertical hole with narrow stair steps carved by the Mayan's themselves. The air is thick and musty. One misstep on the slimy ledges threatens to send you falling over 20 feet.



Once your eyes get used to the light level a bizarre world takes shape. Stalagmites of blood red limestone seem to ooze from the dripping walls. Ahead is a strange green pool of glowing water.



As you approach the pool you notice roots of trees hanging before you. In their search for water they've penetrated the ceiling, dropping 50 feet to the pool below. It's like an eerie underground forest.

After you've crawled under some especially low hanging stalactites you're greeted by an incredible scene. A beautiful blue green pool of unknown depth stretches out before you. A massive stalagmite hangs down, just inches from

touching the surface, and above a piercing beam of light streams in from the ceiling, illuminating the pool and the entire chamber.

By pure luck I was at the Cenoté for a rare event. Once a year, in April, the beam of light touches the tip of the stalagmite. There are many instances of ancient peoples building monuments to take advantage of events like these but this is something that is totally natural and unplanned.

There is a darker side to this and other Cenoté, however. In the wells around Chichén Itzá have been found scores of skeletons. Mayan petroglyphs depict human sacrifices at these sites. What lies under this Cenoté is not known, no one has ever been able to reach it's depths.





Post your questions and comments on the [Mysterious Places Message Boards](#).

[Mysterious Places](#) ^ [Mayan Home](#) ^ [webmaster](#) ^ [about the photographer](#)

[Click here](#) if you want to use images and text from this site

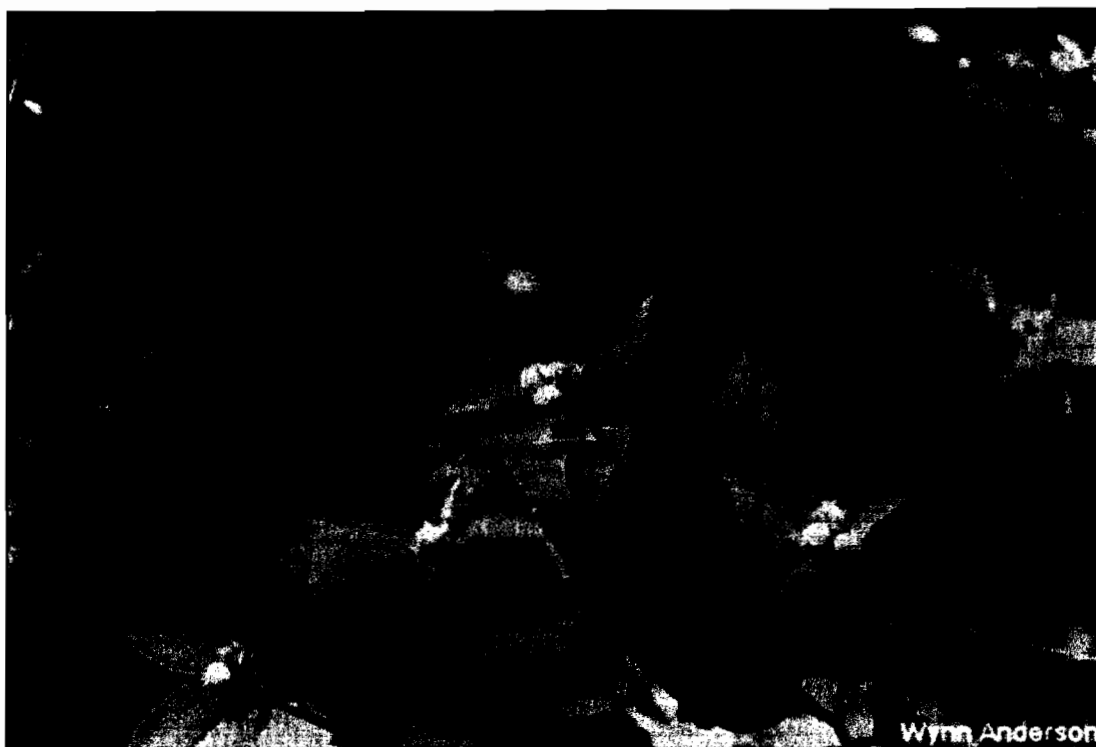
Visit the new Mysterious Places Store
Books, Fine Art Prints, Calendars, and More!
[Click Here!](#)

+





Bush Croton (*Croton fruticulosus*)

[C.D. Home](#)[Gardens](#)[Plant List](#)

*Fern Canyon, Mitre Peak Scout Camp, Davis Mts., Jeff Davis Co.
Oct 2005. Photograph by Wynn Anderson.*

- **Common English Names:** Bush Croton
- **Common Spanish Names:** Encinilla, Hierba Loca
- **Scientific Name:** *Croton fruticulosus* (CROW-ton frew-tick-cue-LOW-sus)
- **Family:** Euphorbiaceae (Spurge Family)
- **Geographic Range:** Southeastern Arizona to central Texas, south into Mexico.
- **Plant Form:** Shrub
- **Remarks:**

Preliminary Studies

of the

Texas Catholic Historical Society

VOLUME I

MARCH, 1930

NUMBER III

DISTRIBUTED UNDER THE AUSPICES

OF THE

Texas Knights of Columbus Historical Commission

THE ESPINOSA-OLIVARES-AGUIRRE EXPEDITION
OF 1709

BY

REV. GABRIEL TOUS, T. O. R.

CORRESPONDING MEMBER OF THE COMMISSION

EDITED BY REV. PAUL J. FOIK, C. S. C., PH. D.

Chairman of the Commission and President of the Society

FOREWORD

The diary, here presented, is a translation of the original record in the *Archivo General de Indias* at Seville, Spain (62-2-29), and describes the expedition of Espinosa, Olivares and Aguirre into Texas in 1709. In 1915 the Reverend Otto Maas, O. F. M., published the entire document in his book, entitled *Viajes de Misioneros Franciscanos a la Conquista de Nuevo Mexico*. Though Father Maas changed the ancient orthography, he scrupulously followed the text in every other detail.

As far as we know, this diary has never been translated into English, and it is now presented because it bears a relation to the later *entradas* into Texas, when permanent settlements were established. This is a literal and exact translation of the original text. It must be remembered, however, that the document contains the archaic Spanish language and expressions of over two hundred years ago. It was written in the epoch of literary "gerundianism" so much in vogue with writers and chroniclers of the sixteenth and seventeenth centuries.

The diary is the work of Espinosa, and differs in style from that of the expedition of 1716, a translation of which is now in press and will appear later in the year 1930. The style of the latter is more sober and concrete, and more exact as to details of important facts, such as directions and distances traveled each day. In this account we recognize the Espinosa of the *Cronica*, more exuberant, more digressive and at times inclined to exaggerate. Here he gives the most interesting and vivid descriptions of animals, rivers, country, customs, and the physical and moral characteristics of the Indians. He portrays for us in the diary a real word picture of the buffalo roaming in the wilderness.

The expedition gave the River San Antonio its present name. There were earlier *entradas* into Texas which followed the same general course.

The map here drawn to supplement the diary was planned and compiled with the greatest difficulty, because of the lack of evidence and data to check up accurately the direction and distances traveled by the explorers as recorded in the document. We feel confident, however, that the route of the expedition here traced is as correct as can be made under the circumstances with the information available.

The translator and the editor wish to acknowledge with thanks the careful revisions of the diary that have been made by the Rev. Dr. Walter O'Donnell, C. S. C., of St. Edward's University, Austin, Texas, and by Prof. Carlos Castañeda, Librarian of the Garcia Latin-American Library, University of Texas.

THE ESPINOSA-OLIVARES-AGUIRRE EXPEDITION OF 1709: ESPINOSA'S DIARY

TRANSLATED BY

REV. GABRIEL TOUS, T. O. R.

ESPINOSA'S DIARY OF 1709

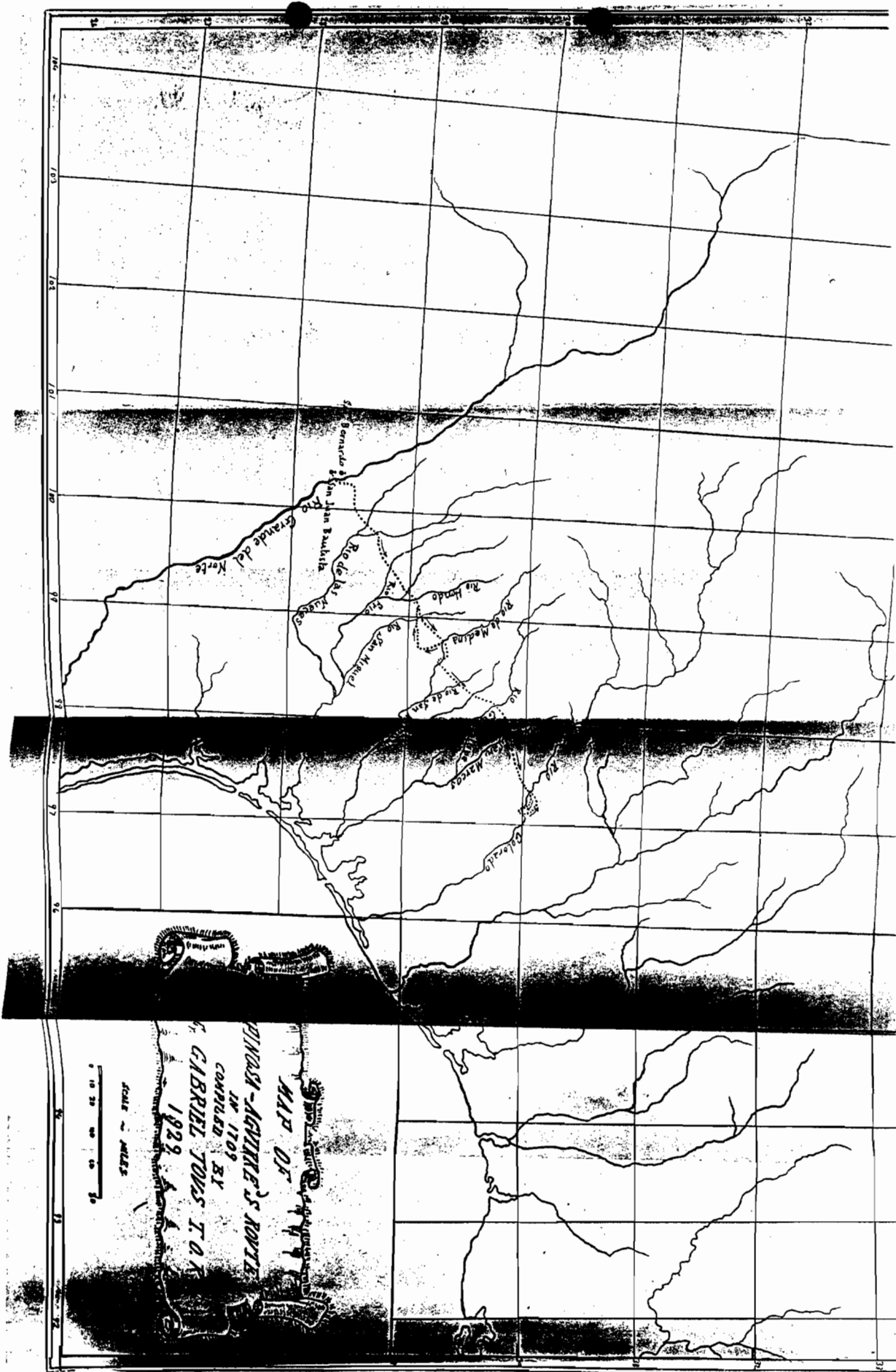
In the name of the Most Blessed Trinity, God the Father, the Son, and the Holy Ghost. Here begins the diary of the expedition undertaken in the year 1709 by the Rev. Father Fray Antonio de Olivares, Apostolic Preacher, Commissary of the Holy Cross of Querétaro, accompanied by Father Fray Isidro de Espinosa, Apostolic Preacher and Missionary in charge of the Mission of San Juan Bautista on the Río Grande del Norte, and assisted by Captain Pedro de Aguirre, Commander of the Presidio of Río Grande del Norte and fourteen men from his company, agreeable to the orders issued by his Excellency the Duke of Albuquerque, Viceroy, Governor, and Captain General of New Spain, etc.¹

April 5th. Friday. After midday the whole expedition set out in search of the San Marcos River and after crossing the Río del Norte, which carried much less water than usual, stopped at a place called Cuervo Encampment. There were only [a few] pools of rain water which was brackish and somewhat salty. The expedition travelled this day four leagues.

April 6th. [Saturday.] We travelled on this day in an easterly direction across level ground and some mesquite groves. Here we found a dry arroyo in which there were clumps of oak trees. After crossing a small thicket of mesquites we went over a few low sandy hills covered with good pasture. We came to a small permanent spring where there is an abundance of haddock, catfish, and other fish which temporarily appeased our hunger. The expedition travelled this day eight leagues.

April 7th. Sunday. After we had built a bower of branches to celebrate the Holy Sacrifice of the Mass, a strong wind arose which prevented it, from fear of some irreverence. We continued our march through open country and crossed a small thicket of mesquites. We then descended to the arroyo of Caramanchel whose two branches were dry. There are many ash trees, elms and an abundance of alfalfa. From the arroyo to the Nueces River it is all level ground. The water of this river is fresh and clear. It has many ash trees, elms, and walnuts, and there is an abundance of Cocomecalt, a plant whose thorny nature might bear some relation to the writer's name. [Espinosa means thorny.]

¹The expedition set out from the Mission of San Juan Bautista.



Rio Grande del Norte

Rio de los Rios

Rio de la Medina

Rio de San Miguel

Rio de San Marcos

Rio de San Juan

SCALE - MILES
0 10 20 30

MAP OF
PINOSA-AQUINER'S ROUTE
IN 1709
COMPILED BY
GABRIEL TOUS T.O.N.
1929

There are many fish of which we had some for dinner. On this day we met three Indians of the Pacuasian nation who were out hunting mice. The other Indians, who made a thick smoke in the woods upon our arrival, did not show themselves again and were lost in the thickness of the woods along the bank. We travelled this day five leagues.

April 8th. Monday. We moved from said place and travelled over level ground for about a league to the east. We then travelled for two leagues through mesquite forest and thorny bushes and thistles, very difficult to cross although there was a path. We came to the crossing of the Nueces, where the abundance and pleasantness of the various trees like mulberries, elms, and oaks enlivened its banks. The river has plenty of good, fresh water. After crossing many ravines, or small streams, and sparse mesquite woods we came to a dry arroyo filled with oaks. From here we went to stop on the Sarco River or, as the Indians call it, Río Frío. Here we found some Indians, two Xarames and a number of Pacuasians, about twenty in all. This day the expedition travelled seven leagues.

April 9th. Tuesday. We advanced through a small mesquite flat and over level ground towards the northeast and came to the Hondo River whose bed was filled with pools of water. Continuing through the day in the same direction we arrived at the arroyo of Capa, where there were many sables, elms and evergreen-oaks, the fields being covered with flowers as in April. After ascending the arroyo for about two leagues to the north we stopped. On the way we hunted for turkeys, the expedition being supplied with meat by seven which were killed. We travelled this day nine leagues.

April 10th. Wednesday. Passing some small valleys filled with mesquite clumps and oak groves we came to the arroyo called Chiltipique, which was dry. We then crossed some plains, going about three leagues towards the east, and passed a few holm-oak groves in the same direction, until we came to the arroyo of the Robalos which had a few pools of water. The expedition travelled this day eight leagues.

April 11th. Thursday. We set out from the said place towards the east in search of the Medina River which we reached and crossed. On the opposite bank, in a clearing along the river, we found the rancharia of the Payayas who were not numerous. This river is bordered by walnuts, the daily food of the nations who live along the banks. Along the river are many green and white poplars, elms and a diversity of other trees which beautify it. Here we consulted and planned the route we were to follow in search of the San Marcos. We stopped at this place after travelling five leagues.

April 12th. Friday. We moved on to the east through a plain, and at a distance of three leagues, not far from the river, met some Payaya

Indians. Later we met five others of the Pamposa tribe, who were going to the rancharia of the Payayas. Crossing the Medina a second time we continued in sight of it, until we arrived at the rancharia of the said Pamposas, where it was necessary to cross the river a third time, halting on the other bank. Here we inquired about the watering places in order to continue our journey. We took an Indian on horseback as guide, twelve Pamposas accompanying us on foot. We travelled this day five leagues.

April 13th. Saturday. We continued our course towards the east through some ravines filled with holm-oaks, mesquites and some white oaks, until we arrived at the arroyo of Leon,² which had running water, and we crossed it about a gunshot from where General Gregorio Salinas crossed it some years before.³ We crossed a large plain in the same direction, and after going through a mesquite flat and some holm-oak groves we came to an irrigation ditch, bordered by many trees and with water enough to supply a town. It was full of taps or sluices of water, the earth being terraced. We named it San Pedro Spring (agua de San Pedro)⁴ and at a short distance we came to a luxuriant growth of trees, high walnuts, poplars, elms, and mulberries watered by a copious spring, which rises near a populous rancharia of Indians of the tribes Siupan, Chaulames and some of the Sijames, numbering in all about 500 persons, young and old. The river, which is formed by this spring, could supply not only a village but a city, which could easily be founded here because of the good ground and the many conveniences, and because of the shallowness of said river. This river not having been named by the Spaniards, we called it the river of San Antonio de Padua. Having distributed tobacco among all of them, we took four Indians to guide us from this rancharia, and after passing a forest of mesquite trees we came to an arroyo of briny water and stopped on the opposite bank. We travelled this day eight leagues.⁵

April 14th. Sunday. The Holy Sacrifice of the Mass was celebrated in a bower. After Mass we went on towards the northeast in search of the River Guadalupe, and crossing over open country except for some mesquites, we came upon a branch of the Guadalupe River,⁶ having crossed a deep arroyo with large pools of water. Having heard of the other branch of this river, we set out in search of it going towards the

²Arroyo de Leon is probably the present Leon Creek west of the San Antonio.

³General D. Gregorio Salinas Varona was governor of Coahuila, 1692-1697, and of Nuevo Leon, 1705-1707, and took a very important part in the explorations of Texas.

⁴San Pedro Creek still flows through the town of San Antonio. Ramon's diary describes the San Pedro Springs.

⁵This arroyo is the Salado Creek of today.

⁶The Comal River of today.

northeast, and at times to the east, through a very dense forest of mesquite clumps and holm-oaks. We came out upon a few bare hills, and continued till we reached the other branch of the said river of Guadalupe. Its banks are very fertile and pleasant. Its waters are abundant, clear and good.⁷ On coming to the river, while going along its banks, a soldier's horse suddenly turned and the soldier was thrown into the water unintentionally. He came out drenched and shivering. Two others who went to his rescue also got a bath without intending it. Here there is an abundance of sables, elms, poplars, willows and other trees. In the river there is a variety of fish that we relished, and alligators have been seen by the Spaniards. Wild turkeys, commonly called *guajolotes*, abound. While hunting them two shots were fired, one of which took effect in the hand of the fowler rather than on the game. We waited here for the Sauac Indians, who were to bring us news of the Tejas nation, whom we had summoned but they did not come. We stopped on the far bank of the said river, having travelled nine leagues.

April 15th. Monday. We left the said river to look for the San Marcos, travelling towards the northeast through some mesquite clumps. We made signal fires to attract the attention of those around. While going over plains and gentle hills we killed two turkeys which appeased our appetite. We soon arrived at the San Marcos. Having crossed right over the hills, we reached the river sooner than we had anticipated. The banks of this river are very pleasant, full of walnut trees, elms, black mulberry trees and very tall poplars. We travelled this day as far as the San Marcos River, six leagues.

April 16th. Tuesday. We crossed the San Marcos River very near its source, the crossing being two arquebus shots from where the river rises. Directing our course eastward through a forest of mesquite clumps and some elms we came, after a distance of about two leagues, to an arroyo with little water which we named San Raphael, Sovereign Prince, to whom we intrusted the success of our journey. This arroyo has many holm-oaks and some elms and is reached by leaving the crest of the hills. Beyond the arroyo mentioned we went on toward some low hills in the direction of the northeast, travelling sometimes to the east. In the center of a plain is a grove of holm-oaks, where there is a small spring of water, not far from said arroyo. After we passed the hills we came to a stream which, because of the many ticks, *garrapatas*, we found there, we called arroyo of the Garrapatas. All of us, though against our will, carried away many of them. We stopped this day at this arroyo. A buffalo which was seen accidentally by an Indian who was with us was killed and though somewhat lean answered our purpose. We travelled this day eight leagues.

⁷The present Guadalupe River.

April 17th. Wednesday. We went on to the northeast in search of the Colorado River or Espritu Santo, which is all one, in order to see if we could meet some Indians who could give us information about the Tejas, since the Indians of the Shipan tribe had told us they did not know of them. At a distance of five leagues, when about to reach Espritu Santo, the guide saw four buffalos. In a little while all four fell into the hands of the soldiers, who, as executioners, put an end to them, providing the expedition with meat. We stopped near this river, having travelled five leagues.

April 18th. Thursday. Having made a thick smoke in order to see if the Indians would respond and not finding any traces or footprints of them, we decided to go on by a marsh on the opposite bank of the river. We set out with the captain and seven soldiers, seven others remaining in the camp we left at the river, with orders that, if they had any news of Indians who might come there, or anything else worth knowing, they should make a smoke that we might repair to camp. We came to the river, which is sheltered on either side by luxuriant trees, walnuts, ash trees, poplars, elms, willows and wild grapes, much higher and larger than those of Castile. The river has sand banks all along its margin, showing the high water mark, and it is a quarter of a league wide. Its water is the best we have found. Just beyond this part of the river is a shady place, about half-a-league, surrounded by trees, where we found an abandoned rancheria, in the shape of a half-moon which had more than 150 circular huts, but large and well made. There, while on our way, we came upon four graves covered with sticks, two of which still gave out an offensive odor and appeared to be fresh. We passed said place and, guided by the Indian, we directed our course towards the east through a forest of oaks for a distance of about six leagues. Looking for Indians we crossed the said river a second time, and continuing our course to the northeast for about two leagues, always in sight of it, we stopped again at some ponds not far from the river, because the forest before us was so dense that we could not penetrate it. We travelled this day nine leagues.

April 19th. Friday. Having suffered much from the cold the preceding night, and being about to decide to cross over to the other bank of the river, which we had not explored, some of the party thought they saw some smoke on the bank of the river we had already explored. We recrossed the river to investigate the smoke, but there was no trace of it nor a footprint of man or beast, only deep tracks and pathways of the buffalo that crossed the river. On both sides we saw many herds of them. This caused us no little surprise, not having found even old tracks of them from the San Marcos River to the Río Grande. Seeing there were no people we returned, avoiding the forest through which we

had come, and on the way the soldiers killed three buffalo cows and three calves. They took as much meat as they could carry, and about this time, we saw a thick smoke rising from the spot where we left the camp. While returning to the river aforementioned, we amused ourselves a short while by teasing a buffalo. At sunset, although lost, we got to the river passage, and it was already night before we crossed. On arriving at the camp we found there Captain Cantona, an Indian, who is very well known by the Spaniards. With him were more than forty Indians, most of them of the Yojuan tribe, a few Simones and a few Tosonibi, who arrived that morning with many others who had returned to the rancharia, seventy-seven persons in all. They came from the river single file, bearing a well wrought *otale* (bamboo) cross before them. The cross-bearer was followed by three other Indians, each one with an image of Our Lady of Guadalupe, two of which were painted, and the other was an old engraving. As they came to where we were, all made manifestations of peace, some bowed, others approached the Spaniards, petted their faces and embraced them as is their custom in showing their joy and high esteem for those they love. There they waited until we, the two religious and the captain, arrived. They then explained themselves in this manner: Two Indian youths seeing the thick smoke we had made before arriving at the river, came to investigate it, and following our tracks, reached that night the place where our camp was. Suspecting that those in camp were Apaches, they cautiously watched the camp until they saw by the reflections of the fire the red waistcoat of the *Alferez*. They knew then that they were Spaniards, because they had seen them on another occasion when they entered the province of the Tejas. These two went to inform the rancharia, which was four leagues distant, and on Friday morning all came in the manner already mentioned. They declared that they were very much afraid to approach the camp but finally resolved to do so. As soon as we dismounted from our beasts, the Indians embraced us with many manifestations of joy. We gave them the most affectionate welcome we could and distributed tobacco among them, this being the present most prized by them. They stayed with us that night with much rejoicing, refusing to return to their rancharia in order to be with the Spaniards.

