

CASE NO.

133

**NORTHERN DISTRICT**

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AGUA CALIENTE GRANT

---

FULGENCIO HIGUERA

CLAIMANT

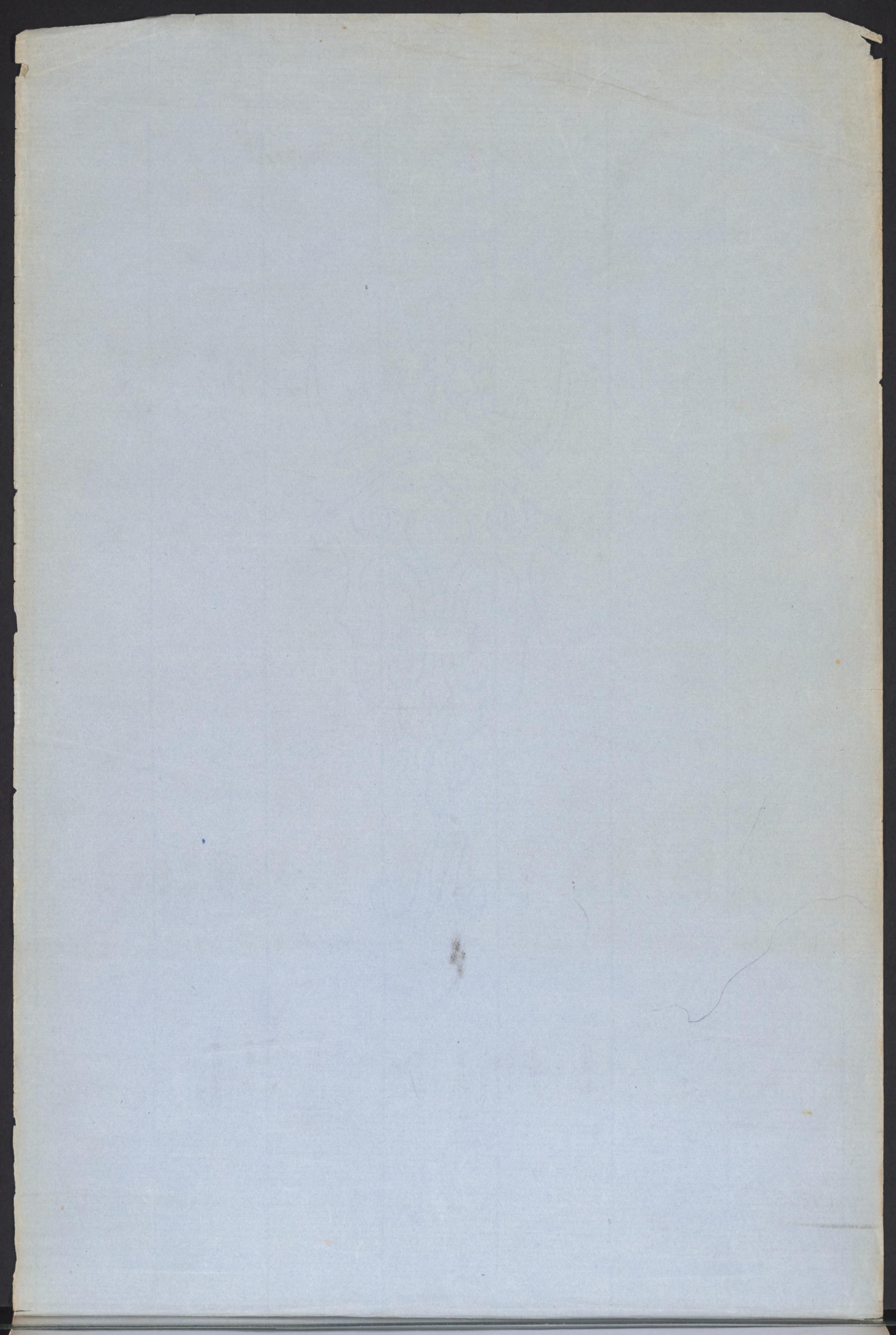
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Land Case 133 ND