Seeing that our efforts to reach the arroyo of the *Otates* in the hope of meeting the Tejas had been fruitless, and knowing that the Indian leader of the Yojuanes, called Cantona, frequents the province of the Tejas with his followers, we inquired particularly about the said Indians, and asked if it was true that they had left their territory and had come to settle on the San Marcos River. To this they replied that the Asinai Indians, commonly called Tejas, were in their own country where they had always lived; that they had not moved to the place we inquired

about; that only a few were in the habit of going in search of buffalo meat to the Colorado River and its neighborhood. Asked again, if they knew this to be the truth, they maintained what they had said and declared further that Bernardino, a Tejas Indian, who knew Spanish and was very crafty, having lived many years among the Spaniards, was the chief of all the Tejas, and this they knew well. All this caused us sorrow on the one hand, because we wanted to see the Tejas, and [joy] on the other hand, because it relieved us of the uncertainty under which we had labored concerning the whereabouts of the Tejas. The Indians said also that it was a three-day journey from the place where we were to the village of the Tejas. Not having planned to stay any longer, and the Captain of the military expedition not having instructions to go any farther, and having been told by all who knew him that the chief of the Tejas was very adverse to all matters of faith, never having been made to live like a Christian, and that he had escaped from the mission on the Rio Grande with some Indian women who had been left there, we decided not to proceed any further. On the day that all this happened we travelled over rough ground covered with oak trees nine leagues.*

April 20th. Saturday. Being on the point of returning straight to the Rio Grande, the aforementioned Indians reminded us that their women, children, and other members of their tribe who had not seen us would be very sad and disconsolate if they did not. Seeing their eagerness and judging that their people were not far distant, we accompanied the Indians, following a northeastern direction for about four leagues, leaving a few soldiers in the camp. Those that went with us carried the *Otate* cross and the three images of Our Lady of Guadalupe that the Indians had brought. Captain Cantona rode on horseback, boasting to the Indians how the Fathers and the Spaniards esteemed him because the Spanish captain had given him a silver-mounted cane. He bade them love the Spaniards. In this manner we came in sight of the wigwams and an Indian on horseback came forth to meet us. He immediately returned to notify the other Indians, who at once came out to meet us in such numbers that it filled us with tenderness to see them. Not one of them came out with arrows; all came with their hands raised or crossed; some with very little clothing on their body; the majority or almost all of them entirely nude. Hardly had we dismounted when they surrounded us, crowding around so persistently that we knew not where to turn. They gave shouts of joy, embraced us, and caressed our faces and arms, doing the same among themselves after the manner of anointing. This is a custom they have to make others their friends or

*By the evidence which we have and according to the directions given it seems that the place where they stopped on the Colorado River is situated between Bastrop and Smithville of today.

favorites. In short there was not an Indian, man, woman, or child, who did not do his or her share of petting, insisting that we pass our hands over the face of even the babies, refusing to be satisfied otherwise. We shed copious tears on seeing such a multitude of souls without light and without knowledge of our Catholic religion, for judging by the wigwams and the people we saw, the number of souls living in this part of the wilderness must have been two thousand. We distributed tobacco to as many of the women as we could, not having enough for everyone because we had not expected so many. We gave lumps of ordinary brown sugar to as many of the boys and girls as possible, caressing them in this way. We, the religious, would have remained longer among them had we not been obliged to hasten our departure. We bade them goodbye with sorrowful hearts and returned to our camp, where we arrived at midday with enough sun and not a little hunger, after travelling in going and coming eight leagues.

That Saturday afternoon we made a paper cross, which we painted with ink as best we could, and gave it to the Indian, Cantona, who came with us. We commissioned him to take it to the governor of the Tejas and to tell them how we had searched for them; that they should go to our missions on the Rio Grande since they knew where they were; and to show them the cane he had, that they might give credence to his words. He promised to do everything we told him. This being done we started our return march to the Rio Grande and came to the arroyo of Las Garrapatas where we stopped, having travelled this afternoon two leagues.

April 21st. Sunday. The Holy Sacrifice of the Mass was celebrated at the said arroyo, and we then proceeded on our march, following the same route by which we had come until we arrived at the San Marcos River, after travelling nine leagues. Though it may seem a digression, Your Excellency, I cannot fail to mention in passing, that in addition to the fertility of the country exhibited by the variety of flowers, trees, and wild fruits, an abundance of hemp was noticed in the depressions of the ravines. This was so flourishing that it seemed to be cultivated though it had received no other care than that of the liberal hand [of nature] that beautifies everything. The hemp found in the fields could supply all the wants of the Indian women. Besides this, the land seems to be suited to the cultivation of vines, a great variety of which are found growing wild on the hills. The vines are very large and resemble those of Castile. The bunches are larger and the grapes thicker, the skin being tougher, but the fruit is sweet and palatable. Mulberry trees are found everywhere along the arroyos and rivers. Their fruit is very sweet and the leaves large, as large as those of trees planted in orchards. The nuts are so abundant that throughout the land the natives gather

them, using them for food the greater part of the year. For this purpose they make holes in the ground where they bury them in large quantities. Not all the nuts are of the same quality, for there are different sizes and the shells of some are softer than others, but all of them are more tasty and palatable than those of Castile, though they are longer and thinner. The Indians are very skillful in shelling them, taking the kernels out whole. Sometimes they thread them on long strings, but ordinarily they keep a supply in small sacks made of leather for the purpose. Though the Indians are gluttons by nature they keep these from year to year. In some rivers medlar trees are found, like those of Spain. The variety of birds of various colors and sweet song is great. The deer and fawn are so numerous that they resemble flocks of goats and are met at every step. The buffalo is a singular beast among the wild life of this country. It is larger in size than the cattle of Castile. Its legs are very short; the head larger than that of a bull of Castile, which it resembles; the eyes very dark and almost covered by the fleece or forelock which is very long. They have whiskers like the goats; the horns are small and curved; the back is an ugly hump, reaching from the neck to the rump. In this hump there are six joints concealed. The skin is woolly like that of sheep, but black or dark brown; the tail like that of a goat. It is an animal so ungainly that there is not another in the land that can surpass it in unsightliness. It is very swift and active, but because of its great weight its swiftness does not last long. Its spirit is weak and its courage short because on feeling itself wounded, even though it be in a part not necessarily vital, it soon stops short and after a short while falls dispirited to the ground, blood issuing from its mouth. Its flesh is like that of the cows of Castile although better in taste and lightness. It constitutes the most common food of the nations that live in the neighborhood of the Tejas Indians, and of those in the hills where there is an abundance of buffalo.

There are, besides, flocks of wild turkeys which are found at every step. There are bears, lions, tigers, foxes and a great variety of other wild animals. Fish are so plentiful that there is not a creek, river, or pond where mullets, haddock, bagre, sea bream or buffalo fish, moharra, and every other species known are not found. In the Rio del Norte fish measuring a vara in length (thirty-four inches) are caught, which are called *pilonates* (yellow catfish) in that country. There are other things worthy of notice which I shall not relate for brevity's sake.

The nations that inhabit those regions are well known and we have seen about fifty, not including those mentioned by the natives that come from the interior, since this region borders on New Mexico and Gran Quivira, all of which is firm land. The number of souls that are without the light of the Gospel are innumerable and remain to be con-

quered. They are of different tongues, but they understand each other by means of signs, being so skillful in the use of their hands for speaking that the most eloquent orator would envy their gestures. By means of this hand language they trade with each other and have familiar intercourse. With few differences, their customs are the same, though some are more courageous than others. They show a clear understanding and great skill in imitating any art or trade. They are generally at war with one another and they exterminate themselves on the slightest pretext, such as the stealing of a woman, a horse, or some similar occurrence. This is the reason for the weak state of the nations. The Indians are of pleasing appearance and well proportioned stature, the majority of them wearing a single stripe across their forehead down to their nose and around the mouth. Some paint their arms with more care, as well as their necks, imitating a necklace, but there is no uniformity in this practice. They are very friendly to the Spaniards and covet greatly their dress, esteeming any cast-off garment as precious gala attire. They learn our language with ease and we have not found a nation that objects to the reception of our holy Catholic faith due to the following reasons: firstly, because as it has been seen, there is no formal adoration among them to any one deity. They practice only some material idolatries and some abuses and superstitions inherited from their forefathers. They are those of whom St. Peter says: *Quorum deus ventres est*; because all their desires are fulfilled when their stomachs are full. There are some sorcerers among them who are imposters more than anything else. These are the medicine men among this people, who make atonement, if the patient dies, by accompanying the corpse to the burial ground, where the mourners sometimes kill him. There is among these Indians a virtue worthy of admiration, in that they do not get intoxicated, because God has blinded them to this vice for their own welfare. Only in their general dances which they hold, do they use a root called *peyote*, or some other herbs that affect their heads, but not all partake of them. They are much inclined to the chase, the men engaging in no other occupation. The women are trained to cure and tan the hides of buffalo and deer. These they curiously paint to trade to the Spaniards. But when the natives are gathered in villages they are extremely skillful, ingenious and hard-working, as shown by the experience in the missions we have founded. Their manner of dressing is to use the tanned deer skins, both by men and women, the latter covering their bodies decorously to their feet. It has been noticed that though there is some laxity in dress among the men, the women cover themselves as much as possible even when nursing the young. The red and yellow dirt with which the Indians paint their hides, which is very hard, indicates that the land is very rich in minerals. The sand of the Colo-

rado River shows by its luster that it contains rich minerals. There is a rumor of a silver mountain so called because of its rich veins. Very large rock salt deposits are found. Lastly, this is the best of all the lands discovered and the natives are particularly suited for the reception of the truths of our holy faith and for the extension of the domains of the royal crown.

April 22nd. Monday. We left the river mentioned above by the same route through which we had come, and arriving at the principal branch of the Guadalupe, we crossed it, though with some difficulty, and continued as far as the other branch of said river [to a point] higher up. The river was almost dry and we found only pools of water. We stopped here, having travelled this day five leagues.

April 23rd. Tuesday. We left the said place and travelled in sight of the hills, following our tracks to the Salado. We crossed the said river of San Antonio and did not find the people we had left there, because they had moved down the river. From here we crossed the San Pedro, and continued as far as the arroyo of Leon where a thick smoke, made by eight or ten Indians of the Sijames nation who were going to the Medina, was observed. We continued our march to the said Medina river, having travelled this day fourteen leagues.

April 24th. Wednesday. The Pampos Indians came out to see us as well as the captain of the Paxi nation. We asked for an Indian to guide us so that we could cut across straight through the country, but it happened that instead of guiding us to the west, he took us to the south-east, leading us into such thick woods and sand dunes that were it not for the good luck of being directed by the good sense of our Spaniards we would not have come out of the labyrinth by sunset. From here the captain of the soldiers went ahead of us with two companions. This day was very distressing, because besides being lost, we had no water whatsoever with us as on other occasions, not even a single jar, all of which [circumstances] redoubled our troubles. At sunset the Lord delivered us and we arrived at the arroyo of the Robalos. We travelled this day sixteen leagues according to our time.

April 25th. Thursday. We went on straight through the country directly west, and at four o'clock in the afternoon we reached the arroyo of Chapa, having travelled this day nine leagues.

April 26th. Friday. We left the said arroyo and crossed the Jondo River on our way, and reached the Sarco or Frio River. As the beasts were tired, we stopped here, having travelled eight leagues.

April 27th. Saturday. Having passed a very disagreeable night, because of the rain that poured upon us unhindered, we, two religious accompanied by a soldier and two Indians, went ahead and came within

two leagues of Caramanchel spring, where we slept after traveling this day sixteen leagues.

April 28th. Sunday. We did not celebrate Mass, because we had no accommodations for it. We set out for the Rio Grande, after some delays caused by the running away of the saddled horse of our soldier companion. We reached the Rio Grande which we crossed though it had more water than when we crossed it before, and with our Lord's grace we arrived at three-thirty in the afternoon at the Mission of San Juan Bautista from where we had set out, with health, success and consolation, for all of which we thanked God to Whom be all glory, honor, and praise forever and ever AMEN. Finis.

FR. ANTONIO DE SAN BUENAVENTURA Y OLIVARES,
Guardian. [Rubric]

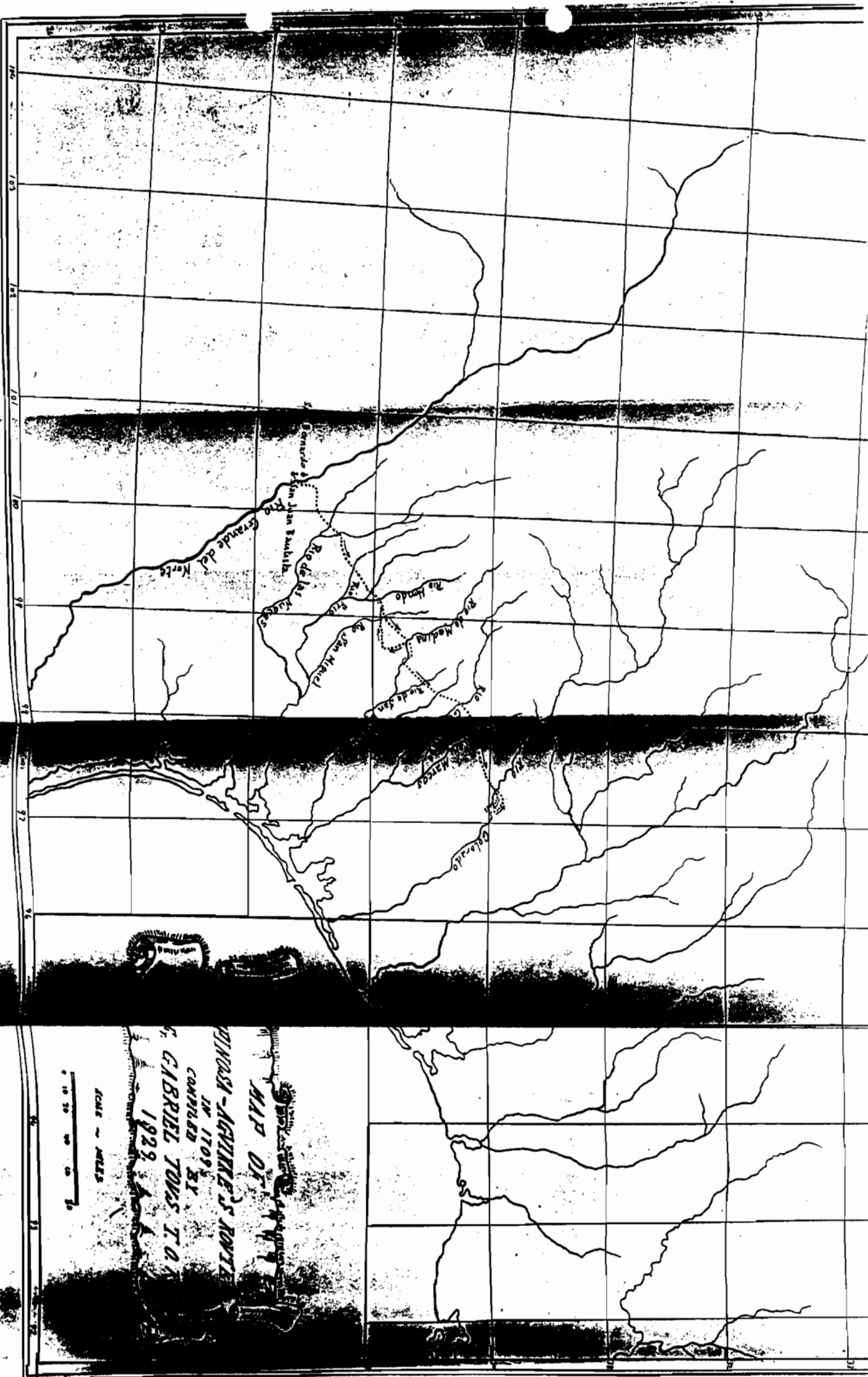
FR. ISIDRO DE ESPINOSA [Rubric]

In virtue of the order of His Excellency, Sr. Don Francisco Fernandez de la Cueva, my Lord Duke of Alburquerque, Viceroy, Governor and Captain General of this new Spain, etc., and of his decree made in general assembly on the 7th of August of 1708, in which his Excellency determined and commanded, with the approval of the general assembly, that I escort the religious Fathers and Missionaries of the Sta. Cruz of Querétaro as far as the San Marcos River, where the Tejas Indians were said to be, I put his command into execution, and personally accompanied the Rev. Father Fr. Antonio de S. Buenaventura y Olivares, Apostolic preacher, Missionary, and present Guardian of the College of Santa Cruz of Querétaro, in company with the Rev. Father Fr. Isidro de Espinosa, Missionary at the Mission of San Juan Bautista, for which purpose I carried a squad of fourteen soldiers from the company which is in my charge, leaving in the presidio and missions a good and safe guard. Those who went saw, experienced and certified all that is deposed and related in the Diary mentioned aböve; and I, as head, commander, and captain of this company, certify it in the manner and form prescribed by law to which I submit myself, and I subscribe it with the witnesses attendant upon me in this presidio and mission of S. Juan Bautista of the Río Grande del Norte on the fourth day of the month of May of the year 1709, acting with said witnesses in lieu of a secretary of war, in the manner in which the law prescribes, of which I give faith.

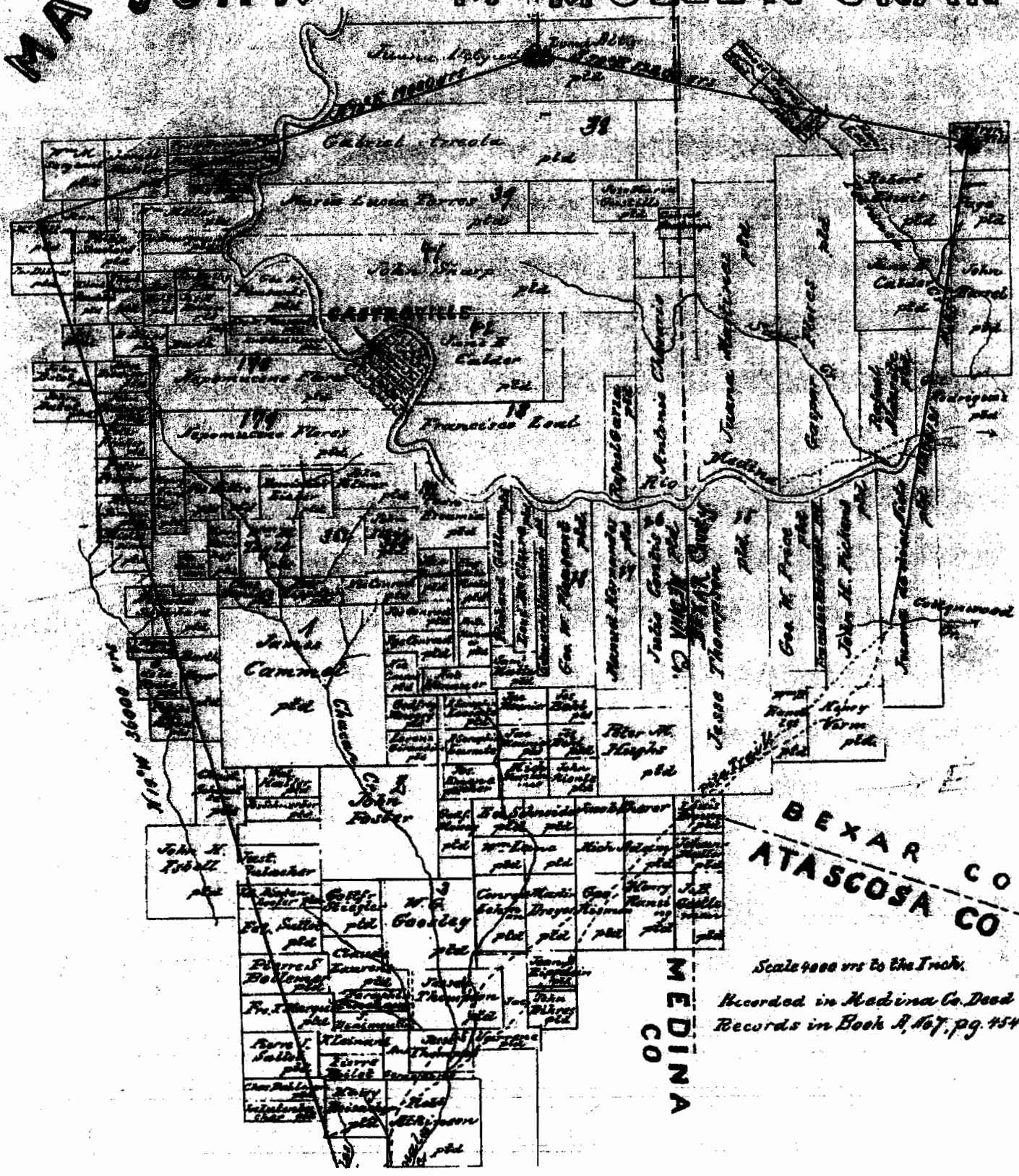
PEDRO DE AGUIRRE [Rubric]

Witness—NICHOLAS FLORES Y BALDES [Rubric]

Witness—FRANCISCO BAEZ TREVIÑO [Rubric]



MAP JOHN M^CMULLEN GRANT



BEXAR CO
ATASCOSA CO

Scale 4000 vs to the Truck.

Recorded in Medina Co. Deed
Records in Book A, No. 7, pg. 454.

MEDINA
CO

ROUTE through Texas followed by the first column of the Army,
of the Mexican Republic, commanded by Brigadier General,
Adrian Woll, Commander of the 2nd Division, and made by
his quartermaster, Captain of sappers, Colonel Jose Maria
Carrasco.

Year 1842 August the 24th

EXPEDITION MADE IN TEXAS
BY PART OF THE 2nd DIVISION OF
THE ARMY CORPS OF THE NORTH
PRINTED BY FRANCISCO MOLINA
MONTERREY, 1842

BY ILMA M BENAVIDES, B.A.
THESIS FOR THE DEGREE OF MASTER OF ARTS
UNIVERSITY OF TEXAS AUGUST, 1952

Number 242 - Most Excellent Sir: I am remitting to Your Excellency a diary of the movements and sketches of the encampments which were made by the Division under my command since it left [Presidio de] Rio Grande until the 11th of the present [month] when it overpowered the enemy in this city. Both were made under my orders by Colonel Jose Maria Carrasco, who, as I have already made it known to Your Excellency, has fulfilled the duties of quartermaster to my greatest satisfaction.

God and liberty. San Antonio de Bejar, September 12, 1842. Adrian Woll - Most Excellent Sir, The Commander-in-chief.

ROUTE through Texas followed by the first column of the Army of the Mexican Republic, commanded by Brigadier General, Adrian Woll, Commander of the 2nd Division, and made by his quartermaster, Captain of sappers, Colonel José María Carrasco.

Year 1842
August the
24th

The Division departed from [Presidio de] Rio Grande towards the Nogal crossing. The ground over which it marched is level, with woods of mesquite, tiny dales, and a narrow road. The right bank of the river is higher than the left and is bordered with tiny hills suitable for batteries of four or five pieces.

To the rear at a distance of four hundred paces, there is a formation of hills parallel to the river much higher than the others. The steep bank at this crossing is almost perpendicular and consists of loose, sandy dirt. The bed of the river is made up of sand, clay, and thin loose layers of rough stones. The ford is variable, from nine to eleven feet for two-thirds of the way towards the left bank and three to nine feet towards the right bank. The course of the river forms an arch of very limited radius and the current flows sharply on the left side of the crossing. Its breadth is two hundred and fifty varas and during flood time measures three hundred.

The 25th
Day

Twenty six dragoons of the Presidial Regiment crossed in two small canoes which were found at the crossing.

The 26th
Day

The Defenders of Bejar and Rio Grande (dragons and riflemen) numbering one hundred and twelve men, twelve carts with a portion of corn supply, a squadron consisting of forty-eight troopers of the Santa Anna Regiment, forty loads of food and fifty live steers [crossed today].

The 27th
Day

The ammunition for the artillery and engineers, the remainder of the corn supply, two pieces of ordnance, four pounders with their gun carriages and

foot and mounted complement, the second squadron of the Santa Anna Regiment, with the same number of men as the first one, its staff, the remount reserve and the artillery train with its men [crossed today].

The 28th
Day

The remainder of the food supply (110 boxes), two hundred and thirteen mule herd, forty-five dragoons of the Presidential Regiment and a company of the Santa Anna Battalion with one hundred veterans [crossed today].

The 29th
Day

Two companies of the said [Santa Anna] battalion with the same number of men and fifty presidential dragoons [crossed on this day].

The 30th
Day

The last company of the battalion, with its stand of colors, and its music, and the equipment of general headquarters were crossed, together with the various infantry and cavalry detachments. They took their position in the camp grounds that lay along a line with its back on the river. The right was flanked by the "defenders" and the left by the mouth of the Saus³ [Willow] creek, as seen

³Saus [Willow] Creek flows through Maverick County.

in the sketch.⁴ Today, in the afternoon, the

⁴The sketches referred to in this diary were not reproduced. They are probably in the official files of the Oficina de Defensa Nacional, to which all the archives of the Secretaría de Guerra have been transferred in Mexico City.

commanders-in-chief of this Division crossed [the river], reconnoitred the camp and spent the night there.

The 31st
Day

At daybreak the Division was placed under arms and having formed in parade, his Excellency, the Commander-in-chief, accompanied by the General of the Division, passed before them and halting in the center of the line he read a proclamation and retired. The Division undertook the march at six in the morning in three columns, along an unmarked road towards the North. The center was the infantry column, two ordnance pieces, and the baggage trains; the right was formed by the regular cavalry; and the left by the presidial troops; the vanguard, the rearguard and the flanking scouts [consisted] of "presidial" and "defender" troops. The land is level, tranversed by creeks. Camp was made at twelve noon at the Cueva Creek,⁵ protected from

⁵Cuevas [Caves] Creek is an intermittent stream which rises in southern Maverick County and flows southwest to join the Rio Grande near the town of Eagle Pass. Texas State Historical Association, The Handbook of Texas.

the rear by this stream. The right and left were covered by two of its smaller tributaries, and the sketch of Camp Number 2. Five leagues were covered in six hours.

Sept.
the 1st

The corn carts, escorted by the Defenders of Bejar, continued the march after leaving in camp two grain rations for the cavalry. The Division stayed behind to wait for a company of the Presidial Regiment which was to join them, whose horses stampeded on the night of the 30th. They joined [The Division] at six this afternoon.

The 2nd
Day

The Division renewed its march towards the north, northeast along level ground in the same order as the previous day and following the same direction. Camp was made on the Saladito Creek⁶

⁶ See Salado Creek which is an intermittent stream and rises in northern Maverick County flowing southeast twelve miles into Chacon Creek. Texas State Historical Association, The Handbook of Texas.

at one in the afternoon after having covered five leagues of level ground today. I was ordered by the Commanding General of the Division to advance in order to join Mr. Seguin and to supervise the opening of a road which had begun to present difficulties because of the woods and creeks that

ross the given direction. I took a mule loaded with engineering equipment and joined Mr. Seguin at 8:00 p. m.

The 3rd
Day

The Division renewed its march towards the northeast; the land was level, furrowed with deep, narrow creeks and dense forests. At the edge of the first creek, which is the Picoso,⁷ a bridge had

⁷ Picoso Creek rises in central Maverick County, and flows generally eastward about twenty-two miles into Elm Creek in southwestern Zavala County. Texas State Historical Association, The Handbook of Texas.

been built. In all the others the banks were leveled and the woods were cleared to make a cart road. The Division camped three leagues from its point of departure, on the other side of Chaparrosas Lakes,⁸

⁸ See Chaparrosa Creek, which is an intermittent stream, rising in the Anacacho Mountains in the southeastern part of Kinney County, and flowing southwestward, crossing the extreme northeastern corner of Maverick County, and continuing into western Zavala County where it flows into Turkey Creek. Texas State Historical Association, The Handbook of Texas.

150 varas from the shore, the right protected by a hill; the back, by a lake to the rear and the left by another. At six this afternoon I renewed the march in order to prepare the road for the following day.

The 4th
Day

The Division renewed its march at six towards the north, northeast after crossing a tiny creek, there follows a plain with minor hills (slopes) called the Colorados. The ground rises to a big hill called Divisadero (Lookout); next there are two bayous before Rancherías Creek, deep and rough, is reached. The slopes were leveled on either side. A dense forest, furrowed with tiny creeks, is [then] crossed. Here, the Division overtook the troops assigned to work on the road, but while they [the Division] drank water, the task was completed. Today, from four in the morning to three in the afternoon more than five leagues of [road] were cleared of woods and crossings made at four deep creeks. The Division, while on the march was exposed to a rainstorm for an hour and arrived at four-thirty in the afternoon at the Mueces River, after having covered two leagues towards the above-indicated direction, four towards the northeast, two towards the east and one towards the east northeast to the edge of the river which was crossed at the fords known as Amoladeras and Chicle. This new crossing was named General Woll. The river at this point is very different from what it is on the main highway [the standard road from Riogrande to Bejar]. Its woods consist of ash, elm and poplar trees; its bed

wide and of loose rock, and its banks are very high. It [The river] can water a lot of land to the right and to the left; the ground along the banks is very firm; the forest on the right bank is very dense. Camp was made on the left side, and the "defenders," who occupied a high hill, protected the right, the front was protected by a hill parallel to the river, and the left by the bank of a nearby tributary creek.

The 5th
Day

[The Division] rested.

The 6th
Day

The march was renewed towards the north, northeast through level land and the journey was continued in three columns as far as Leona Creek, a distance of three leagues. This creek on its right bank has about 20 or 30 yards of woods, and on its left [bank] the woods are from 400 to 500 yards deep and very dense, thick and towering. It differs very little from the crossing on the main road [Riogrande to Bejar]. The road was made practical for all kinds of transportation. Camp was made on the left bank in the same order as on the previous days.

The 7th
Day

The journey was renewed at six in the morning towards the northeast along level land. The Rio Frio was crossed after [traveling] a distance of two

leagues; it is shallow, without trees, not remarkable, running through large grassy plains. Camp was made on the left bank of the creek called the Sabinal, at its mouth crossing. The camp occupied the arch formed by the creek delimited by a line running from north to south. This creek has no woodland on either of its banks. The flanks were protected by two huge ravines. It had no crossing to the rear other than the one made in the direction of the [arch] with a radius of 200 varas. The bed of this creek is 50 varas wide, planted with huge sables. It rises at the mouth of the Juan de Uvalde (Uvalde) Canyon, in the hills of San Sabas. *

The 8th
Day

The march was renewed at seven in the morning towards the east, northeast and after traversing seven leagues of level land, Hondo Creek was crossed. Camp was made after the banks had been leveled in order to cross it.

The 9th
Day

The march was continued through a forest of mesquite, leaving Guije lake to the left and following a north, northeast direction. Guije Plain was crossed and, turning to the east, Medina River was reached at 5:00 p. m. after having traveled seven leagues in the first direction, and two [leagues] towards the second. The river was crossed between its mouth ford and canyon crossing

here a draw is formed. The Division crossed through the center of the draw and camped alongside the arch [of the river] along a line from north to south.

The 10th
Day

At six in the morning the march was renewed towards the northeast and after one and a half leagues, it was changed to the east, northeast. This direction was followed for a league. A change was made to the east and camp was made at Leon Creek at 2:00 p. m. At six the Division renewed its march along level land and followed single file along the left bank of San Pedro Creek. The infantry was lined up to the left of the road and the Santa Anna Regiment on the right, with the two field pieces placed as a battery on the road. This creek is [approximately] a cannon shot's distance from the Bejar Plaza. From this point, the Presidial Regiment and the Defenders of Bejar and Riogrande advanced to intercept all avenues [of escape] within the city and to establish positions at all vantage points around the plaza. At twelve midnight, all the troops were arranged in formation and rested under arms awaiting the signal of a cannon shot for the regular infantry and cavalry corps to penetrate the city and take their position at the plaza. The encircling troops were not to permit a single individual

to leave. At four-thirty in the morning the advance was made by columns of half companies; the General, with his staff, and the music of the Santa Anna Battalion playing at the head until the first houses on the edge [of the city] were reached. A heavy mist prevented either persons or horses from being seen. A stop was made until it cleared. But seeing that it was already five-thirty and the mist persisted, the General ordered the signal cannon be fired. The music started to play reveille and continued with the national hymn as the column renewed its march. What followed will be made known in the report regarding the action which this column sustained.

San Antonio de Bejar, September 11, 1842. -

Jose Maria Carrasco.

Number 243 - Most Excellent Sir: I am remitting to Your Excellency a copy of the proclamation which today I have addressed to the citizens of this city, hoping it will meet with your approval and you will see fit to have it published.

God and liberty. Bejar, September 12, 1842. - Adrian Woll. - Most Excellent Sir, The Commander-in-chief.

PUBLICACIONES
DEL INSTITUTO TECNOLÓGICO Y DE ESTUDIOS
SUPERIORES DE MONTERREY

Serie: Historia

6

NOTICIAS GEOGRÁFICAS E HISTÓRICAS
DEL NORESTE DE MÉXICO

Editados por la Biblioteca del
Instituto Tecnológico y de Estudios Superiores
de Monterrey

III

Monterrey, Nuevo León, México
1968

PRIMERAS EXPLORACIONES Y
POBLAMIENTO DE TEXAS
(1686 - 1694)

por

LINO GÓMEZ CANEDO
Academy of American Franciscan History
Washington, D. C., U.S.A.

MONTERREY
1968

DESCUBRIMIENTO DE LA POBLACION FRANCESA EN LA
BAHIA DEL ESPIRITU SANTO Y DEL PAIS DE LOS TEXAS
(1689)

Sábado dos del dicho, pasamos el río y anduvimos como uno legua al norte, por descubrir unos barrancos y lomitos; después fuimos al rumbo del nordeste lo más, hasta llegar a unos charcos que estaban cinco leguas distantes del río, que le pusimos el Forje de los Cuervos, porque al anochecer se aparecieron más de tres mil: el camino fué llano y sin monte.

Domingo de Ramos, tres del dicho, solimos al rumbo del nordeste por tierra llana distancia de tres leguas, y después hubo otras dos de algunos montecillos de mezquites: pasamos unos arroyuelos secos y luego topamos uno con agua en cuyo orilla paramos, conque este día anduvimos cinco leguas largas: pusimos a este arroyo el de Ramos por haberlo hallado este día. Aquí observamos la altura del sol con astrolabio (aunque defectoso) y nos hallamos en veintiséis grados, treinta y un minutos de elevación de polo: es de advertir que los tablas de esta observación fueron hechas antes de la corrección gregoriana que llamen, que fué el año de 1582, en el cual fué el equinoccio a diez de marzo y siguiéndonos por las Ephemerides de Andrea Argoli, romano, que pone este año el equinoccio a veinte de marzo, hallamos por estas tablas le corresponden a este día trece de abril los veinte y cuatro de marzo de este año que es primero después de bisesto: y estos tablas, refiere el autor, los sacó del Arte de Navegar que hizo el maestro Medina.⁴ Ha sido forzoso satisfacer con estas razones, por si pareciera haber algún yerro por hallarnos sin tablas modernos.

Lunes Santo cuatro del dicho, caminamos al rumbo del nordeste lo más del día y algunos ratos, cuarteo al norte, distancia de ocho leguas; al principio fué tierra llana y después hubo un monte de mezquites pequeños, y habiendo salido de él nos metimos en otro mayor de tres leguas, fuimos a dar a un río que aunque traía poca agua se reconoció en él que en tiempo de lluvias sale de madre casi de media legua: le intitulamos el río de los

⁴ Pedro de Medina. *Arte de navegar*, publicada por vez primera en Valladolid en 1545. Andrea Argoli es un famoso astrónomo italiano (1520-1600) autor de varias obras. Sus Ephemerides tienen muy vedas desde su primera edición romana de 1621.

Nueces por tener muchos nogales: es olga pedregosa y todas sus piedras son de fuego y muy finas.

Martes Santo, cinco del dicho, pasamos dicho río; fue necesario andar media legua en su orilla y entramos por una cañada y se ofreció un monte muy espeso que fue necesario dismantar en su entrada con onfones y hocas casi una legua, por los muchos nopales y mezquites que impedían el caminar. Seguimos el rumbo del este: entramos después en un mezquital en que a trechos nos obligó a desmontar y anduvimos distancia de siete leguas. Topamos con un río a quien pusimos el río Zorco (Frio), por ser la agua de él. Anduvimos (como digo) siete leguas con muchos rodeos.

Miércoles Santo seis del dicho, caminamos como tres leguas al rumbo del nordeste y dos al este, por tierra llana y de tomoso pasto y por unos cañados muy amenos, y a trechos hubo unos bosquecillos de encinos; llegamos a un río, a quien pusimos el río Hondo, respecto a que tiene por cada lado la bajada más de seis estados: están cerca de él, así de una banda, como de la otra, algunos lomas pequeños, montuosos algunos de ellos. Al bajar al río hallamos unas piedras grandes blancas y en algunas de ellas vimos algunos cruces grabados y otras figuras hechas a mano con mucha perfección y al parecer son de mucho tiempo.

Jueves Santo, siete del dicho, caminamos al rumbo del este, el dicho río abajo, sin haberla pasado, como de cuatro leguas, unas veces al rumbo del este y otras al sureste, y poramos en su orilla de esta banda que va de la misma colindad que en el paraje antecedente, tierra llana lo más aunque también hubo algún monte de mezquite: y aunque en todas las jornadas desde que pasamos la habitación de los cinco naciones de indios, que fué a treinta del pasado, fuimos atrevesando algunos veredos de indios, eran de mucho tiempo y no pareció ninguno. La tierra en lo más fué llana.

Viernes Santo, ocho del dicho, pasamos de la otra banda del río Hondo y seguimos el rumbo del este al nordeste lo más de este día: cerca del

A L O N S O D E L E Ó N

rio, topamos con dos cañados, la una cercana de la otra, y lo lo que parecían en tiempo de aguas crecen tanto que sube más de un estado de altura; a que se siguió un arroyuelo en un monte que fué menester despuñtar un trecho para poder pasar las mulas cargadas, que fué con harta trabajo, alascándose algunas pasando este arroyo. Topamos con tierra muy llana, y luego un monte de mezquites grandes, en cuyo medio estaban unos chorcos de agua donde paramos, habiendo caminado este día ocho leguas largas al este, como va referido.

Sábado Santo, nueve del dicho, salimos al rumbo del nordeste y, por algunos montes que se ofrecieron, fué necesario hacer algunos rodeos unas veces al norte, cuorita al nordeste y otras cuarta al este. La tierra fué muy cómoda. Este día pasamos un arroyo seco y a distancia de uno legua hallamos otra con agua muy buena y mucha pasto; socáronse de él muchos robalos; le pusimos a éste arroyo del Vino, por haberse abierto este día un barril que se reparó entre toda la gente. Anduvimos este día cinco leguas. Hallamos nueces debajo de los árboles, muy crecidos, tanto como las de España, si bien difíciles en abrirlos; vimos muchas porras silvestres que nos afirmaron los indios que a su tiempo era el fruto muy crecido y sabroso. En este paraje como a las nueve de la noche nos dió la caballada estampido; no obstante que había quince soldados de posta, no lo pudieron reparar toda; se fué una punta de ciento dos caballos, que se reconoció por la cuenta el día siguiente.

Domingo de Pascua, diez del dicho, salieron soldados por diferentes rumbo a buscar los caballos, los cuales se hallaron en diferentes sitios, que les deluvo hasta la oración; y así por esta causa paró el real este día, y reconocimos la altura de polo y nos hallamos en veintisiete grados y cincuenta y cinco minutos.

Lunes de Pascua, once del dicho, solimos al rumbo del este arroyesando a poca distancia del paraje dos arroyos de buena agua, y luego se nos ofreció una selva grande de nogales y encinos de más de cinco leguas, toda tierra fértil y amena; fué necesario caminar este día doce leguas, para tener agua. Topamos con un río bien grande aunque no con mucha agua

94—

DESCUBRIMIENTO DE LA BAHÍA

y con buen vado para pasarle; le pusimos por nombre el río de Medina; tiene la bajada de nueve a diez estados. El rumbo de este día fué la mitad al este y mitad al nordeste; todo lo demás del camino fué de encinos y nogales.

Martes de Pascua, doce del dicho, pasamos el río: fué el paso muy acomodado. Seguimos el rumbo del este cinco leguas de unas lomas bajas, sin ningún monte; atavesamos unos barrancos de tierra colorada y amarilla; entramos en un mezquital y hallamos agua en un arroyo que, aunque en los principios estuvo seco y estuvimos con desconfianza de que la guía había errado el agujete, a trecho como de una legua iba bien corriente; la tierra fué muy fértil de pastos y a causa de haber hallado cerca de este arroyo un león bien disforme, muerto, le pusimos el arroyo del León [río San Antonio?].

Miércoles trece de abril, salimos rumbo del este y a veces al este-nordeste distancia de seis leguas; como a medio legua del paraje pasamos por la punta de una lomita, en la cual remata uno arboleda de encinos, que quedó a mano derecha. Estaban en ella unos montecillos de piedras puestas o mano; seguimos unos lomos bajos; hubo como dos leguas de montes de encinos, que en partes fué necesario desmontar, y después hasta que llegamos a un arroyuelo todo fué tierra llana.

Jueves catorce de abril, salimos para el rumbo del este cuarta al nordeste en demanda de un río grande que nos dijo la guía hallaríamos; llegamos a las dos de la tarde; anduvimos seis leguas. Caminamos las tres lomas y después por otros montuosos y con algunas barrancas, que [es] necesario en partes desmontar para poder pasar; la tierra fué la más amena que habíamos andado; el río no es muy caudaloso, tuvo buen paso: está por sus orillas lleno de arboleda; matáronse en el camino seis ciobolos, que fueron los primeros que vimos en distancia de más de cien leguas. Le pusimos a este río Nuestra Señora de Guadalupe, que desde Coahuila llevamos por nuestra protectora y abogado y lo llevamos pintado en el estandarte real.⁵

Index to the Maps in this Report

1. **Platted on Map of Bexar** ca. 1842 or 1845 on file in the General Land Office, Austin, Texas..... 1 page

2. **Map of former Rancho San Lucas between Bexar and Medina Counties** ca. January 5, 1845, oversized page, GLO map..... 1 page

3. **General Land Office** map entitled “**Pressler Map**” ca. 1858 shows Quihi, Texas, with Woll’s road that ran through Quihi..... 1 page

4. **“The Archaeology and Early History of The Head of the San Antonio River”**
By Karen E Stothert I.W.U., 1989, together with a Spanish map ca. March 24, 1764, shows a map of the Camino del Can’on Road, which went via Quihi..... 2 pages

5. **“A Texas Legacy. The Old San Antonio Road-The Caminos Reales: A Tricentennial History, 1691-1991”** by A.J. McGram, J. W. Clark, Jr., and E. A. Robbins, TEXDOT, January, 1991..... 4 pages

6. **“Coahuila Y Texas en La Epoca Colonial”**by Vito Alessio Robles, showing the limits of the Provincias Internas de Oriente, which included Texas..... 2 pages

7. Map of some of the tribes that lived in Texas during the early Spanish Colonial Era. This map is undated and its source is not found. It shows the terrain of the **Coahuiltecan Tribes**, including the **Payaya Tribe**..... 1 page

8. **“The Zacatecan Missionaries In Texas, 1716-1834.”** Excerpts from the Libros De los Decretos of the Missionary College of Zacatecas 1707-1828. Translated By Fray Benedict Leutenegger, O.F.M., and Fray Marion A. Habig, O.F.M., Texas Historical Survey Committee, Report No. 23 with 2 maps..... 3 pages

9. **Digging Into South Texas Prehistory-A Guide for the Amateur Archaeologist**, By Thomas R. Hester, Ph. D. (c) 1980, with three photos, Figures 5.5, Figure 4.13, Figure 4.14..... 3 pages

10. **“The Supreme Court of the State of Texas”** by Oliver C. Hartley, Vol. V, 1877, McMullen v. Hodge (Texas 1849) pp17-44..... 16 pages

11. **“Supplemental Draft Environmental Impact Statement”** Finance Docket No 34284, Vol. II, Appendices C-F, by: (STB) December 8, 1006, Map Sheet 1, Site Numbers & Survey Area Boundaries, Quihi Vicinity, Medina County, Texas 2 pages

No. 4.