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18  
Northern District



# TRANSCRIPT

OF THE

# PROCEEDINGS

IN CASE

NO. 78

*Fulgencio Higuera*

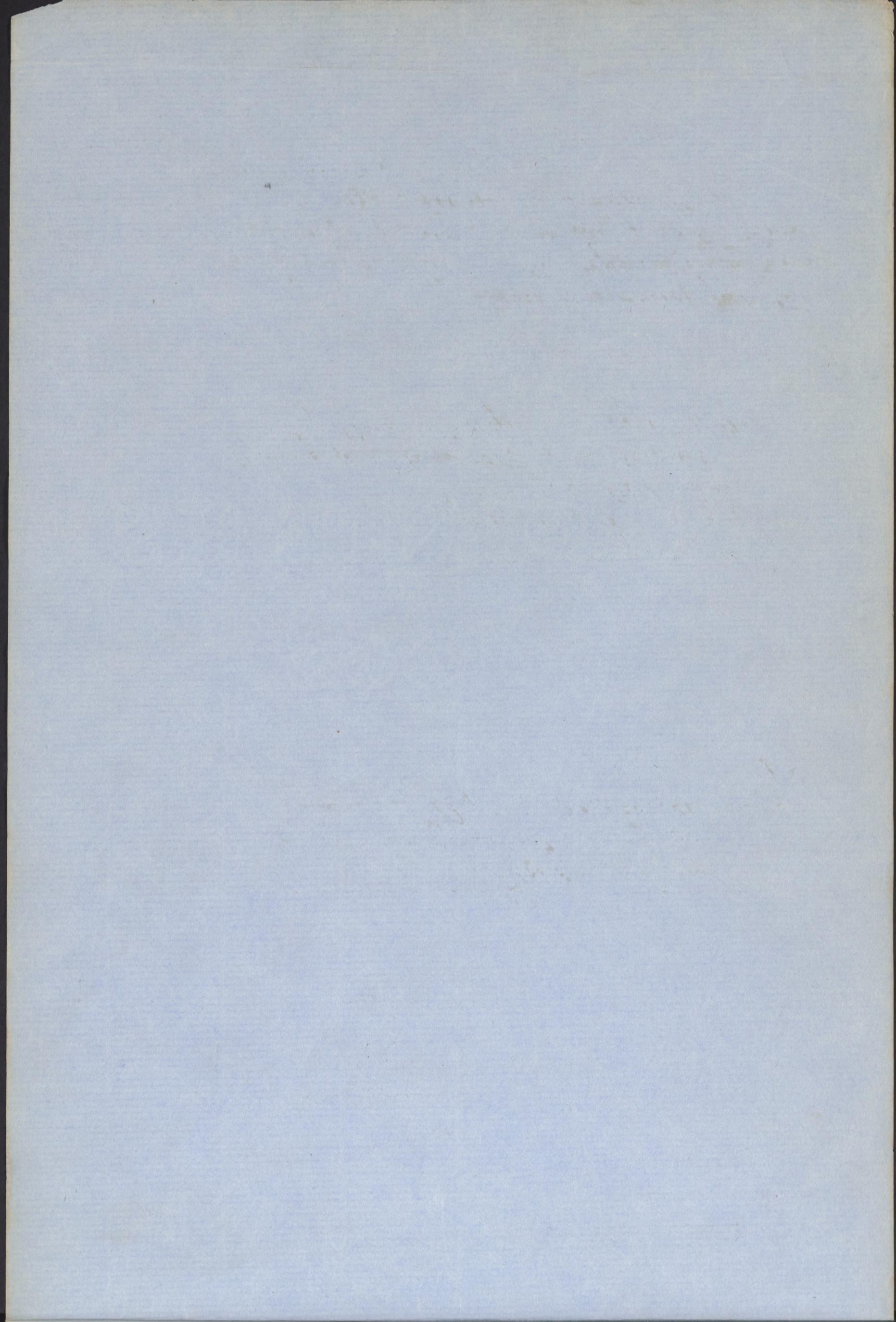
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