A 16175000
 B 24104000
 C 3295250
 D 33100000
 E 5634000
 F 56960000
 16
 400.102.250
 25
 150
 150

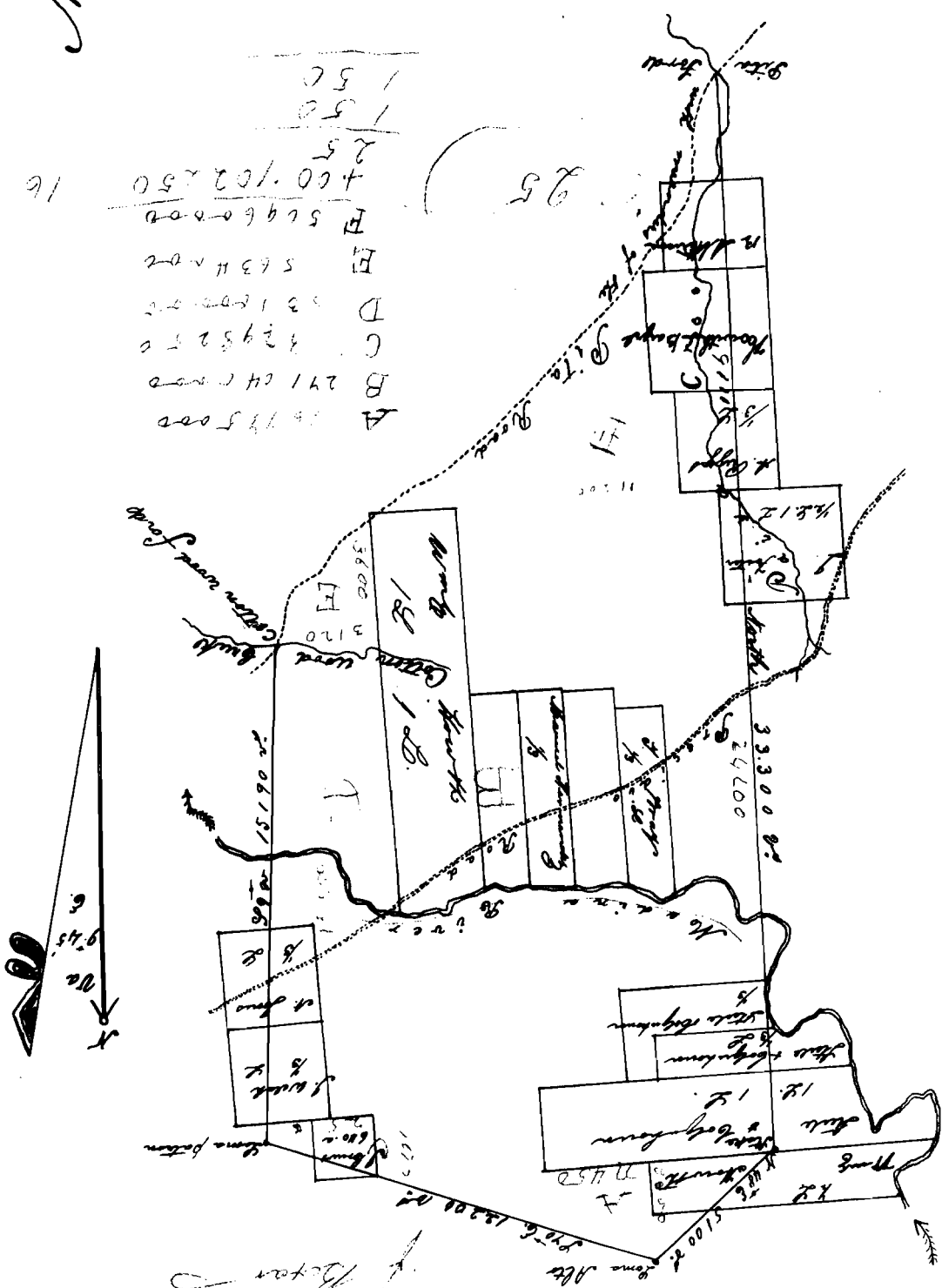
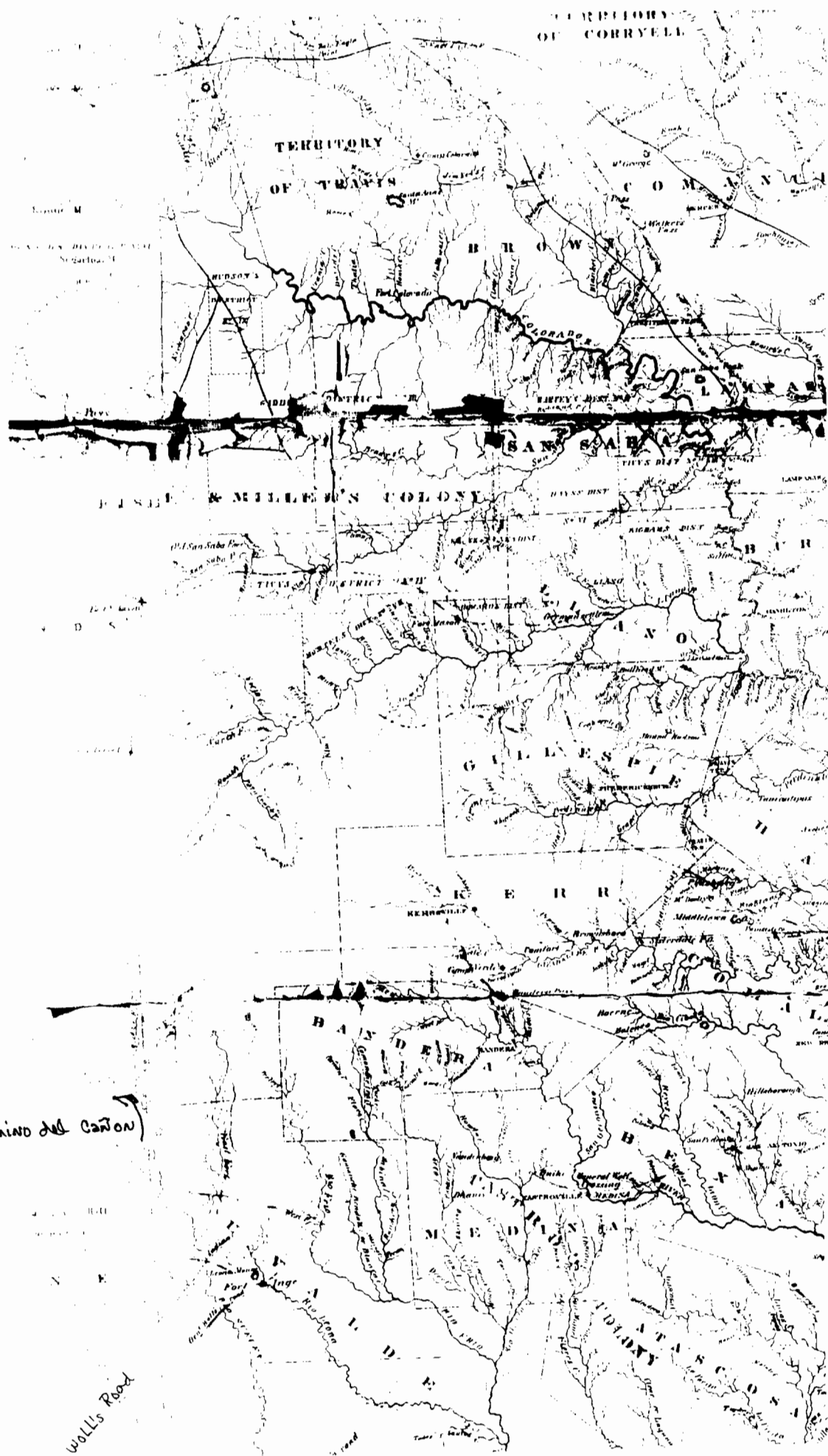


Plate in map
 of Betar



TERRITORY OF CORRYELL

TERRITORY OF TRAVIS

BROWNS

COMANCHE

COLORADO

SHERRY'S DIST.

SAN SABA

FISHER & MILLER'S COLONY

HAYES DIST.

RIGBANS DIST.

LANCASTER

GILLESPIE

AKER

KENNEWICK

BANDERA

MEDINA

STANTON

OLD Camino del Cañon

Walls Road

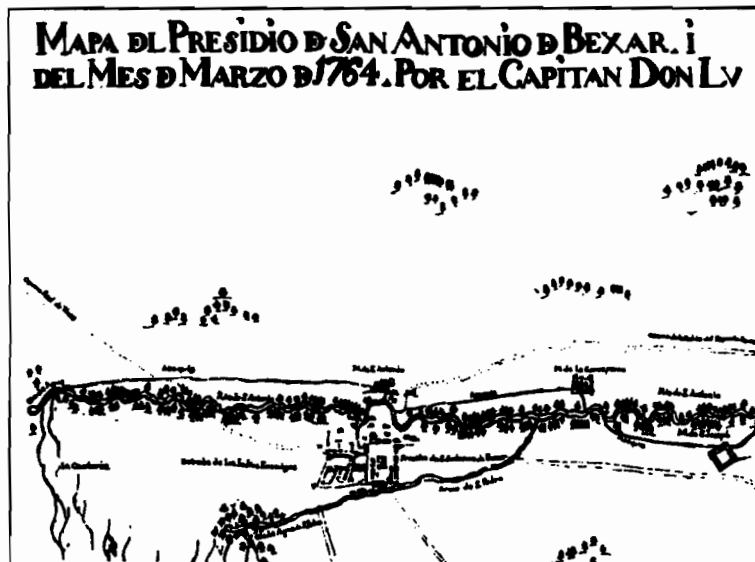
↙ Mexico

Frederick Map 1860

T
913.031
S888a
c.2

THE ARCHAEOLOGY AND EARLY HISTORY
OF THE HEAD OF THE SAN ANTONIO RIVER

Karen E. Stothert



Incarnate Word College Library
San Antonio, Texas

Southern Texas Archaeological Association
Special Publication Number Five

And

Incarnate Word College
Archaeology Series Number Three

San Antonio, Texas
1989

MAPA DEL PRESIDIO DE SAN ANTONIO DE BEXAR, I. MISIONES DE LA PROVINCIA DE TEXAS EN 24. DEL MES DE MARZO DE 1764. POR EL CAPITAN DON LUIS ANTONIO MENCHACA Y EL LOES DEL PRESIDIO.

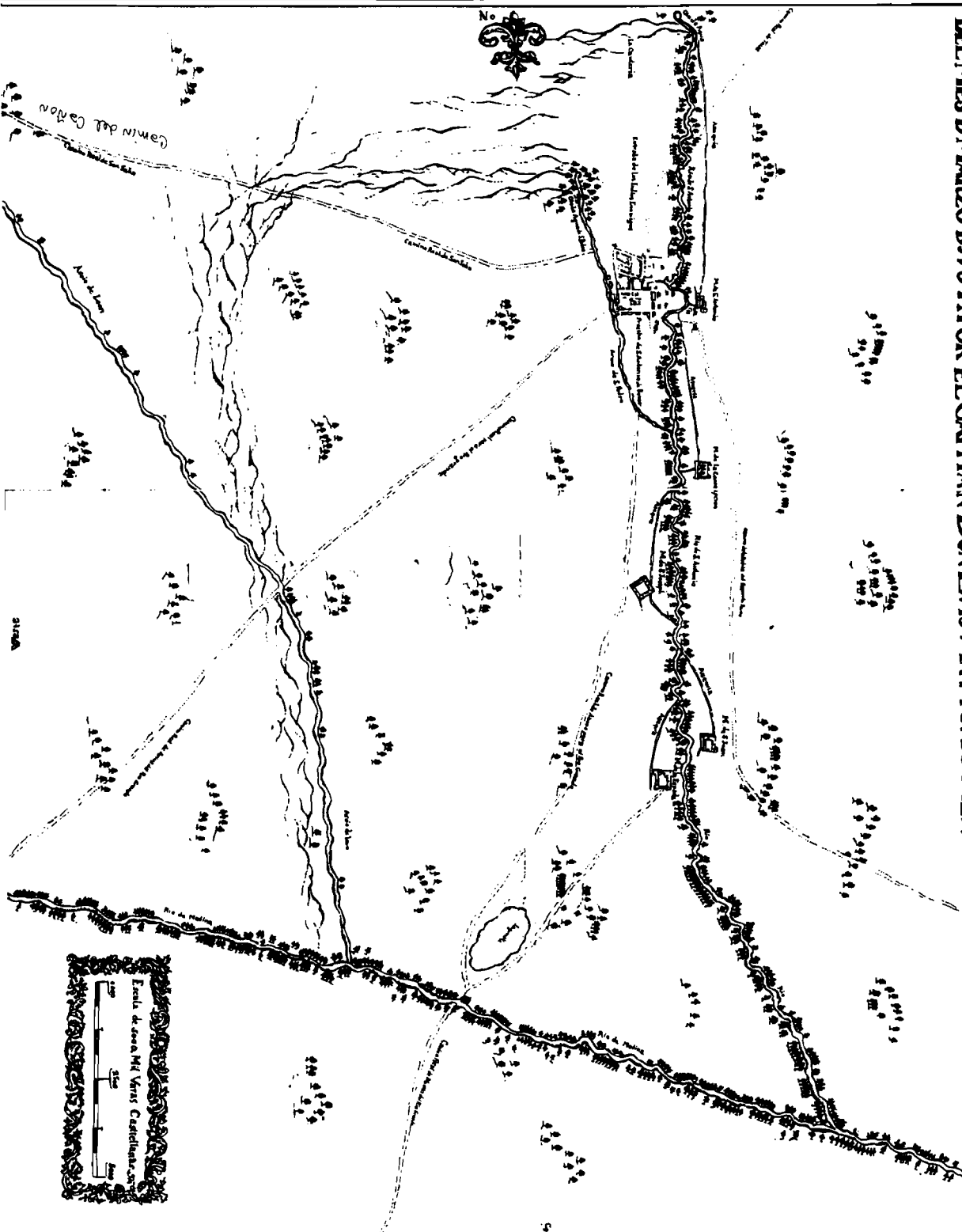


Figure 25. Map of the Presidio of San Antonio de Bexar and missions of the Province of Texas drawn as seen on the 24th of March 1764 for Captain Don Luis Antonio Menchaca. The Blue Hole (Ojo de Agua) is seen at the left margin of the map (North of Mission San Antonio and the Presidio de San Antonio de Bexar); it was clearly perceived to be the headwaters of the San Antonio River (Reproduced from a copy in the Alamo Library, courtesy of the Daughters of the Republic of Texas; Drawing by Frances Meskill).

**A TEXAS LEGACY
THE OLD SAN ANTONIO ROAD
AND
THE CAMINOS REALES
A TRICENTENNIAL HISTORY, 1691-1991**

**EDITED BY
A. JOACHIM MCGRAW, JOHN W. CLARK, JR., AND ELIZABETH A. ROBBINS**



**TEXAS
STATE DEPARTMENT OF HIGHWAYS AND
PUBLIC TRANSPORTATION
AUSTIN, TEXAS
JANUARY 1991**

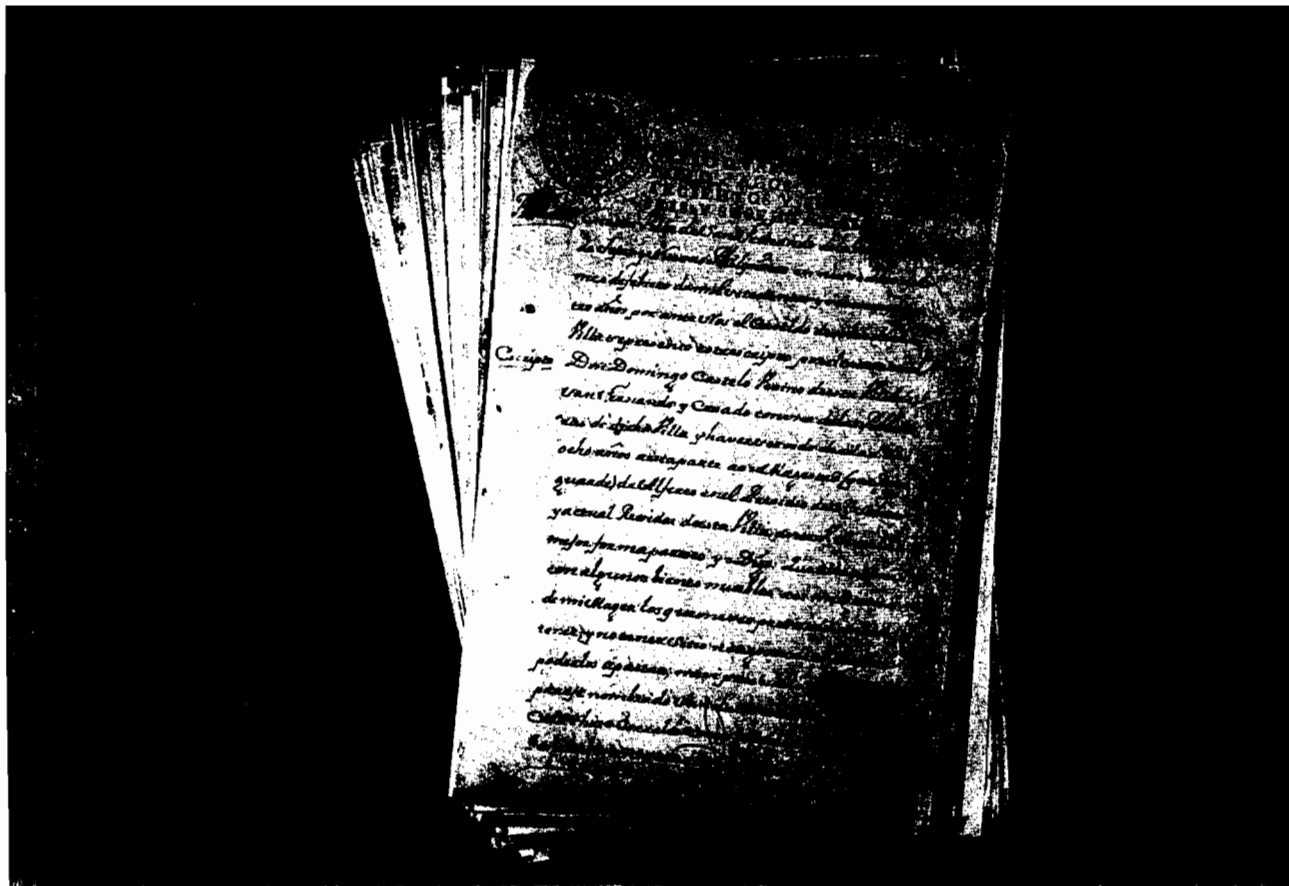


Figure 24. Testimony of a court case regarding property ownership of lands of Miguel San José y San Miguel de Aguayo, 1776-1777. The Camino Pita acted as a boundary of the property, only a boundary to the S.E. part of this Rancho San Lucas...

P. Saray

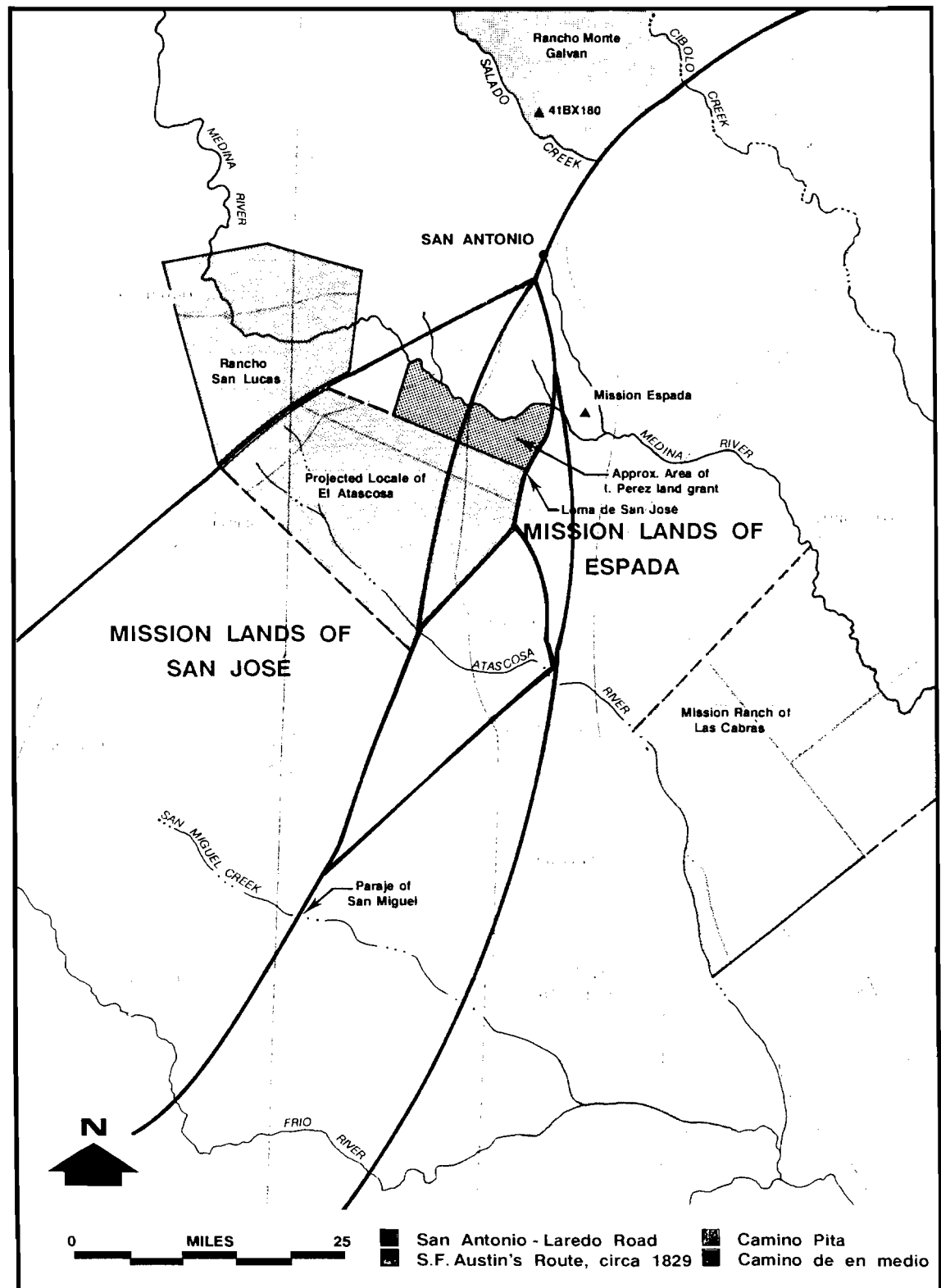


Figure 21. Projected boundaries, lands of the Missions San José and Espada, south of San Antonio.

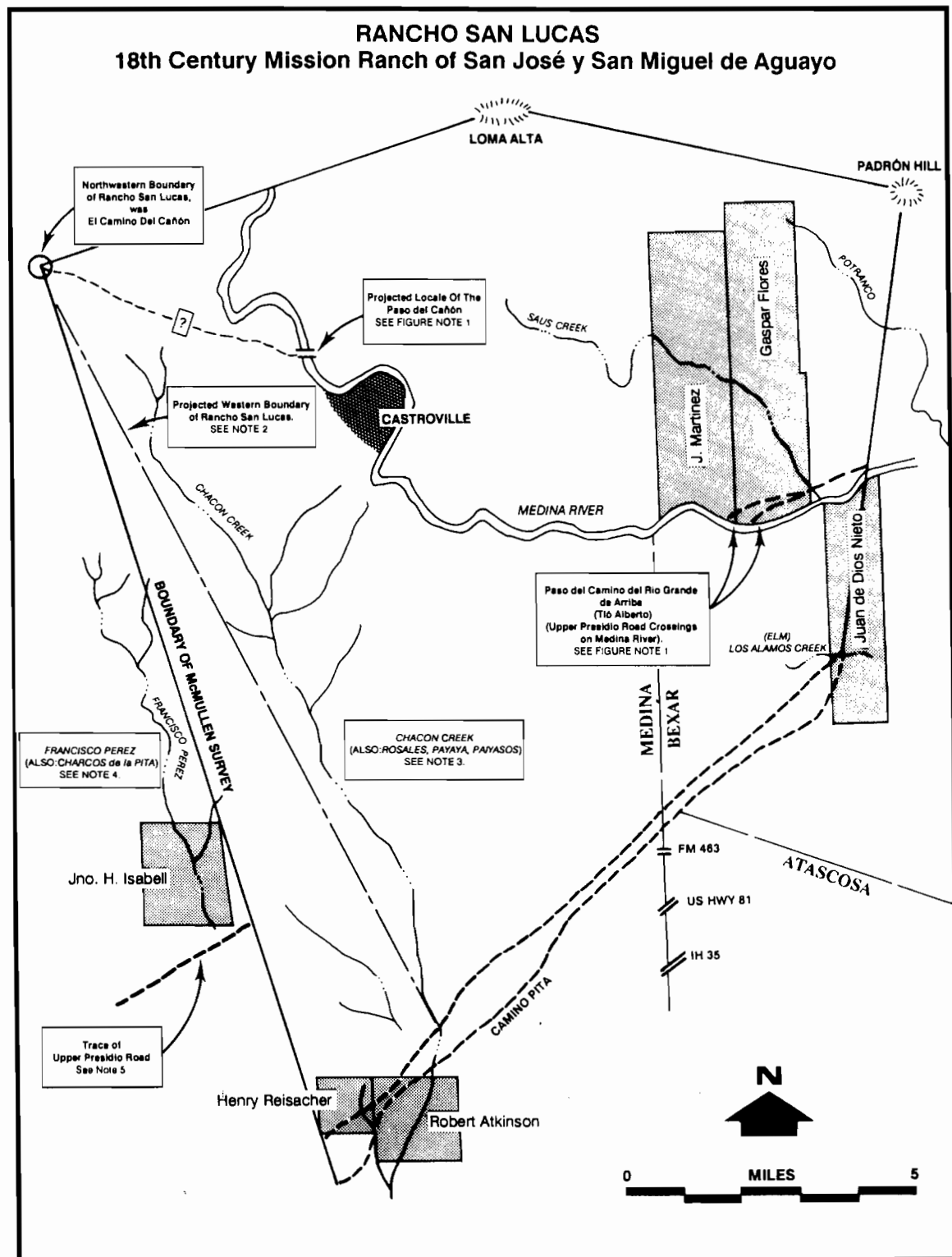


Figure 20. Projected boundary of Rancho San Lucas, land belonging to Misión San José y San Miguel de Aguayo in the 18th century.

BIBLIOTECA PORRUA

VITO ALESSIO ROBLES

COAHUILA Y TEXAS

EN LA

EPOCA COLONIAL

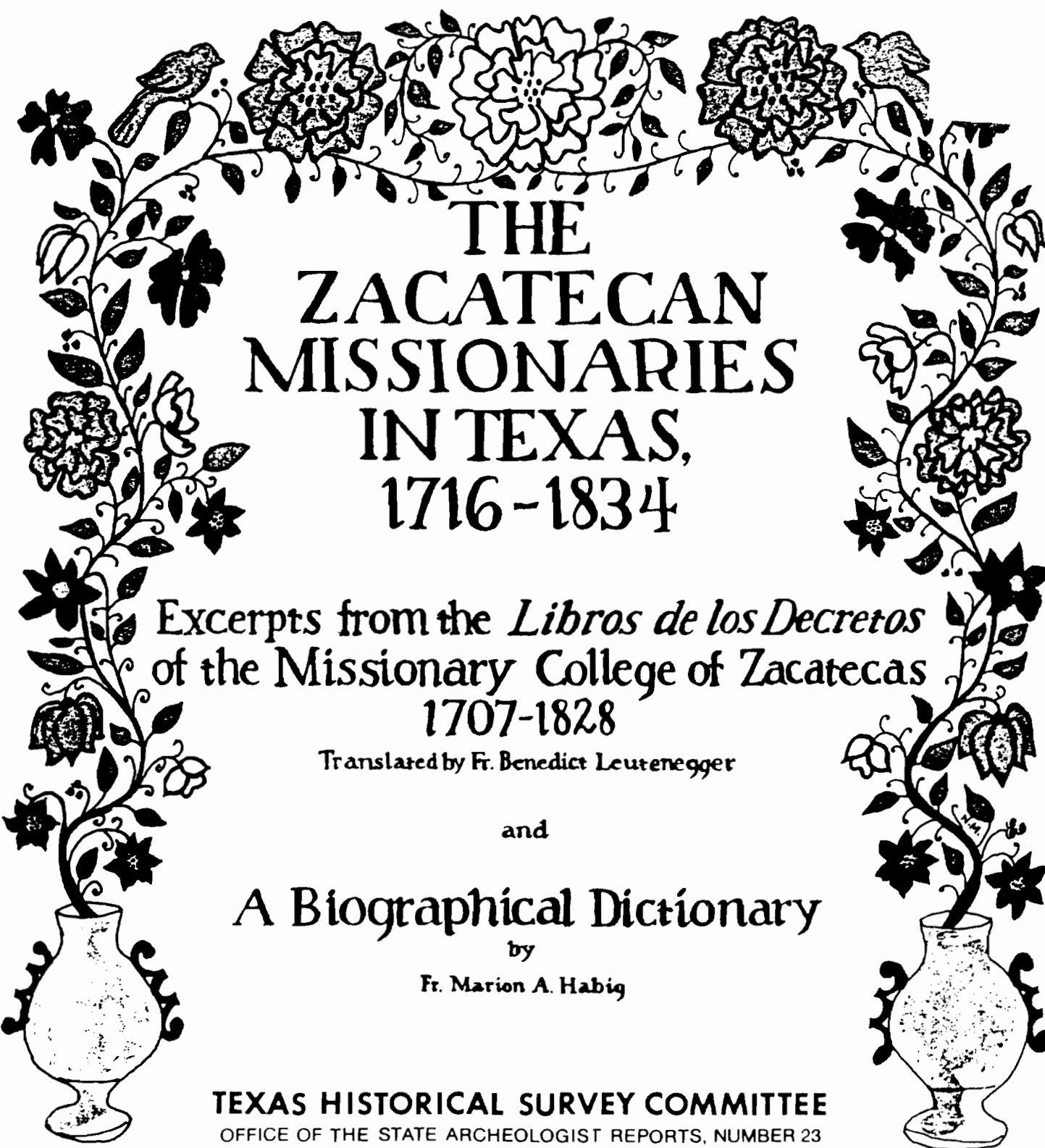
EDITORIAL PORRUA, S.A.

AV. REPUBLICA ARGENTINA, 15 • MEXICO, D.F.

Cashville



brigadier Joaquín de Arredondo. P. 660 "Coahuila y Tejas En La Época Colonial."
by: Vilfo Alessio Robles (c) 1978 2d. Edition



THE ZACATECAN MISSIONARIES IN TEXAS, 1716-1834

Excerpts from the *Libros de los Decretos*
of the Missionary College of Zacatecas
1707-1828

Translated by Fr. Benedict Leutenegger

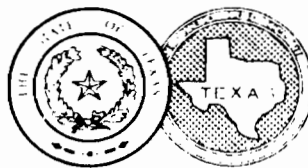
and

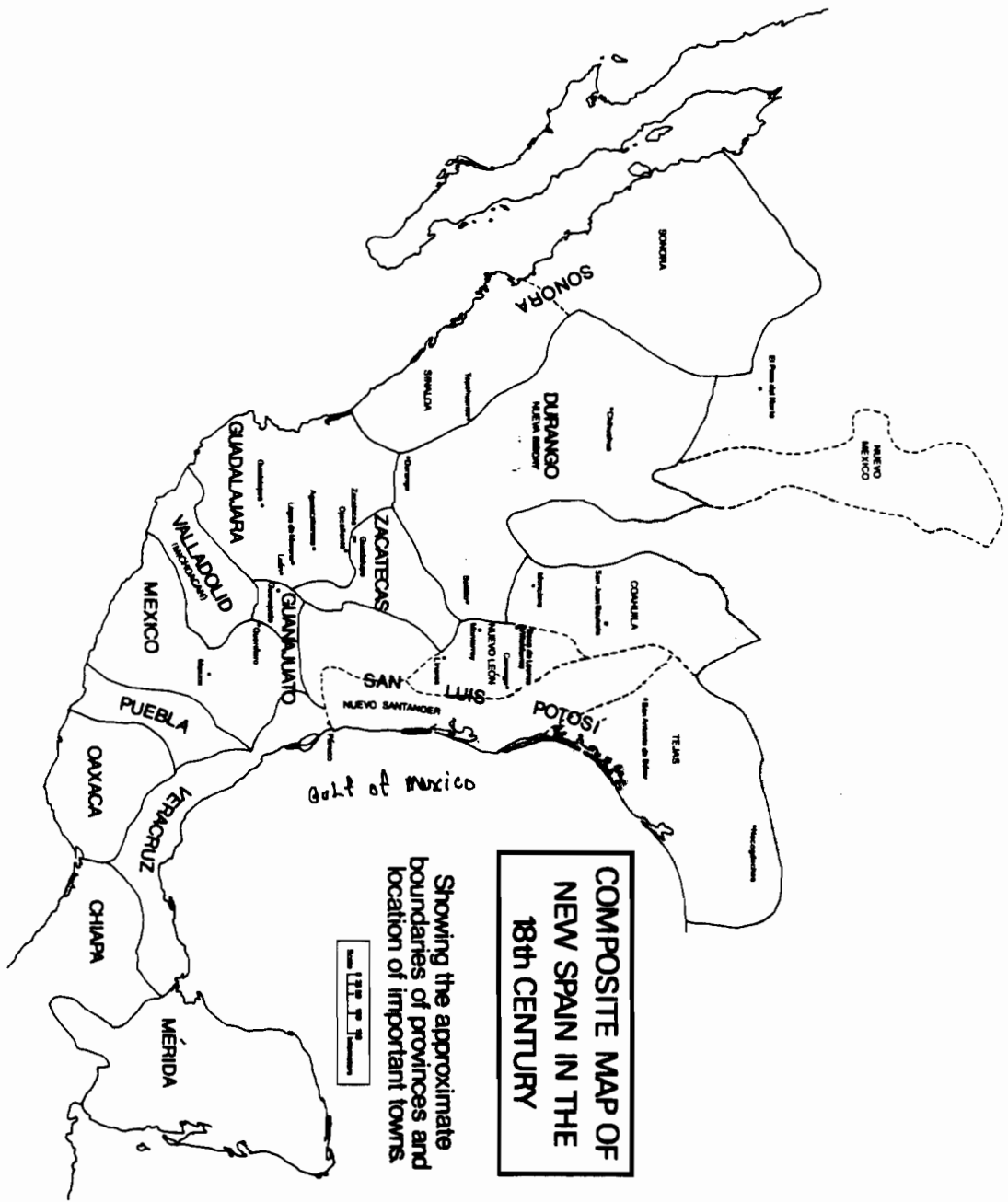
A Biographical Dictionary

by

Fr. Marion A. Habig

TEXAS HISTORICAL SURVEY COMMITTEE
OFFICE OF THE STATE ARCHEOLOGIST REPORTS, NUMBER 23



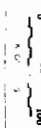


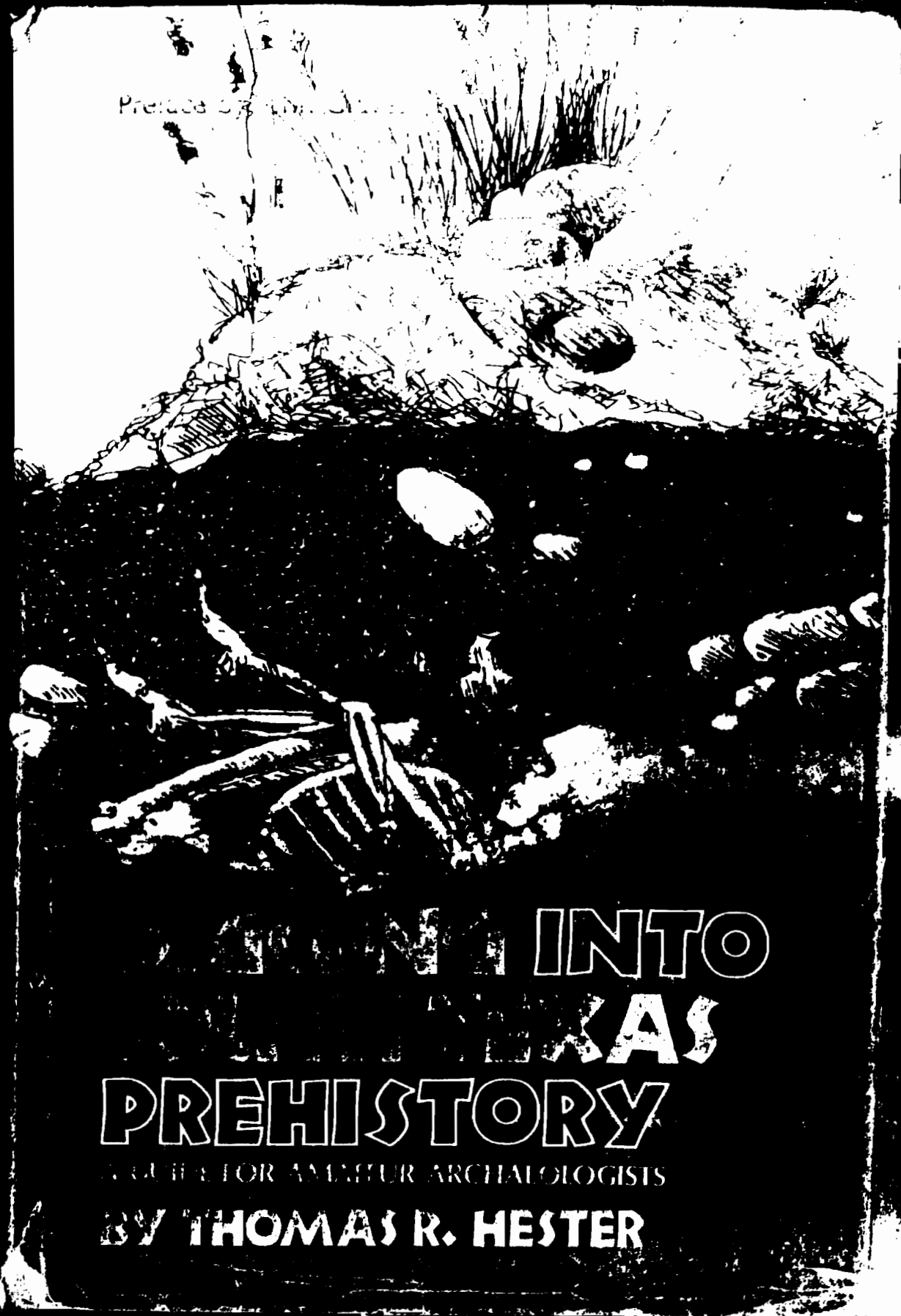
SPANISH
ESTABLISHMENTS
IN TEXAS

KEY

- Village
 Presidio
 Mission
 Visita
 Nuestra Señora

SCALE





Preface by John G. Goff

GETTING INTO TEXAS PREHISTORY

A GUIDE FOR AMATEUR ARCHAEOLOGISTS

BY THOMAS R. HESTER

PROJECTILE POINTS

Among the most distinctive artifacts—and certainly the one that first catches the attention of the person who is becoming interested in archaeology—is the projectile point or “arrowhead.”*

Projectile points are frequent on south Texas sites and are avidly sought by relic-collectors and archaeologists alike. Unfortunately, the relic-collector usually wants the specimens for their “looks”, dumps them in a cigar box (or puts them in a frame on the wall), and forgets where they were found. This process destroys all scientific value of the specimens, and their removal from the place of discovery damages the potential for future research in an area. For example, when Texas A&M University carried out a major site location study in McMullen and Atascosa Counties in 1975, their archaeologists found that most sites had been stripped of projectile points. They could do very little in terms of ascertaining the ages of the sites or their cultural affiliations because of the bias introduced by relic-collecting activities.

In south Texas (and in most of the New World, for that matter), projectile points fall into two groups: *dart points* and *arrow points*. Dart points are fairly large, heavy points (the “arrowheads” of the collector), used as tips for short spears thrown with an atlatl (Fig. 5.5). They were the only weapon tips in use in south Texas for most of the prehistoric period.

*Most of the major types that are found in south Texas are briefly discussed here, and some illustrations are provided. However, amateur archaeologists wishing to learn more about such point types should see if their local library has a copy of *An Introductory Handbook of Texas Archeology* (by Dee Ann Suhm, A. D. Krieger, and E. B. Jelks; Bulletin of the Texas Archeological Society, Vol. 25, 1954) or *Handbook of Texas Archeology: Type Descriptions* (by Suhm and Jelks; Texas Memorial Museum and Texas Archeological Society, 1962). Both books are, at this writing, out of print and can be purchased only in a used-book store. However, the Anthropology Club of West Texas State University (Canyon) has printed a large wall poster which illustrates most Texas point types, including several defined since the time of Suhm and Jelks's 1962 volume. In addition, most Texas point types are described and illustrated in the several volumes of *A Guide to Certain American Indian Projectile Points*, published by the Oklahoma Anthropological Society.

Right, Figure 5.5. **Using a Spearthrower.** This artist's reconstruction shows the use of a spear and spearthrower or atlatl, the main weapons of the Archaic and Paleo-Indian periods in south Texas.





Figure 4.13. The Oso Cemetery Site (41NU2), Nueces County. (Photograph courtesy of the Texas Archeological Research Laboratory, The University of Texas at Austin.)

Figure 4.14. Burial at the Oso Cemetery Site (41NU2). Skull at back of the burial is from an earlier, disturbed interment.

IN

THE SUPREME COURT

OF THE

STATE OF TEXAS

DURING A PART OF DECEMBER TERM, 1849, AT AUSTIN, AND A
PART OF GALVESTON TERM, 1851.

BY

OLIVER C. HARTLEY.

ANNOTATED BY JNO. SAYLES, 1876.

VOL. V.

HOUSTON, TEXAS:

E. H. CUSHING, PUBLISHER.

[Now Published by THE GILBERT BOOK CO. of St. Louis, Mo.]
1877.

The first section of the schedule in the Constitution of the Republic continued in full force and effect the laws and decrees of the Mexican Confederacy which were inconsistent with that Constitution. Taking the first section of the schedule of the Constitution of the Republic with the tenth section of the General Provisions, it would seem that the contention did not intend to destroy any rights or titles, except those enumerated and specially named. Those two titles virtually confirm all other titles that were consummated at the date of the revolution. We have uniformly decided that in case of imperfect titles, to give them a standing in court required the action of the political authority; but if consummated before the change of the government and owned by a citizen of the Republic, they were valid without any action of the political authority, and have standing, *in proprio iure*, in a court of law. The titles in this case were consummated before the change of government, and were examined at length, and the conclusion arrived at that the Indians were (35) merely tenants, as well as that their rights could neither be alienated nor transmitted by inheritance, and that after the extinguishment of the missions, the lands became a part of the appropriate public domain. Under laws 13 and 14, title 12, book 4 of the New Recopilacion, were only in commission, and the purchasers were merely tenants at will. (Note 3.) I think it may well be doubted whether large grants of pasture land were ever authorized in any case by the laws of Spain. LUCAS, J.

Appeal from Bexar. The plaintiff in the court below, who is the appellant in this court, brought suit to recover a tract of land of eleven leagues, described by metes and bounds supposed to contain twenty leagues. He offered in evidence a copy of a record from Bexar county which, by agreement, was read in lieu of a copy of the same document which might have been obtained from the General Land Office. This document purports to be the record of certain proceedings under the Government of Mexico, whilst it composed a viceroyalty of Spain, in relation to the San Lucas lands. It goes to establish the following facts:

In February, 1764, one Domingo Castillo applied to the cabildo of San Fernando de Bexar for a concession of certain lands at a place known as the San Lucas Springs, alleging that he required the use of the said lands for the stock of himself and his wife, and that he was and had been for several years in possession of the same, and that he had erected thereon a house and an enclosure. This application purported to have been in conformity with the royal decree of 15th October, 1754. The matter was referred by the cabildo, with its report, to the audiencia of the viceroyalty of Mexico for its final decision.

During the prosecution of the claim of Castillo the Rev. Father, the president of the mission of San Jose, made opposition to the claim in behalf of the Indians of that mission, alleging that the Indians of that mission had a better right, having used it for the pasturing of their flocks before it had been occupied by Castillo; that there had therefore been no particular lands set apart for the use of the people of the mission. (36) because that when it was founded it was well understood that it was entitled to as much land as might be needed for pasturing flocks and for culture.

This opposition was also referred to the royal audiencia for its decision. The land had in the meantime, in conformity with instructions from the viceroyalty, been surveyed, appraised, and ceded for the best bid for thirty days, and knocked off for the use of the mission Indians at one hundred dollars, being the best bid; a formal report of all the proceedings was made to the royal audiencia for its final approval. It resulted in favor of the mission Indians, and on the 18th of November, 1768, a grant was made to them of eleven leagues of land, in the following words:

"In consideration of the foregoing acts, I do hereby order that the mandate of their lordships of the royal audiencia, and in conformity, that the sum of one hundred and fifty dollars be made into the royal treasury, *via media caudata*, on account of their being Indians of the population of San Jose to whom the sale of eleven leagues of land is proved, and the same be granted to them by way of sale for their labors, pastures, and other purposes, without the right of alienating, conveying, or selling any part thereof, without the superior license of the Supreme Government of the Kingdom, under penalty of annulling this sale, without prejudice to his majesty or a third party."

The plaintiff read in evidence, to denigrate his title from the original grantees, a paper from Antonio Garcia, acting for himself, and pretending to act in behalf of the Indians of the mission of San Jose, dated 10th January, 1833, to Redolfo de la Cruz Cienega, Luis Romero, Jose Maria Garcia, Juan de la Cruz Cienega, Apolonario Rodriguez, alleged to be the only natural descendants of the abolished mission of San Jose, dated 10th January, 1833, to Redolfo de la Cruz Cienega, describing the eleven leagues of land, as set out in the ancient field-note of the survey made under the order of the cabildo of San Fernando de Mexico, referred to in the proceedings on the application of Castillo, and a commission dated the 18th of the same month from De la (37) Garza to McMullen, constituting him in this suit. To prove the authority of Antonio Garcia to act for the Indians of the mission of San Jose, the plaintiff introduced a paper from Del Toro, Luis Romero, and Jose Maria Garcia acknowledged with him, dated for them in January, 1833, and on the 30th November, 1846, at the commencement of this suit, a similar act of confirmation from Del Toro, Luis Romero, and Jose Maria Garcia acknowledged with him. There were several witnesses sworn whose evidence conduced to prove that the vendors to De la Garza were the only surviving descendants of the Indians of the mission of San Jose, and also some to prove the manner in which the mission Indians were governed at the mission and the object of the institution, as also the manner in which the missions were broken up. The defendant offered in evidence a headright certificate granted to him under the laws of the Republic of Texas, and located on a part of the land claimed by the plaintiff. The case was submitted to the judge without the trial by a jury; and the judgment was against the sufficiency of the title of plaintiff, from which he called.

E. Howard, for appellant.

It appears that the lands claimed by Castillo and the Indians were duly granted for sale at public auction, being first valued according to law. In both modes of disposition this was the rule of proceeding. The only question is, whether the lands were disposed of by composition, so called, which it appears, by law 15, tit. 12, lib. 4, of the laws of the Indies, (2 White, 53,) rendered a purchaser a tenant at will. It should be observed that that law is not referred to in any part of the proceedings as furnishing the rule under which the grant was made. On the contrary the only law referred to is 10 of the book and title, referred to by the royal attorney, as giving the Indians the service in the disposition of the lands, whether by sale or composition. Nothing, for argument's sake, that the law referred to speaks of composition not of sale, yet a mistake of the purport of the law by the attorney could affect the character (38) of the sale actually made. The law is as follows: "Who shall be admitted to make composition of lands who shall not have in possession thereof for the term of ten years, although he should state he is in possession at the time; for such circumstance by itself is not sufficient; and communities of Indians shall be admitted to make such composition in preference to other private individuals, giving them all the facilities that purport." (2 White, 54.) We should further observe that in the very reading sentence to his reference to the law, the attorney states that there is no contest which required proof; that the lands were vacant, as decided in the cabildo—evidently meaning that not having been occupied ten years, the law required, they were not subject to composition. Neither did the law nor Castillo come within law 13 so as to subject the land to composition. We must therefore presume that the attorney referred to this law 19 to prove that Castillo had no right if the lands were admitted to composition, or to show, what was in fact the law of the Indies, that the Indians were in all manner of sales and compositions of lands. (Law 9, tit. 12, lib. 2; 2 White, 51; law 36, tit. 18, lib. 2; law 13, tit. 31, lib. 2; 2 White, 51.) Whether or not the opinion of the attorney was that these lands should be admitted to composition, the decree of the officer authorizing and directing the sale is made by sale according to the 8th schedule of the instructions of 1764, which is much later than the above decrees promulgated in the

law of the Indians in —, and directs under what circumstances the audiencia may confirm sales and dispositions. This tribunal did confirm this grant "by way of sale" for the additional sum of fifty dollars over and above what the lands had been struck down for to the Indians; and directed the secretary to extend the title. This title was extended "by way of sale for Indians, justly, free, and other purposes." There is no doubt the royal audiencia with the primitive judge had a right to sell lands, and might sell in view of admitting to composition. See (139) note, *lavorado* in the law, 12 White, 25. As to the position of the audiencia, see *seces*, 3, 10, 11, of the royal order of 1754, 12 White, 65, which was indeed almost identical, respecting the king himself.