*"Aqua Caliente."*



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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Be it Remembered, that on this *twenty seventh day of February*, Anno Domini One Thousand Eight Hundred and Fifty-*Two*, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of *Fulgencio Figueroa*  
for the Place named  
*"Aqua caliente"*  
was presented, and ordered to be filed and docketed with No. 78 and is as follows, to wit;

(Vide page 3 of this Transcript.)

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

San Francisco April 27' 1852.  
In Case No. 78, *Fulgencio Figueroa*, the deposition of *James W. Weeks*, a witness in behalf of the claimant, taken before Commissioner *Henry J. Thornton*, was filed;

(Vide page 4 of this Transcript.)

San Francisco Jan. 15' 1853.  
In the same case the deposition of *Antonio Sivil*, a witness in behalf of the claimant, taken before Commissioner *Henry J. Thornton* was filed;

(Vide page 5 of this Transcript.)

San Francisco Sept. 2<sup>d</sup> 1853.  
 Case no. 78. Cullen; Submitted on briefs  
 on both sides and taken under advisement  
 by the Board,

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San Francisco Feb. 14' 1854.  
 In the same case Commissioner R. Aug.  
 Thompson delivered the opinion of the  
 Board confirming the claim;  
 See page 31 of this Transcript.

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To the Honorable the Commission to ascertain & settle private land claims in California.

Your petitioner Fulgencio Niguarda, a citizen of said state, gives notice that he claims a tract of land therein called Agua Caliente, containing two sitios de ganaderia mayor, more or less, situated in the County of Santa Clara. He claims said land by virtue of a grant therefor made under the authority of the Mexican Government by Don Nicolas Gutierrez, Political Chief or Governor of the Territory of California to Don Antonio Suro, bearing date 13<sup>th</sup> October, 1836, & a transfer of which was afterwards made to claimant by said Suro; & also by virtue of a grant made under the said authority by Don Juan B. Alvarado, Governor of the Department of California, to the claimant bearing date 4<sup>th</sup> April 1839, & approved by an act of the departmental Assembly by act passed on the 22<sup>d</sup> day of May 1840. The claimant, & those under whom he claims, have been in peaceable possession of said land ever since said year 1836. The claimant has no knowledge of any conflicting grant.

The claimant has presented the original grant of said land made to himself as aforesaid, & a certified copy of other papers therein which exist in the archives of the former governments of California, & he will make further proof of title if required by the Board.

Jones, Tompkins & Strode.

Attorneys for claimant.

Filed in Office Feby 27<sup>th</sup> 1852.

Geo. Fisher.  
S. Secy.

Petition.

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Office of the Commissioners of  
Private Land Claims in California.

San Francisco April 27<sup>th</sup> 1852.

On this day before me Harry Thurston, one of the Commissioners for ascertaining & settling private land claims in California, came James W. Weeks, a witness produced in behalf of the claimant Fulgencia Heigueras, whose petition is James W. Weeks. No 78 on the docket of said Commissioners. The witness being duly sworn testified as follows.

The United States Law Agent was notified & attended by Mr Gunther.

Questions by Claimant.

Quest 1. What is your name, age & occupation.

Ans. My name is James W. Weeks, my age between 37 & 38 years, present occupation Interpreter to the County Court of Santa Clara.

Quest 2. Do you know the claimant in this case Fulgencia Heigueras, how long have you known him.

Ans. I do know him, I have known him for nineteen years.

Quest 3. Do you know the tract of land claimed by him.

Ans. Yes. I do know it; it is situated south of the Mission of San Jose & is known by the name of Agua Caliente.