The Supreme Court of the United States have always presumed in favor of the face of the grant and the power of the officer making it. In *Lozano v. Stroh*, 12 Pet. R., 411 they declared that if a Spanish grant is contrary to the written order of the king, it shall be presumed to be according to some other order not known. The king, as legislator, may change the laws, and his officers are presumed to know these changes, and to act within the scope of their powers and according to their duty. 6 Pet. R., 35. If then, under the law, this land might have been admitted to composition, but the audiencia had power to sell, and did pass title by way of sale, there is no doubt that such is the real character of the title. And even if the audiencia, having jurisdiction of the subject, decided wrongly, yet as it was *res judicata*, it would render it a title, by sale. We know affirmatively that that tribunal had a right to grant lands, by sale, and to confirm sales; and if we did not, having exercised the right, the law presumes not only that it had the right, but that the Spanish Government always had some officers in the colony who possessed the power. 6 Pet. R., 270; 5 Pet. R., 793.

The authorities granting the land having directed that the conditions should be incorporated in the title, we are to presume that all the conditions were in general, and that to what a condition and qualification of the title as that of being tenants at will was not confined. Such an interpretation would be favored, and contrary to the well-settled rules of construction. "The rule to be collected from all the cases is, that the intention of the parties, as it relates to the words of the instrument, must govern the construction." (Pope v. Doubledy, 12 East R., 168; 1 Mass. R., 221; 4 Bl. 24; 7 Id., 382; 1 [40] Kent, 460 note 6, last ed.; 2 Id., 536.) In the case of the United States v. —, 10 Peters' R., 308, it was decided that no conditions in law would be attached to a Spanish grant absolute in form; inasmuch as the officer granting was the judge of the conditions, and had embodied none in the grant. So here, the audiencia was the tribunal to decide whether the confirmation should be by composition or by sale; and having made it by sale, the face of the title cannot be controverted by insisting to have been by composition. The Supreme Court of the United States in adjudicating Spanish grants have never implied conditions in law when none were expressed in the grant. The well known habits of the Spanish authorities of setting down in the title the precise conditions on which the Government intended to rely forbid any such assumption, especially when connected with the fact that the officer had power to grant with or without conditions at his pleasure. The case of the United States v. Rothman (15 Pet. R., 139) is in all respects a case in point upon this branch of the subject. There the grantee presented a petition to the Government, stating his losses and services to the Government, and his intention to better his condition by erecting a saw-mill, and prayed for a grant of land. The Government, in his decree, noticed his services and the advantages to result to the home and foreign trade of the province, and then gave the grant, according to the royal order of 1790, for five miles square, in absolute property. It was objected to this grant, 1st, that it was void, because it did not conform to the order of 1790; 2^d, that there was implied a condition that a saw-mill should be built. It was maintained that the order of 1790 did not justify grants of the size made,

20

the court said that as the Governor by law had authority to make larger grants, the more perfect of the order could not limit or prejudice the grant, officer having sufficient power. As to the saw-mill, the building of it not having been carried into the decree, was a condition, it could not be held a condition of the grant. Now, then, can it be contended that in the case at [11] or the more reference by one of the attorneys to the law of composition, if such be the reference, can make this grant a title by composition? According to the case of Rothman, the recited of the law of composition is the decree. If it would not make it a title, by composition, where the grant itself declares to be a title "by way of sale." The breadth of the title is to be measured by the granting word, and not by the recited of laws and things, which do not enter into the conditions of the grant. So where the petitioner, seeking his release, asked for a grant of five miles square of land to build a saw-mill on, and it was granted—the decree reciting the inducement—the building of the mill, without making it a condition expressly, the court refused to imply one.

United States v. Hanson, 16 Pet. R., 166.

II. Such being the nature of the grant, for whose benefit was it made, and to whom was it granted? Not to the church. Not to the heirs of the order of the order. After the first application for the two leagues, which was not based on, they appear to have withdrawn from the contest. At the public sale of the Indians of the mission of San Jose appear as ordinary purchasers, and had the highest price for the lands, and they are struck down to them, and subsequently purchased by one person, of that nation, by way of sale. They are purchased by one person, with the private property of the Indians, and the land cannot be held the property of the church or mission without stating that the Indians and the church were one and the same thing. Now, that the Indians formed no part of the foundation of the mission, which had no sale for pasture in right of property, but only a general right to use the lands, as lands—the mission having no particular charter, but being organized under general laws. The grant shows that it was the intention of the order to grant these lands, by sale upon the Indians in private property, separate and apart from the church and the mission. The statement of the order of the church in Mexico shows that the mission, as an establishment, had withdrawn all prepossession, and that all difficulty [12] was removed by the Indians, as a community, becoming the purchasers.

That the laws of Spain gave a right to the Indians to purchase and hold property, both as individuals and as communities, cannot at this date be a matter of doubt. (2 White 31; 40, 51, 54.) Such a right is especially and fully recognized by the laws of the Indies, which not only gave the Indians the right to purchase and hold, but gave them a preference over others. They were the favored subjects of the law. And even if we did not find in the laws of Spain this express recognition of the right we should be bound in absence of contrary proof, to presume it. It is a familiar principle that the words will be construed all presumption in favor of the validity of a grant made by an officer having the power; and he who alleges the invalidity of a grant takes upon himself the burden of proof, and must show it. (Phillips v. Rothman, 15 Pet. R., 139.)

But if the Indians, by the general laws of Spain, had not a right to purchase and hold land, either as individuals or as a community, how does the title to the Indians of the mission of San Jose was sufficient for that purpose, whether viewed as a legislative or judicial act. It was within the power of the audiencia to confer this property on the Indians. Such would be the common-law as well as the equitable rule of construction. A legislative grant to an alien and his heirs has been held to authorize him to take a gift of land. (Jackson v. G. 6 H. 21 Johns R., 175.) So with regard to a gift of land to a native, (ib.) So a private land from the Indians in payment of a service is equivalent to a legislative grant, and would convey the title, and if the grantee had no one to force, object to, or prevent it. (Cory, R., 367.) The decree of the audiencia of Mexico is, therefore, of equal dignity with a legislative

21

McMullen v. Hodge.

McMullen v. Hodge.

grant, and carries to the Indians the full capacity to take in the precise form of the grant.

Not only are there express laws of the Spanish monarchy which authorized the Indians to purchase and alienate real estate, but the judicial decisions of this country have fully recognized their power. *Mitchell v. United States* (9 Pet. R. 732) is an authority which asserts the right of the Indian to hold and sell. In *Martin v. Johnson*, (5 Mart. R. 632), the court says: "But it is said that such locations of the Indians on any tract of land did not convey to them the property of soil, but gave them a mere possession for the purposes of the Indian mode of life. By the laws of the Indies, 1, 6, 27, however, it is recognized that Indians can hold land as well as other people; nay, that they can alienate it with permission of Government." (41, 470; 2 White, 34; 11, 31, 34.) In the same case it was held that no one but the Indian is able to take advantage of a nullity in the sale. *Spencer v. Ginnball* (6 Mart. N. S., 355) is to the same effect.

The Indian communities were always clothed with the same facilities as corporations whenever Indians resided together as a community. They were entitled to hold property as a community and to alienate it. From the Louisiana decisions already quoted it seems that wherever a community of Indians settled they were, under the laws of Spain, entitled to land, and might sell and choose another location, and were again invested with a league square without formal grant. These laws are sufficient proof that these communities had capacity to take by grant. After such a length of time a charter of incorporation would be presumed if necessary. (*Stockbridge v. Stockbridge*, 13 Mass. R. 400; 2 Kent Comm. 277; 12 Wheat. R. 94.) Again, the grant itself would constitute the grantees a body corporate as to the grant. (2 Kent Comm., 270; 7 Mass. R. 445; *Denton v. Jackson*, 3 Johns. Ch. R. 1 Cow. 671.)

The grant in this case is not to the Catholic church, nor to the mission, nor to the population of the mission generally, but to the "native Indians" of the mission of San Jose. It is difficult to see how such language can be tortured into meaning to the mission in its corporate capacity. The language evidently means, not the mission as a foundation, nor the [44] whole mass of the population of the mission, but the resident native Indians of the mission. It is a grant to a particular class of individuals by name, and their express enumeration is by every rule of construction the exclusion of all other beneficiaries. It is not easy to understand how a grant of land to parties residing in a particular house could be held to inure to the benefit of the owner of the house instead of the residents named. The words of the grant to the Indians make it a conveyance in fee with a defeasance; but granting that it might be construed either to that effect or as a tenancy at will, the grantees would be supported in claiming the fee, on the obvious principle that the grant must be taken most favorably to them, and that they have a right to elect if it is capable of two constructions. Such a grant is as certain as a grant to or an entry by the heirs of J. F., which has been held good. (*Hunt v. Wickett*, 2 Pet. R. 207) or a grant to the wife of A. That is certain which may be proved to show by proof who were native Indians of the mission. (*Ship, Touch. Ch. 12, p. 246; 1 Paline C. C. R. 652.*) See also *Bee, Abv.*, p. 378; *Yt. GRAYR.* (C.) to the point that where there are sufficient marks of distinction the grant would be good without any name at all.

But granting the position that this was a purchase of land by the Indians with their own funds, the title to which was made to the mission for their benefit, this would only constitute the mission a trustee for the benefit of the Indians, and would not make the grant church property. (2 Kent Comm., 279; *Phillips Academy v. King*, 13 Mass. R. 346; *Vahl v. Girard's Ex'rs*, 3 How. U. S. R. 186; *Hempstead v. Hempstead*, 2 Weib. 133.) And as it is a principle of law that a court of chancery will never let an estate fail for want of a trustee, the suppression of the mission could not affect the estate of the Indians. Were a trustee necessary to the preservation of the estate a court of equity would appoint one in place of the one extinguished. Neither was the

foreign [45] to the purposes of the creation of the mission, which was for conversion, civilization, and support of the Indians. But the principles of case law cited fully sustain the right of the mission to take in trust for the Indians. And even if it were held that the title vested in the mission for the use of the Indians, the suppression of that institution and the extinction of its aid and property to the Government could in no wise affect trust property which it held for other beneficiaries. A law declaring that mission property should revert to the Government could not affect it either in terms or by construction. And a law of confiscation or suppression would not be extended to its terms so as to embrace the private property of the Indians, especially in the face of laws declaring that all grants shall be made in such a manner as not to interfere with the rights and property of the Indians, either communities or as individuals. Neither the decree of the Cortes of Mexico that of Coahuila and Texas authorize a presumption that either Government ever intended to alienate any other property than that which belonged to the mission as an establishment. It never was intended to touch the private property of the Indians.

By the general colonization law of Mexico of 1824 the right of the States of Mexican Federation to the lands within their limits was acknowledged, they were directed to prescribe rules and laws for the disposition of them in colonization. The Legislature of Coahuila and Texas, by decree 177, declared that "the Executive is hereby authorized to alienate the lands that pertained to the extinguished missions, conforming in so doing to the colonization of the 24th of March, 1825," cannot be tortured into authority to alienate lands which belonged, not to the church, but to the Indians residing in the mission.

By Spain and the Government of Mexico claimed a right to alienate those lands which were strictly mission property is seen in the declaration of the who declares that the mission was organized under general laws, and no particular [46] property, but only a general right of usufruct in what necessary for the accommodation of the mission. Those decrees therefore had no rights of property; but the title in the San Lucas lands and all the dealings connected with it show that it was the intention of the parties to the interest in the Indians separate and distinct from the mission. It was land, therefore, that pertained to the mission. All the proof in the record is that this decree for the alienation of the mission property was confined to that which was strictly mission property in 1831.

There is one argument which should be conclusive with the courts of this country of the correctness of the construction for which I contend: It was the action of the Spanish and Mexican Governments. Everything in the laws and in the conduct of the mission proves that it was the construction of Spanish authorities. That it was the construction of the Mexican is proved by the fact that while the mission lands, property so called, were alienated by the decree of Coahuila and Texas of 1831, the San Lucas lands were alienated, but always respected as the private property of the Indians, the lands were valuable both for grazing and agriculture, it seems incredible that they would not have been sold had they become public domain, especially as the decree expressly directs the sale of all lands which pertained to the extinguished mission. If these lands were respected as private property the authorities of the Government, who fully understood the whole subject, is not to be presumed that the courts of this country will undertake to say they were mistaken. The rule is well settled that they cannot be held to have resumed as mission property without express words to that effect in the same suppressing the mission. (*Butlerford v. Green*, 2 Wheat. R. 203; 6 U. S. R. 733.) If the Government of Mexico had actually alienated these lands for any of the decrees for the sale of mission property, the courts of this Government might have felt some reluctance to pronounce the sales void, as contrary to the fundamental laws of [47] that Government; but the Mexican

authorities having respected the grant as private property, the presumption that it was so is too violent to be defeated in our courts after such a length of time.

IV. We farther insist that the descendants of the original grantees were no Indians, in the meaning of that term; that as heirs and successors they took the estate as other Spanish subjects. It is in proof that they were converted and civilized at the time and long previous to the suppression of the mission, appears undoubted that, under the laws of Spain, Christian Indians, or those who had received the rites of baptism, could hold and dispose of lands as fully to its validity. This was fully established in the investigation of Louisiana grants by the United States commissioners. (2 White, 249.) It was also established that this appropriation in the case of other Indians was not a condition precedent to the sale under the laws of Spain, but might be had any time after the sale by the Indians. We therefore insist that inasmuch as the Indians of the mission are proved to have been baptised and converted, and in the enjoyment of all the benefits of civilization at the time of the sale, the law for that reason discharged the title of the condition. And inasmuch as the Indians of the mission were not a condition precedent, the purchaser would take the estate subject to the defeasance. The title, therefore, would take the Indians dispose of any portion of the land without appropriation it shall be on pain of nullity, without prejudice to the king or a third party; that is, the king should not be compelled to restore the purchase-money, nor the purchaser lose any portion of the land which he had purchased. Unless the language has this meaning it can have none, but would be entirely inoperative—a consequence never to be indulged in construction when it can be avoided. It must be held to mean that the title could not be avoided in the hands of a purchaser from the Indians. It appears, too, from the authority last cited, that when a condition [48] was in truth a condition, as in the case of unappropriated lands, it never was withheld, but always given. It conferred a title to which nobody could object but the Indians and the Government.

The Constitution and laws of Mexico conferred full right of citizenship upon the whole mass of her Indian population. From that moment the disability ceased. Conditions which limit or defeat an estate are always construed strictly against the grantor and liberally to uphold the estate. (40. Litt., 219. C.) The condition of the estate is that it shall not be sold without the approbation of the officers of "this kingdom;" and the Spanish Government having, by acknowledging the independence of Mexico, rendered the compliance impossible, the condition is discharged. (Avelando's case, 6 Pet. R.) The limitation is express to the authorities of the kingdom of Spain, and cannot be extended by implication. (Hillman R., 249; 1 Paine C. R., 652.)

V. Spain and Mexico discharged the condition by abolishing entails and all restraints on alienation. (2 White, 181; Dees, of C. & T., No. 203, p. 249; of Mexico 7 August, 1823, 2 vol. Dec., 184.) By the common law a peculiar upon alienation, such as that contained in this title, would have been void. (4 Kent Comm., 131.) and the Government of Texas by adopting that system has discharged it and restored it to the class of free estate. It has been repeatedly affirmed in the United States that abolishing the doctrine of entails restored such estates to absolute property and discharged the conditions.

Again, if a license to sell or an appropriation of the sale was necessary by the authorities of the Mexican Government it will be presumed that it was duly proved before the officer before whom the Indians passed the title. Especially should it be presumed when it has been held long enough to bar a right of entry under our statutes as well as under the laws of Spain. Grants are presumed in analogy to statutes which bar a right of entry. (Strout v. Lucas, 12 Pet. R.; 1 Greenl. Ev., 24, note 1; 8 Pick. R., 504; 10 Id., 205; Ricard v. Williams, 1 [49] Wheat. R., 110.) We know that this condition in Spanish

24

was for the protection of the Indian, who, from simplicity and want of skill, was supposed not to be able to cope with the civilized man. The condition, not having said that this condition is to survive to the successors of the grantee, it cannot be extended beyond the original grantees. The condition is limited by the precise words used in the defeasance. (Adams on Eject., 19.) The condition took the property as trustees, the condition being discharged, the grantees might sell. (4 Kent Comm., 263.) And whether discharged or the vendee would take subject to the right of entry by the State.

It does not follow, if this grant was made by composition and the grantees tenants at will, that they or their vendees may be dispossessed by any parties. If tenants at will, it was at the will of the government, and not of strangers or mere intruders. There is no evidence of any will on the part of the Spanish, Mexican, or Texas Government to terminate this tenancy. All that could be said upon the subject is, that the Governments of Mexico and Texas succeeded to the rights of the crown of Spain and might in the forfeiture. The forfeiture, when asserted, must be by some method known to the laws. It is not in the power of a superior under a Government to treat the estate as forfeited until a judicial finding; much less, where the tenant is at will, is it in the power of any citizen to terminate the estate by setting up the own will for the will of the Government. A location by some inquiry instituted by legislative authority. Until such authority is given, the location is a mere trespasser, against whom the tenant may have action. (6 Pet. R., 743.) A grant, by breach of condition subsequent, is void; it is only voidable by those alone who made it. (Walcley v. Wilson, 10 R., 370; 2 U. S. Dec., 423; vide especially 11 N. H. R., 9.) This is action for the possession, and a right of possession is sufficient to sustain it. (Hans on Eject., 35.)

VI. Since writing the above, I have examined the decree of the Spanish Government of 1794, sanctioning the mission of San Jose, and also the writings of the political chief in 1829, under the law of Colombia and Texas, which it appears that this land under both Governments was recognized as property of the Indians, and subject to division as their property. It also appears that this property was never treated as belonging to the church, but the decrees of both Governments, as voted in the Indians by virtue of the same. It appears, furthermore, that none of the property belonged to the church but to the Indians, and was ordered to be respected as such. It also is manifest by the decree of 1794 that the Indians could take and hold in real and personal estate as a community; that they were, in fact, if not in corporation, tenants in common. (Vide book to the Land Office, Missions, 47.)

There can be no doubt that grants for pasture exempted the fee. It was the principal business of the inhabitants. But the grant in this case is for agriculture. (C. S. v. Richards, 5 Pet. R., 470; U. S. v. Huerfano, 5 Pet. R., 470, 483.)

I. A. & G. T. Paschall, for appellants.

1. The first proposition that we shall rely upon is, that no title can be considered by this court as an evidence of right to land unless recognized as such by the laws of this State.

Every revolution which ends in the destruction of the old and in the creation of a new sovereignty repeals all prior laws, and upon obvious principles, laws are rules of action, prescribed by sovereign will. Rights are defined and protected by laws. Whenever the sovereign power which prescribes the rules of action or laws to society is abolished or destroyed, the laws themselves are without force or efficacy, and the rights of property can alone be protected by the laws of nature, until the new sovereignty, established on the ruins of the old, shall prescribe other rules for the regulation and government of the

25

rights of citizens. This may be done by the adoption of the old or by enactment of new laws.

[531] We are aware that there are a few decisions of the Supreme Court of the United States which seem to recognize a different doctrine. Many of the protection rely upon these decisions as conclusively settling the doctrine of consummated grants of a former Government having a standing in the courts of justice of the succeeding Government, without recognition on the part of the political authorities. The decisions relied upon to sustain this principle are Smith v. U. S., 4 Pet. R.; Arechondo, 6 Pet. R.; Percheman, 7 Pet. R.; D. Lassus v. The U. S., 9 Pet. R.; New Orleans v. The U. S., 10 Pet. R.; and a few others made about the same period and under the same circumstances.

We propose briefly noticing the dates of these several decisions, and the grounds upon which they were based. One of the earliest cases brought before the United States Court for confirmation, after the act of 1824 allowing claimants to land under the Louisiana treaty to resort to the Federal Court for confirmation of their titles, was the case of Southard, as it is reported, but better known as Smith v. U. S., (4 Pet. R.). The Supreme Court in this case recognized in strong language the political obligation of the General Government to respect the rights of property of the inhabitants of the Government which he passed away, even without a treaty stipulation; but nowhere in that opinion is it intimated that such rights may be asserted in a court of justice against persons deriving title under the new Government until they are recognized by the political authorities.

We must not omit to mention here an able and important decision of the Supreme Court of the United States as to the nature of grants to land while have not been recognized by the political authorities of the Government, *Wheeler v. Pet. R.* It declares that the court fully sustains the views we have here advanced. It declares that the court can recognize no grant which has not been recognized by the political authorities. The next case in order is the Arechondo case, (6 [532] Pet. R.). This was an application to the Federal Courts for confirmation of a grant of land under the Florida treaty of 1819, the court acting not only as a judicial but political tribunal to confirm grants under a special act of Congress. The interpretation given to the 8th article of the treaty with Spain in 1819 is the distinguishing feature in the case. An interpretation which different from the English was given to the Spanish version of this article. By this interpretation the treaty was made to act upon and confirm all grants and concessions of lands made prior to the 24th of January, 1818. In relation to these grants there was no necessity of future action on the part of the political authorities. By the treaty itself, which was the supreme law of the land, the were ratified and confirmed. Shortly afterwards the Percheman case (7 Pet. R.) was decided upon the same grounds. Chief Justice Marshall, however, in delivering the opinion of the court, took occasion to go further than was necessary, and to throw out the *obiter dictum*, upon which so much stress has been laid by those who contend that complete titles of a former Government need not be recognized or confirmed by the succeeding Government before asserted in a court of justice. The language of Chief Justice Marshall is this: "While out it" (the 8th article of the treaty) "the title of individuals would remain as valid under the new Government as they were under the old, and those of the United States independently of this article." If his meaning was that all those titles emanating from the Spanish authorities, and which were consummated according to the laws, customs, and usages of the country under which they originated after the treaty of cession, might have been asserted in the courts of the United States independently of treaty stipulation in their favor and their recognition by legislative provisions, he is opposed, in opinion to the continued practice of the Government for more than forty years, to his own opinion solemnly expressed in the case of Foster and Eliam, and to all the recent opinions [533] of the United States Supreme Court in relation to

Florida and Louisiana grants. Although there were many titles perfect in and containing a full conveyance of land remaining unconfirmed after announcement of the opinion in the Percheman case that they might be in the courts of justice, still we know of no single case in which such has been asserted. None of the subsequent decisions of the Supreme Court of the United States, relative to grants arising under the Louisiana and Florida treaties, declare that those grants, however perfect, had a standing in a court of justice, unless confirmed by treaty stipulation or by act of Congress.

Circumstances under which these decisions were made are also to be noted. Spain was complaining of the want of good faith on the part of the United States in carrying out her treaty stipulations in regard to the grants of land to her treaty inhabitants. The parties were permitted to resort to the Federal Courts for a confirmation of their titles. In discharging this duty, the courts of the Federal Courts occupied a truly responsible position, not merely to declare what the law was, but were clothed with high political powers to declare how far a great and magnanimous nation should go to restore to the people of a conquered and tributary nation the rights of the people to their honor and the dispensers of its liberality, so far as related to its obligations or implied, in the Louisiana and Florida treaties. Such men as John Jay and Baldwin had rather have seen the entire public domain acquired by the United States absorbed by private claims than that the national faith should be justly impugned. This view of the subject is necessary to a correct understanding of the decisions of the United States Supreme Court in the case of *Wheeler v. Pet. R.* and *Percheman v. Pet. R.* because this spirit and of liberality entered into all their decisions until they discovered the gross frauds and impositions practiced upon the Government by interclaimants.

It is also necessary to have constantly in view the interpretation of the article of the Florida treaty for a correct [534] understanding of the case in relation to the claims arising under that treaty, because in every case except the *dictum* in the Percheman case, arising under this treaty, in language is used seeming to imply that those cases had a standing in a court of justice without confirmation by the political authorities, the supposed confirmation of the treaty itself is had in view. This interpretation, if erroneous, and first laid down in the Arechondo case, was what led the Supreme Court of the United States into a series of decisions characterized by inconsistency than any ever emanating from that tribunal or any other tribunal distinguished for learning and ability.

In the case of *Pollard's Heirs v. Kibble*, (14 Pet. R.) the Supreme Court entirely departs from the doctrine laid down in the Arechondo and Percheman cases, and in most of the cases till that time. From this time, the doctrine laid down in the case of Foster and Eliam v. Neilson was fully restored, and it has since been considered a leading case.

In the case of *Wiegman* (14 Pet. R.) was an absolute grant in full property to a quantity of land without conditions, present or subsequent, expressed in the grant. The grant gave the party the privilege of selecting any portion of the public domain to the extent of the grant. The right was as absolute complete as any right could be, and was as much protected under the article of the treaty as any other concession of land, whether surveyed or unsurveyed. If, according to the decision of the Supreme Court, the eighth article of the treaty, *propria vigore*, operated upon and confirmed all concessions made prior to the 24th day of January, 1818, then Mrs. Wiegman's claim made prior to the 24th day of January, 1818, upon land not surveyed, and confirmed by the supreme law of the land. Nevertheless, the Supreme Court refused to confirm the claim, because it had not been surveyed, the conditions prescribed by the rules and regulations of the Governors of the territory had not been complied with. Here they traveled behind the treaty to the conditions prescribed by the rules and regulations of the Governors of the territory, and not the validity, for of that they were satisfied, but

McMillen v. Dodge.

1837 established [57] the General Land Office. By the provisions of this law, they might be recognized and their legitimacy tested. The Congress intended the colonization law to encourage Western settlement of surveyed lands by commission¹⁴. At the same time, the law sought to provide protection for the Constitution, lay down the English law, provided a model for which they might be recognized and their legitimacy tested. The Congress intended the colonization law to encourage Western settlement of surveyed lands by commission¹⁴. At the same time, the law sought to provide protection for the Constitution, lay down the English law, provided a model for which they might be recognized and their legitimacy tested.

The common law gave the right of action by ejectment, and an act of the Legislature of February of the same year abolished all fictitious proceedings in those cases of ejectment. (Acts of 1849, p. 136.) This act provided a mode of giving titles to lands, but did not declare what should be considered as evidence of title to land. As the common law required every person who sought to recover from the sovereignty, and such a title is showned that the sovereignty itself was at issue, and with the fee in the premises before he could recover, there were many instances of forcible title upon which persons could not recover the possession, and the hands of those who had no claim whatever to them. For instance, such persons as had been located, or located and surveyed by virtue of valid certificates, and who had been located, or located and surveyed by the Republic, would not enable them to maintain an action of ejectment even against a mere naked possessor. Before the 23d section of the act of 1849 provided "that all certificate possessors of lands hereafter located, or located and surveyed by the Republic, shall be recognized by the laws of this Government which have been located or surveyed by the laws of this Government; and no other legal remedy given by law, except an action of ejectment, trespass, or (59) any other legal remedy given by law, shall be deemed and held a sufficient title to authorize the maintenance of suits to the contrary notwithstanding." (Acts of 1849, p. 170, sec. 23.)

The plaintiff's title clearly does not come under the designation of hearsay, and scrip, or bounty warrants. Is it then any other evidence of rights to land recognized by this Government? If so, when and by what act was it recognized?

III. The site or grant to the Indians of the mission of San José conveyed no absolute property in the soil, but merely the occupant and usufruct right as tenants at will of the King of Spain.

This land was sold at public auction, that is, it was admitted to composition by the highest bidder, whether the mission or the people, taking as tenant at will. The Attorney General, in making his report to the primitive judge of lands, declares that the lands in question should be disposed of according to book 4, tit. 12, law 19 of the Recopilacion. This law is as follows: "No one shall be admitted to make composition of lands who shall not have been in possession thereof for the term of ten years, although he should state that he is in possession at the time, for such circumstance, by itself, is not sufficient; and composition of Indians shall be admitted to make composition in preference to other private individuals, giving them all facilities for that purpose." (2 White, Decop., 54, 55.)

It is admitted that if the land was admitted to composition it was held as tenants at will, but it is boldly denied that this land was admitted to composition, 1st, because the natives had not proved their possession of the land for ten years, without which it was not liable to be admitted to composition; 2d, because they purchased it by way of sale.

To the first objection we say it fully appears from the grant itself that the Indians possessed this land and pastured their cattle on it many years before the date of the grant. It is shown that Castillo admitted the fact to Captain Manchen. The testimony taken before the *cabildo* shows that there were the signs of old posts and corralis on the land formerly **(60)** used by the mission people. The assertion on the part of the land formerly of the institution is frequently made, that this land had not been used by the mission people, and hence contradicted. It is too late now to travel behind the adification, and say they acted upon mistaken testimony. The only effect would be to show that the officers were imposed upon, and the grant a nullity. But there is no doubt that the latter clause of the law above quoted would allow lands to be admitted to composition in favor of Indian communities without ten years' possession.

But it is said this land was purchased by way of sale for a valuable consideration, the Indians being the highest and best bidders. The law regulating this matter will be found in book 4, tit. 12, law 13 of the Novísima Recopilación. (2 vol. White's Recop., 35.) In this law we find the following provision: "All lands which are to be allotted to composition shall be sold at auction and without reserve to the highest bidder as tenants at will."

The land which the plaintiff claims was sold at auction to the highest bidder, with the restriction that they should not alienate or sell the same without the previous license of the Government; still it is contended that the Indians acquired a fee-simple to the same. The restriction, no doubt, was in consequence of the character of the persons in favor of whom this land was admitted to composition, being a community of Indians in a state of pillage, and the *modus*, or gift, being for charitable purposes. The *media annata*, that is, the fruits and revenues which are always derived from leases, rents, and lands admitted to composition, was disposed with on account of their being Indians of the mission of San Jose. Now such a thing as *media annata* was never heard of in connection with an absolute and unqualified sale. How is it possible to make an absolute sale of land for cash, and receive a half-yearly rent. Although the "*media annata*" was not reserved in this case, it was only disposed with on account [61] of the character of the population and not on account of the nature of the title.

6 may, however, here be permitted to remark that the concession of a certain extent of land for the purposes of pasturage and the raising of cattle was known to the Spanish law. The assessor general, the highest law officer known to Spain, and whose duty it was to advise legally all officers in relation to the sale and composition of lands, thus speaks on this subject: "The concession of a great extent of land for the rearing and pasture of cattle constitutes no more than the usufruct of it for the time agreed upon; but the tenant has not nor never had the most remote right to solicit the proprietor, nor there is no law or regulation on which to found it; and consequently he must not go out of the class of public lands, since it is the same as if it were held on rent."

Then, if the animals of the mission were tenants at will, that tenancy ceased when the mission was dissolved by the resumption of the property in the dissolution of the community; by the overthrow of the government, pertaining to the missions they suppressed; by the overthrow of the Spanish monarchy; by the action of the Government of Mexico in 1824-5; by the act No. 177 of Cahuilla and Texas, which authorized the Government to resume of the lands pertaining to the extinguished missions in conformity to those of the lands previously reserved to the Indians; by the laws of colonization laws. This decree could not have alluded to the *sacetas* and *mitas* around the missions, because they had all been disposed of; it could have referred to the pasture lands held by the missions. Also the tenancy must have ceased by the Texas Revolution, a tenancy held from this Government being unknown, and finally by the location and survey of the defendant, which law, as complete a purting with the interest of the State as if the land laws, is as complete a purting with the interest of the State as if the land had been ceded by patent. (6 Cal Va. R., 113)

IV. The grant was without prejudice to the right of the king or sovereignty; and it not only by the terms of the grant itself were the Indians restrained and inhibited from selling (**62**) or conveying the property in question under pain of nullity, but by the laws of Spain all Indians were prohibited from selling, conveying any property belonging to them, individually or in community, without the previous license of the Government, under pain of absolute forfeiture.

This restriction in the grant, prohibiting the Indians from alienating or ceding their property without the superior license of the Government, was the mere corollary of a general principle by which every nation in Europe obtaining possession of a new continent was governed. They were never considered as sovereigns on this continent was governed. They were never considered as having the ultimate fee of lands of which they had the occupant right, whether the same was distributed to them by the Government or whether they possessed in the original capacity. All the testimony in this case abundantly shows that the Indians at the time of the grant were in a state of pupillage and incapacity.

The grant being a royal grant, was to the grantee a law, and pronounced the penalty which should ensue from an attempt to sell without license from the Government.

[illegible]

them for the laudable and pious purpose of their habitation, benefit, and education;" from which it clearly results that these lands were distributed to the community of Indians of the mission of San Jose for the laudable purpose of their habitation, benefit, and education; that "they had no direct dominion in such lands," but a mere beneficiary interest; and that they were prohibited from alienating whatever interest they had acquired, under pain of the loss of the lands.

As to the effect of a sale or alienation against a prohibitory law, we refer to the case of *Conalusi v. Chierokee Indian*, (4 Ala. R. 1.) University of Alabama v. *Winston*, (5 Story, 6; 15.) *Gil v. Taylor*, (3 Port., 4.) *Crombie v. Winter*, *et al.*, 2 (Ala. R. N. S. p. 94) and *St. Regis v. Drury*, (4 Johns. R. 127.) See also *Jackson v. Goshell*, 20 Johns. R. 188.) and *Murray et al. v. Woodson*, 17 Wend. R. 381.)

The decree last cited not only declares that the Indians or natives have no direct dominion in lands distributed to them, but more positively prohibits alienation than the laws under which the foregoing cases were decided. If the property belonged to the natives absolutely, the plaintiff can take nothing for the sale to him was a nullity; if distributed to the Indians for their benefit by the act of sale, the lands were lost to both parties and reverted to the Government.

We have been referred to the cases of *Rebore v. N. v. R.*, (400.) *Martin v. Johnson et al.*, (3 Mart. R. 615.) *Spencer's Heirs v. Granbail*, (6 Mart. R. N. S. 352.) and *Michell v. The United States*, (9 Pet. R., as showing that the Indians were allowed by the laws of Spain to sell their lands without the license of the Government. In view of the facts that the sales in question in the Louisiana cases were fully approved by the Spanish Governor and the United States, which rendered them valid, and that the question whether the sale of the Indians without license was an absolute or relative nullity, was a purely theoretical one, these cases do not conflict with our views as here expressed, though they [64] may with some of the Alabama decisions. Besides, from the reference of Judge Porter to the Spanish law (*Ortuzars de Torres y agues*, p. 110) requiring Indians to sell their property at auction, under the pain of the nullity of such sale and not the loss of the property, and from which he seems to draw the conclusion that the nullity of the sale under the law could only be taken advantage of by the Indians, it is evident that he never saw the decree we have here cited. In the case of the United States v. *Michell*, (9 Pet. R.,) discussed at great length, the rule of the court may be extracted as follows: "Individuals could not purchase lands of Indians without permission or license of the Government, the Crown, colonial Governor, or according to the rules prescribed by colonial laws; and by this notion of the perpetual right of occupancy with the ultimate fee, which passed from the Crown by the license, the title of the purchaser became complete." The case, therefore, is not against us, but in our favor. It is doubtful, however, whether the decree dated 23d of February, 1781, was ever in force in Louisiana or Florida. It was issued through the viceroyalty of Mexico, and seems to have been intended alone for New Spain. If so, that will account for its never having been referred to in the United States by the courts.

But it is said the disability under which the Indians labored was removed by their conversion to Christianity and by the overtures of the Spanish monarch, when they were declared free citizens of Mexico. The change of the moral condition of the Indians did not change the tenure of their property, then held; nor did such change, according to the laws of Spain, authorize the Indians to alienate the property which they might acquire by clear title of inheritance, even after they were converted. The decree, too, which we have cited, of February 23d, 1781, especially mentions converted as well as unconverted Indians. Nor did the change of Government enlarge the estate and remove the restrictions. If the grant vested in the grantees an estate in the land under the new [65] Government, it must at least have been subject to

same conditions and restrictions as contained in the original deed, and as required by the laws in force at the time of the change of the Government, adding but a subsequent act of the new Government could have removed the restrictions. If the mere act of the Revolution destroyed the restrictive use of the grant as intended, it certainly destroyed every clause. Such we have no doubt was the case. The law of 1781 was continued in force in Texas, with all its prohibitions against Indians, till the Declaration of Independence of the Republic, and in Texas even down to the year 1849.

It is said the consent of the Government must be procured from the execution of the sale by the officer. No such consent is even mentioned. By the law we have referred to it required the consent of the freed or attorney general.

The same law was continued in Mexico. This grant was made without prejudice to the right of the King or a third party. There seems to be some little obscurity in the latter clause in the ending of the deed. The language, literally translated is as follows: "And we do to them," (the Indians of the population of the mission of San Jose) "gift of them," (the eleven leagues of pasture land) "by way of sale, for pasture, rearing of cattle, and other necessary purposes, without being allowed to alienate or sell any part of said lands, except with the express consent of the Superior Government of this Kingdom, under pain of nullity of gift, without prejudice to his majesty or a third person."

It is said that the expression "without prejudice to his majesty or a third person" has reference to the penalty pronounced; that is, then the nullity would be without prejudice to his majesty or a third person. It is the gift [65] which is made without prejudice to his majesty or of a third person, an universal rule in all Spanish grants to insert the clause without prejudice to a third person, and as this was a mere penance at will the same clause reserved [66] in relation to the grantor. If we supply the word "and," punctuate differently, the sentence will be perfectly clear: "And is made under a gift, &c., for their labors, &c., without the permission of alienating, or selling any part of said lands, except with express license of the Government of this Kingdom, under pain of nullity of this gift." "without prejudice to his Majesty or a third person." That is, the gift made without the power of selling and without prejudice to the majesty of the third person. It is susceptible of no other construction. The sale itself is the gift.

The grant in question, whatever may have been the amount or quantity interest in the estate intended to be granted, was in favor of a corporation or society which has ceased to exist for more than a quarter of a century; by operation of law, as well as by the action of the Government, all the property belonging to the said corporation or society at the time of its dissolution, in the public or grantor, and became subject to distribution according to the laws of the country.

support of this [67] see the whole subject exhausted in the case of *Turlock*, (6 Cal. Va. R. 113.)

On the 13th of September, 1813, the cortes abolished the missions, declaring that Indians should no longer be under the control of the fathers, but that their lands should be delivered over into the hands of the ordinary, and alone subject to the control of the civil authorities. The sixth and last article of the law provides that the lands belonging to the missions should be distributed in the same manner as provided for in the decree of 4th January, 1813. (See *Decree*, vol. 3, p. 106.) Finally, by decree of 1st of October, 1820, all the lands of every kind, colleges, and charitable, of every class, were sold. (Dec. Mex., vol. 3, p. 38; also *Cal. D. C.*, pp. 1-5; *Ill.*, pp. 106, 108.) In December, in the year 1821, Sanguel acting as political chief, ordered depuration of Texas, acting under an order of the Supreme

Government of Mexico, proceeded to make an inventory of the mission property and to sell the same. In this inventory no mention is made either of the league near the mission or of the eleven leagues on the Medina. The property was sold by order of the Supreme Government of Mexico, and funds remained subject to its disposition, having been sold in 1824 and 1825.

In the year 1829 some twelve or fourteen persons petitioned the political chief of the department of Bexar that the eleven leagues of land on the Medina one league near the mission of San Jose might be distributed to them as only surviving descendants of the mission of San Jose. This petition was referred to the ayuntamiento of Bexar, to ascertain whether the petitioners were the only descendants of the mission of San Jose, and to adopt such other measures in relation to the petition as they might deem proper. The names of eighteen descendants were reported, but no further action seems to have taken place. By the decree 127 of the Congress of Coahuila and Texas the Executive of the State was authorized to alienate the lands belonging to the extinguished missions conformably to the colonization laws. Immediately afterwards strong remonstrance was made by the people of the mission to the Governor through their political chief, inasmuch as it was apprehended that this decree authorized the alienation of the house reserved for their pastor or curate. It did not pretend to claim these lands at that time, but desired to be removed from the obligation of paying to the State for the mission property they bought in 1824 and 1825. For the history of the missions, not sustained by decrees and ordinances to which we have referred, we beg leave to refer to No. 50, vol I of the missions near Bexar, in the land office, from p. 1 to 160.

We have argued this question as if we considered the dissolution of the corporation of the mission of San Jose necessary to prevent the plaintiff from recovering. Such, however, is not the case. The regulars, the priests, fathers, and (69) the monks, under whose control and supervision these missions were, were the visible representatives of the corporations, the trustees, the associated bodies. The Indians were no part of the corporate body; they were pupils, the beneficiaries, for whose welfare the corporate bodies and fathers had associated themselves; the Indians had no voice in choosing the land and language would have been as much misapplied in calling the Indians part of the corporation of the mission of San Jose as it would be to call the students of a college a part of the corporation. All the property of the mission was, and must necessarily have been, held in trust by the fathers.

It seems to be admitted on the part of the plaintiff that the lands were granted to a corporation, because if not granted to a corporation it was granted at all for the want of a grantee. But we differ as to the nature of the corporation. We say the grant was to the mission of San Jose, for the use and benefit of the Indians then in said mission, and those who might be received into the mission afterwards. The application was in behalf of the mission people by the president of the institution. In the whole proceedings it was perceived that the grant was asked for the use and benefit of the Indians, and granted as asked. It is not true, as has been stated, that Pedro Ramirez, the president of the institution, ceased to act in the matter, and that the grant was prosecuted by a lay member. Ramirez attended to the proceedings before the authorities in San Antonio, and when transferred to the vice royalty of Mexico he addressed a letter to his brother, Friar Boque Ximenes, requesting him to give it his attention there, setting forth the great necessity of the Indians to the mission people. The latter addressed the primitive jurisdiction for the sale and composition of lands, and styles himself as acting "for the Indians affairs of the holy evangelized mission of San Jose."

VI. But if it be contended, as it was in the court below, that the grant was made to the Indians of San Jose, as tenants (69) in common or joint tenants

The grant fails and the plaintiff cannot recover. 1st, for want of certainty in the grant; 2d, for want of words of inheritance; 3d, because it is not shown that the ancestors of the plaintiff's vendors were of the mission of San Jose at the time the grant was made.

3d. It is said a tenant in common can recover to the extent of his interest of the vendors of plaintiff in the land in dispute. What was the extent of the vendors of plaintiff in the land in dispute? It is proved that formerly that number, their interest would probably be one three hundredth part of the land claimed. The grant fails for the want of certainty as to the grantees.

The plaintiff tells us that this may be rendered certain by the evidence. He admits we have no means of knowing who were residing in the mission at the time of the grant. But in 1794 the missions were secularized, and the inhabitants made by order of the captain general, which was found in the General Land Office. He modestly asks this court to go to the General Land Office, examine the proceedings in relation to the secularization of the missions, and ascertain whether the plaintiff's vendors descended from the inhabitants then made. Admitting, for the sake of argument, that in proof before the court that the plaintiff's vendors were the heirs and assigns of the persons connected as pertaining to the mission of San Jose, what is there to prove that those persons were descended from the Indians residing in the mission at the time the grant was made? The court says that the Indians were emancipated and left the missions after the year 1794 only included those who were then in the mission. And it is from the proof in the record, as well as from the general history of the missions, that the Indians were emancipated and left the missions after the year 1794. So that nearly three generations or periods of ninety years, had passed away from the date (70) of the grant till the mission of the missions in 1794; and, according to the proof, none of the Indians residing in the mission in 1766, the date of the grant, resided there in 1794. If the grant took effect in favor of individuals, it certainly was in favor of Indians residing in the mission or in the village or town, if you will, at the date of the grant. And the plaintiff, to recover, must show that his vendors were regularly descended from the persons who were vested with the property. Instead of this, he has referred you to a list of the Indians to be found in the General Land Office, and not offered in evidence in support of his claim a list of the Indians residing in the mission in 1766, then not only asks you to presume that the vendors of the plaintiff descended from those Indians, but that the latter were also descended from persons residing in the missions in 1766, although both presumptions are contradicted by the general history of the missions and the evidence of records.

For want of words of inheritance. (2 Black, Comm., 296; 2 Amer. Dig., sec. 3; 8 Johns, R., 385; 4 Kent Comm., p. 5, sec. 64; 2 Amer. Dig., p. 2, sec. 2; 3 Wash. C. C. R., 495; 17 Johns, R., 221; 2 Wend. R., 110, 112; B., 320; 8 Johns, R., 385.)

have here referred to the authorities collectively in relation to the two or three points; but particularly call the attention of the court to the latter, setting the nature of grants to towns or corporations.

CONCURRENCE. J. In my investigation of this case, I propose first to take up the points embraced by the two first points made by the counsel for the plaintiff. A broad proposition has been laid down that, by the Revolution that separated Texas from the rest of Mexico, all titles of lands previously obtained by the Indians, and that none of them, in *propria vigore*, could have a standing in court; that to give them life and energy, required the action or sanction

of the political authorities of the new Government. That this doctrine be found once to have had standing in the jurisprudence, though more openly asserted of England, may be admitted; but it has long since become obsolete. And we are sincerely persuaded that a judicial recognition by the court of its prescription and its vital influence on rights of property would shock the moral sense of the civilization of the nineteenth century. In early ages, when the rights of the common masses were but little considered and cared for, and all power and all right was permitted to be deposited in individual personal sovereignty, it is a melancholy fact that the doctrine was too well sanctioned by the practice of kings and princes of those times. The houses and lands, flocks and herds, husbandmen, wives, and children of conquered country became the spoil of the heartless conqueror. That age is passed away, and a milder and more enlightened one has succeeded. The masses of the people have felt their strength, and made the tyrants feel it too, and in this moral regeneration a more elevated sense of right, of justice, and the laws of humanity has asserted an ascendancy over the cruelty and despotism of the past. It instructs and commands, in a language that will be obeyed, the commanding general that he shall use no unnecessary rigor even to the prisoners taken in battle; that to the peaceful citizen, not found in the ranks of war, he is to extend the arm of protection to his person and property that he is to make no innovation upon the laws and customs, only such as are necessary to the security of the army and retention of the territory acquired. On this subject, public opinion in almost every civilized community, has pronounced of the most humane and beneficial portions of the law of nations.

The language of Mr. Justice Baldwin, in the case of the United States Mitchell, (19 Pet. R. 734,) is, "That the inhabitants, citizens, or subjects of a conquered or ceded country, territory, or province retain all the rights of property which have not been taken from them by the orders of the [735] conqueror, or the laws of the sovereign who acquired it by cession, and remain in the former laws until they shall be changed." The language of the Chief Justice Marshall in the case of *John Tompkins* (7 Pet. R.) is so very explicit and appropriate that it will not be deemed improper to insert it. He says: "It may be worthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than displace the sovereign and assert dominion of the country. The modern usage of nations which has become law would be violated; that sense of justice and right which is acknowledged and felt by the civilized world would be outraged if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved, but their relation to each other and their rights of property remain undisturbed. It will be found on an examination that the several Florida cases decided in the Supreme Court of the United States sustain this conclusion: that in the absence of any treaty, decree, or law of the new sovereign, and in the absence of any treaty stipulations, individual rights of property would remain unchanged; and as a treaty stipulation to that effect is nothing more than the assertion of a general moral principle of the law of nations, and would have been equally as well asserted without such stipulation. The same doctrine is believed to have been recognized by an English adjudication in the case of *Picton*, Governor of Trinidad, in the absence of any treaty stipulation, and resting solely for its support on the modern law of nations."

It would seem that, so far as respects a change of Government brought about by a conquest or a cession, the doctrine has been well and firmly established, and it would be difficult to conceive, on any known principles of reason or regard to the rights of man, why a change made by the people themselves should subject their rights to different and harsher rules of construction. It implied a principle that seems to pervade the whole social relations of man to laws, customs, [738] and usages, when once established, shall continue un-

acted by the introduction of new ones—our sympathies to such influences reason approve them just and right; and in truth it is hardly possible to view of a civilized people existing where all laws and customs and all the rights of the social relations have been dissolved. Old habits and customs prevail until new ones have been established. In the case of conquest it is emphatically true that it is in the power of the conqueror to destroy all the rights of the conquered, but in doing so the most flagrant outrage would be done to the moral sense of the age, and such as would never be presumed to have been striven without the most positive and explicit affirmation of its authority, when avowed would justify place him beyond the pale of civilization. So one of a peaceful change of government by the people assembled in convention for the purpose of forming a Constitution as the fundamental law for protection of the three great objects of all governments based on the rights of life, liberty, and property. It would be in the power of such convention to take away or destroy individual rights, but such an intention would be presumed; and to give effect to a design so unjust and unreasonable as to require the support of the most direct, explicit affirmative declaration of intent.

It is not at all unlikely, nor indeed is it a matter of surprise that it should be as we are led to false and erroneous conclusions on the subject of eminent domain, liberty, and alienation of landed property by early impressions derived from sources entitled to more consideration in determining what the law is in questions of our ancestors than in establishing what it now is in our land on questions. The great fathers of English jurisprudence built up a jurisprudence eminently adapted to sustain the whole object of the feudal tenement with them a regent, bordering on idolatry, was indicated for the preservation of the crown. It was supposed to be the source of not only all the rights of the crown, but of every [741] other right and privilege enjoyed by the subjects and that of every [741] other right and privilege enjoyed by the subjects and that of every [741] other right and privilege enjoyed by the subjects. It was power and personal sovereignty, vested in a particular individual, of a regular line of ancestry who wore the crown; the right of eminent domain, and not granted by him or his ancestors, and that became forfeit for loss or reversion on failure of the heirs of the original grantee, was vested in by virtue of the royal prerogative of eminent domain. He granted or sold with a liberal if not a prodigal hand to his courtiers who were, as the very worst of his subjects; such as had ingratiated themselves in his favor by flattering his vanity or by catering to the indulgence of his passions and depraved passions. The humble and lowly but meritorious subject received his bounty. But all were taught to look to the crown as the source of all rights and titles, and as the bulwark of social order. The landlord was instructed by the usage of the law that if the king was dethroned by a successful revolution, all titles would be abolished from the failure of the line from which they had emanated; that when the fountain failed, the stream supplied from it would dried up. It was a part and parcel of a system which none has ever been devised more eminently calculated to perpetuate hereditary inequality.

Such is the source of titles to land is as different as light from darkness. It is from a pure and holier fountain. It is from the sovereign power, not an individual, personal sovereignty, but from the free and sovereign will of the people, denied and expressed by well-regulated laws of their own making; so long as this source of power is sustained, all popular governments may be their organic law at pleasure without de-roving rights, even according to most facitious regard to the principles of prerogative rights; because such changes the source of power being in the people, that source is not open. Such was the revolution that changed the relations between Texas and the other parts [751] of the Mexican Confederacy to which she had been

attached. The majesty of the law was not destroyed; it was in the people and it still remained in them under a different modification of the government.

There is another aspect in which this question may be presented that will show still more conclusively the soundness of the principles discussed and the conclusions to which we have arrived. The term "revolution," when in reference to government, has a positive and a qualified meaning; when employed in the first it supposes a radical change of the whole system of structure of the government; when in the latter it conveys the idea of a mere reformation only. The Revolution of Texas was clearly of the last description, a seceding part of the Mexican Confederacy, she was not left without, but made by herself, or without the proper officers for administering them. It was practically the case. The old laws continued to be administered through the instrumentality of the old officers until the establishment of a new system and until changed were supposed to exert the same binding influence in protection of persons and property that had been claimed for them before. The fact that the body of our jurisprudence remained the same until the introduction of the common law by the act of Congress in 1840. Nor can it with any degree of propriety be said that we were sustaining the laws of Mexico, with whatever we were then in open hostility because they were made by a power as much as by the other parts of Mexico forming the Confederacy. When those laws were made and rights acquired under them we were a part and those laws were made and rights acquired under them we were a part of the Republic of Mexico and participated in their making. If we were therefore our own laws. The Revolution worked less of a change in us than it did in other parts of Mexico with which we had been associated in the Federal Constitution. We continued the same popular representative government emanating from the people. They destroyed the Constitution of 1824, that had guaranteed a free popular government, and substituted a military despotism. And it may therefore be replied to the question so emphatically propounded to us—what was the obligation imposed on Texas to respect the laws of Mexico?—none, not the least. But she was under the sacred obligation to defend and support her own laws and to protect the rights of her own citizens.

If, however, we had arrived at a different conclusion, and believed that so affirmative act of recognition by the Government of Texas was necessary to give validity to titles that had been perfected under the former organization, why should a component part of the Mexican Confederacy, it is believed that, but as perfect titles are concerned, that recognition has been abundantly made by the people of Texas, in convention and by the acts of Congress of the Republic, as it will be shown. It was said that by the Declaration of Independence and that from its date until the Government was truly organized under the Constitution, we were without law, either civil or criminal. A reference to that instrument affords no support to any such conclusions. It is a more eloquent exposition of the causes that induced the people to make that declaration and encounter the peril it would necessarily draw upon them; but it contains not a syllable that is in the slightest degree repugnant to the declaration, but in the first section of the schedule to the Constitution immediately following the Declaration of Independence. It is expressed in the words following:

"That no inconvenience may arise from the adoption of this Constitution is declared by this convention that all laws now in force in Texas, and not repugnant to the Constitution, shall remain in full force until declared repealed, or expire by their own limitation."

What an absurdity to declare all laws shall continue in force if there were laws! And how scrupulous to suppose the existence of laws without validly regulating rights and enforcing [75] remedies! If the convention meant

It must be that the laws in force before the separation from the Mexican Confederacy should be so continued in force. The provision in the first section of the schedule is precisely the same that we find in most of the new constitutions made by the different States where no radical change is designed. The regulation of the tenure of real estate are not in express terms mentioned, but those governing the acquisition and transmission of personal property; has never been doubted that property of every description found the protection derived from these laws that seemed it to the owner before the change of the Constitution. It has never been doubted that the people in action assembled had the faculty to annul and destroy private rights, but believed that to do so would require a direct affirmation of such intention. Power was exerted by the convention that framed the Constitution of the State. In the tenth section of the general provisions, in the third paragraph of that section, will be found the expression of the will of the convention in the following words:

"Whereas the protection of the public domain from unjust and fraudulent sale and quieting the people in the enjoyment of their lands is one of the duties of this convention; and whereas the Legislature of Coahuila de Texas having passed an act in the year 1834 in behalf of General John T. of New York, and another on the 14th day of March, 1835, in relation to the enormous amount of eleven hundred leagues of land has been sold by sundry individuals, some of whom reside in foreign countries and are citizens of the Republic, which said acts are contrary to articles fourth, fifth, and fifteenth of the laws of 1824 of the General Congress of Mexico, and been declared null and void;—

It is hereby declared that the said act of 1834, in favor of John T. Mason, of the 14th of March, 1835, of the [78] said Legislature of Coahuila de Texas, and each and every grant founded thereon, is and was from the beginning null and void, and all surveys made under pretense of authority derived from the same are hereby declared null and void. And all claims for the same are located within twenty league leagues of the boundary line between the United States of America, which have been located contrary to the laws of Mexico, are hereby declared null and void."

There had been no such provision as we find in the first section of the schedule this section just recited from the general provisions would have shown that the convention did not intend to destroy any established perfect titles held by a citizen of Texas before the change of Government, those specially named and annulled. There is a provision in the treaty, which the United States acquired Florida from Spain, annulling the grants of the Duke de Aragon, to Donato Rostero, and Vargas, from which a legitimate conclusion, it was thought, by the Supreme Court of the United States, had been drawn, that those were the only individual titles intended to be annulled. The same conclusion could be drawn, just the convention did not intend to destroy any other titles than those named. Taking the first section of the schedule with the tenth of the general provisions it would seem that the convention did not intend to destroy any rights or titles but those created and specially named.

We have devoted more attention to this branch of the case than was perhaps called for. We have not done so, however, from any difficulty in coming to a conclusion, but from the fact that it is a question well calculated to disturb the tranquillity of the old settlers and those claiming under them. And where it is our duty to remove such groundless apprehensions, and to give some on this subject. Much of the time of the court has been occupied in settling the distinction between perfect and imperfect titles. And we have firmly decided that, in case of imperfect titles, to give them a standing in required the action of the political authority; [79] but if consumed

before the change of the Government and owned by a citizen of the Republic they were valid without any act of the political authority. These decisions sustain the conclusions we have arrived at on the point we have been considering; why the necessity of establishing the distinction if all were void both perfect and imperfect, without the action of the political authority?

We will now turn our attention to the grant which was relied on by the plaintiff in this case in support of his title to the land sued for. (See the grant set out in the statement of this case.) We will endeavor to arrive at a correct construction of this grant from the terms in which it is expressed, and by resorting to such evidence as are accessible to us of the character and principles on which the Indian missions were founded.

The grant on its face shows that it was a limited title intended to be conveyed. It was granted to the Indians of the mission of San Jose, for the labors, pastures, and other purposes, without the right of alienating, selling, or leasing any part thereof without the superior license of the Supreme Government of the kingdom. The plaintiff contends that it conveys the fee-simple subject to be divested only on a sale without the license expressed, and that it can only be taken advantage of by the Government.

Let us examine into the subject. Had the grant purported to be in fee, subject to a forfeiture on failure to do some particular act, perhaps there would be some soundness in the argument. But the inhibition to sell or alienate is inconsistent with the fee. And there is another part of the grant that seems to fix the true character and extent of the right conveyed by the grant. It is that the Indians are to receive it "in *media annata*." This has been translated in the report sent up "without interest." This translation is not altogether correct; and a reason is assigned for such remission of the half-yearly profits: "that is, because they [50] are Indians of the mission of San Jose, and when the grant is made. It shows that the character of the grant was not to be changed by such remission; that it would have been due on such sale or purchase in absolute dominion, constituting a fee. Drs. Munoz and Asensio, in the Institutes of the Civil Law of Spain; We only observe one remarkable difference in point of succession or descent, for lib. 6, tit. 20, p. 4, says that the succession does not descend beyond the grandson, but returns to the lord; and it is clear that, by the feudal common law, the succession was extended to *infinitum*. (2 White, 80.) And they say that the "*media annata*" was given in lieu of military service. (Id., p. 79.) The inhibiting the sale and but for the expression, that the "*media annata*" is not to be exacted, the Indians would have been liable to pay it every half year so long as they enjoyed the heritage.

It is probable, however, that this kind of title was known under the laws of Spain as composition, and the title created the holder a tenant at will. In lib. 4, tit. 12, law 13 of the New Recompilation, under the head of lands to be let to composition, we find as follows: "All lands which are to be admitted to composition, shall be sold at auction, and without reserve, to the highest bidder, as tenants at will." (2 White, 53.)

And again, in lib. 4, tit. 12, law 19: "No one shall be admitted to composition who shall not have been in possession thereof for the term of ten years, although he should state that he was in possession at the time, for such circumstance by itself is not sufficient. And communities of Indians shall be admitted to composition in preference to other private individuals." (2 White, 54.) The land in question was sold to the highest bidder, and it will be seen by reference to the proceedings in the process of proving the title to the Indians of the mission, that their having been long in occupancy and [81] pos-

of the lands for pasturing their flocks was urged as giving to them a preference over the claim of Castillo.

The purpose of better understanding the principles on which the Indian missions were founded, the object of such foundation, and the customs and usages by which they were governed, I will now advert to the oral testimony on the trial of this case in the court below. I am aware, that it is said that this evidence is objectionable, as some more authentic evidence exist on this subject. In answer, I will only reply, that I am not at all of such evidence, and if there be such it is not now accessible; and oral evidence of the practice and existence of those institutions, if it is secondary, is resorted to because better cannot be procured. And it is a reasonable confidence that the regulations prevailing in those institutions were in accordance with the legitimate object of their foundation. I shall mainly rely on the evidence of Col. Navarro and Erasmo Seguin as found upon the trial before us.

Navarro states that when he first knew the mission of San Jose there were six hundred natives there; that they were afterwards killed off, died, sent away, and decreased yearly, until the last he knew of them, there only ten or fifteen left; that the Indians of the missions were in a state of servitude, under the control and guidance of the fathers; that they owned separate property, but that all the property was held in common, the property being sold and the proceeds of the Indians' labor; that the property of the mission was held in *las metes morientes* or *morituras*; that all the lands on San Antonio river were extinguished by the Government of Mexico in the year 1822 or 1823, and the land and property appertaining to missions in that territory, that witness was commissioned by the Mexican Government in the distribution of the lots and *solares* near the missions pertaining to the natives were preferred; that on the extinction of the missions all the property was returned to the public, and became subject to distribution as other public property; that witness afterwards, as commissioner or agent for the Government to deliver titles to hands, did make a title to Verdad for six leagues of land of the hands that formerly pertained to the mission of Redondo; that when the missions were extinguished the property was delivered over to the ordinary; that the mission in the valley of the San Antonio river was under the patronage and protection of the of Gandulpe or Gaudilipans, and were founded by the brothers for propagation of the faith.

Erasmo Seguin states that the Indians lived in a community under the control and direction of the fathers. The products of their labors were received by the fathers. At the end of ten years the Indians were considered as having been converted, and after a probation of two years more they were permitted to leave the mission, and were then considered as entitled to the privileges of citizenship. Before their conversion and the expiration of the two years probation they owned no separate property, but everything was in community with the fathers; but after their conversion they were given a lot of ground, and a title made to them in their own name, which they had a right to sell, or any of their property, as any other citizen.

The conclusion to be drawn from this evidence is that whatever may have been the object of the foundation of the missions, practically they were seminaries for instruction in Christianity and the arts of civilization of such Indians as came to them; that they were all held by the fathers, and that during such conversion they were in a state of servitude to the president of the establishment, and twelve years was the duration of such servitude. A grant then to the Indians the mission of San Jose, even if there had been no words of limitation in the grant, may well, as it was by the defendant's counsel, be compared to a grant made to the student of a manual-labor institute of lands for their experimental uses [83] or to the students of a university for a campus or common for exer-

else. In such case it could not for a moment be contended that the right of property was granted in fee to the particular students who might, at the time of the grant, belong to the institution or to their heirs; but it is manifest that it would only grant the right of way to such of them as from time to time should belong to the institution; and should the institution from any cause become extinct, no right would survive to the descendants of the pupils.

The evidence of Mr. Seguin is entitled to great consideration on this subject, because he is a very old man, and was born and always lived in the immediate neighborhood of the mission. From his evidence it is clear that as long as these Indians were in a state of paganism they did not enjoy the rights of citizenship, but after their paganism had expired they were considered as naturalized; were permitted to leave the mission, and had grants made to them in their own names of a *sueto*, (a small lot of ground) which they had a right to sell, or to sell the profits, as any other citizen. It is worthy of notice that the president of the mission, in his opposition to Castillo's application, alleged that these Indians stood in need of the lands for the use of pasturing their herds thereon, and does not use any term from which it can be inferred that he claimed it for them in full property.

I will next proceed to notice the action of the Government in relation to the missions, and the property appertaining to them. It appears from the archives of the land office (vol. 30, p. 14-24, title Missions) that the missions in the valley of San Antonio were established by the royal order 23d October, 1729, that there was an order for the secularization of these missions, and the distribution of all property appertaining to them for secular purposes, dated 10th of April, 1791. Under this order of secularization it seems that certain proceedings were had at the town of Bozar, by which the lots and all the personal property pertaining to the missions were inventoried and a part of the stock distributed. This [84] appears by reference to the archives in the General Land Office, and is also shown by the evidence embodied in the statement of facts, Missions, so far as related to the faculty of holding property by any tenure, were from that time considered as extinguished. They existed, however, as a corporation until dissolved by the decree of the Cortes in 1813. They were extinguished also by the Mexican Government in 18—, By decree No. 177 of the Congress of Coahuila and Texas, of date 29th April, 1831, in relation to the lands belonging to the extinguished missions, we find the following action of the Government:

"Art. I. The Executive is hereby authorized to alienate the lands that pertained to the extinguished missions, conforming, in so doing, to the colonization law of 24th March, 1824.

"Art. II. The town property or securities that pertained to said missions shall be sold at public auction according to law."

This decree makes a distinction between the lands that pertained to and the town property and securities of the missions. The first was to be alienated in conformity to the colonization law. By this we can understand nothing to the contrary, but that it would have been granted to any colonist had application been made for it, or it would have been sold to a Mexican under the XXIVth article of the colonization law above mentioned. Mr. Navarro says that six leagues of the land that had appertained to the mission of Benigno were granted to Vermont; and that he, as commissioner or agent for the Government, had delivered the title. It is very satisfactorily shown that as far as the Congress of Coahuila and Texas had authority, such lands, after the extinguishment of the missions, were acted upon and treated as a portion of the public domain, and this too became the plaintiff in this suit, persons to have acquired any title to the land from the supposed surviving descendants of the Indians of the mission of San Jose.

There is another reason why I believe the grant in this case [85] was invalid.

composition. It is that the attorney at law representing himself as the attorney or agent for the religious affairs of the holy evangelization of San Jose, procures the claim for the lands on the authority of law 12, book 4, of the New Recopilacion, cited already in this opinion; and the appropriation of the attorney general for the Crown was based on the same law. It will be seen by reference to this law and to law 12, (same book and title) that all lands sold under these laws were only in composition, and purchasers bought and received titles as tenants at will. If the claim against alienation had not been contained in the grant, I should still have been constrained to the conclusion, from the proceedings in procuring it, that only money at will was conveyed. In my judgment the protection was only extended because the beneficiaries were Indians, and it was repugnant to law then to alienate the lands so granted. If the result of Castillo's application had been favorable to him, I believe that he could have taken under the same laws, and only have been constituted a tenant at will; and as he was a then and not an Indian, perhaps there would have been no inhibition in the grant against alienation; but in the event of his selling, his vendee would have been only a tenant at will, and in this aspect it is not at all material to decide whether the grantee took the land as a corporation or as a village or community of Indians, because, if taken in composition, the decree of title would be the same, and the law prohibiting Indian sales would be equally obligatory. Hence it may be well doubted whether large grants of pasture lands were authorized, in any case, by the laws of Spain. It seems to have been the policy of Spain, not only in her old dominion, but also in the colonies to encourage a pastoral life. This may fairly be inferred from the regulations of Mexico and the various decrees regulating the use and occupation of grazing lands. (See Royal Instructions for selling the San Marcos, 2 White, sec. 21; Id., p. 134, sec. 76; see also 2 White, 133, on the Commons and some Grants.)

[86] I do not wish to consider that I give much weight to the proceedings at law, in distributing the lots and property pertaining to the mission of San Jose, found in the General Land Office, because such proceedings were not so evidence on the trial; but I have referred to them merely as confirmatory of the oral evidence used on the trial of the cause in the court below.

There is one other ground taken by the defendant in this case that I will also state; that if the grant is to be construed to be to the Indians of the mission, the plaintiff has not shown that the Indians he claims under are the descendants of those to whom the grant was made. The case was submitted to the court without the intervention of a jury, and the judge had to decide on all the law and the facts. If, in the opinion of this court, the fact of the ancestors of the plaintiff, or rather of the parties under whom he claims, being descendants of those Indians has not been so well-out, we would have been compelled to affirm the judgment of the court below, no matter what he claims, or opinion on the points presented; because it is that right that he claims, and do not understand that the only Indians admitted to a connection with the mission belonged to a particular race or family; but that it was for the instruction of the savages of different lands or nations; consequently the inheritance by descent would be difficult to make out, and in this case is far from being satisfactory. On this ground, also, I believe the plaintiff failed to make out the case.

In conclusion, I am of opinion that titles, purporting to be the titles of the Declaration of Independence, and owned by citizens of the Republic at that time, have a standing, in *propria ratione*, in a court of law; and that such titles do not receive any action of the political authority to give them validity.

That such titles have received the affirmative action of the political authority in their favor.

I believe the judgment ought to be affirmed in this case, because the plaintiff failed in showing title in himself;

Hill v. George.

That the grant relied on by him as the foundation of title only admitted the Indians of the mission of San Jose to composition, and that it constituted them tenants at will of the Government;

That, by the laws in force at the date of the grant, the Indians could not lawfully alienate their possessions without the consent of the Government;

That, having seen no evidence of any authority or consent to such sale, it is void, and gives no title to the purchaser;

That the lands sued for became, by the extinction of the mission of San Jose, a part of the public domain;

And that the judgment ought to be affirmed, and it is accordingly affirmed.

Judgment affirmed.

NOTE 8.—Hardy v. De Leon, *post*, 211; Kilpatrick v. Cisneros, 23 T., 113.

NOTE 9.—See Trevino v. Fernandez, 13 T., 630, for the discussion of the legal effect of composition grants.

Decision ID: 34284

Supplemental Draft Environmental Impact Statement

Finance Docket No. 34284

Southwest Gulf Railroad Company
Construction and Operation Exemption
Medina County, Texas

Volume II - Appendices C - F

Prepared by:
Surface Transportation Board



Section of Environmental Analysis
1925 K Street NW
Washington, DC 20423-0001

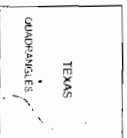
Information Contacts:
Victoria Rutson, Chief
Rini Ghosh, Attorney-Adviser

Served on Parties and the Public
Comment Due Date: January 29, 2007



Legend

- Site Location
 - Historic Stone Wall
 - - - Proposed Route
 - - - Alternative 1
 - - - Alternative 2
 - - - Alternative 3
 - - - Eastern Bypass Route
 - - - MCECA Medina Dam
 - - - Alternative
 - - - SGR's Modified Medina Dam Route
 - - - Windshield Survey Boundary
 - - - Intensive Land Survey Boundary
 - - - New Foundation Rural Historic District Boundary
 - - - Quilts Rural Historic District Boundary
 - - - Upper Quilts Rural Historic District Boundary
 - - - Map Sheet
- Transportation:**
- U.S. Highway
 - Road
 - Private Road



Background USGS 7.5 Quadrangles:
Riomedina, Quilts, Castroville,
Murphy School

Map Sheet 1
Site Numbers & Survey Area Boundaries
Quilts Vicinity, Medina County, Texas