Quest 4. How long have you known said land to be occupied, & by whom.

Ans. By the said Fulgencia Heigueras & family the space of ten or eleven years, they have their houses upon it & stock, an orchard, corrals and

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cultivated ground.

Cross Questions by United States Law Agent.  
Quest 1. Did you ever know the title of Nigueras to be questioned by any one?

Ans. I never did.

James W. Weeks.

Sworn to & subscribed before me  
the 27<sup>th</sup> of April 1852.

Harry J. Thornton,  
Comr.

Filed in Office April 27<sup>th</sup> 1852.

Geo: Fisher,  
Secy.

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San Francisco Jan'y 15<sup>th</sup> 1853

Deposition of  
Antonio Sunol.

On this day before Comr Harry J. Thornton came Antonio Sunol, a witness in behalf of the claimant Fulgencio Nigueras, petition No 78, & was duly sworn, his evidence being interpreted by the Secretary.

The U. S. Associate Law Agent was present.

Antonio Sunol, a witness called on behalf of the claimant in reply to witness questions taken on the part of the claimant testified as follows.

My name is Antonio Sunol, I am fifty five years old, I reside in the pueblo of San José de Guadalupe, & have resided there thirty five years, I am acquainted with the tract of land called Agua Caliente, situated southwesterly from the Mission of San José. I had in 1836 from Governor

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Autuniz, a grant for two leagues of said tract, which  
 afterwards released to Fulgencio Higuera. The  
 boundaries of said tract are a creek at the southern  
 which divides it from the lands of Jose Higuera, &  
 at the north a valley called the Canada del Aliso.  
 The hot springs which give the name to the tract  
 lie between the said boundaries. Fulgencio Higue-  
 ra has been in possession of said tract since about  
 the year 1839. His cattle pastured there before that  
 time. About 1839 or 1840, he built a house on the  
 tract, & he & his family have occupied it ever since.  
 I am acquainted with the signatures of Don Juan  
 P. Alvarado, & Don Manuel Jimeno, I have of-  
 ten seen them write. Their signatures on the  
 title in this case, being the paper marked C. are  
 their genuine signatures. I never occupied  
 the land above referred to myself.

Antonio Suro.

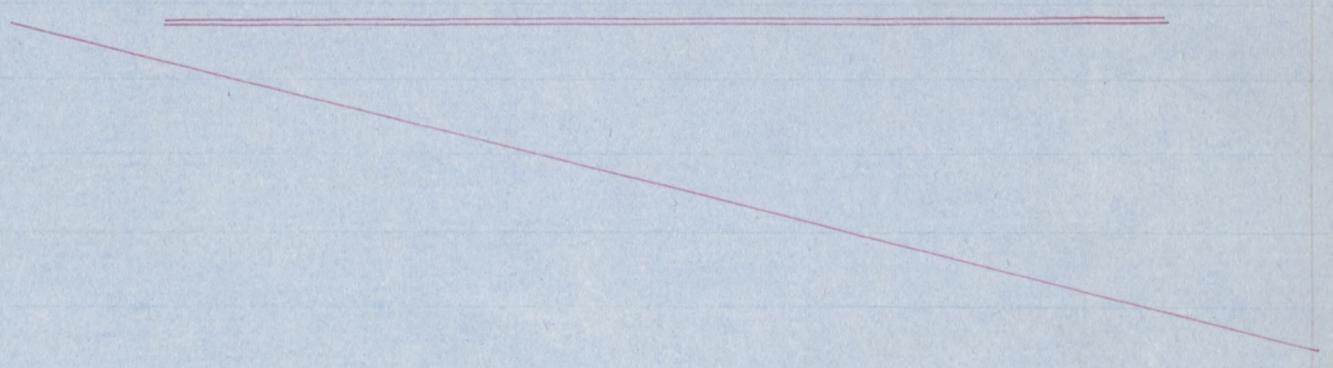
U. S. Agent present.

Sworn to & subscribed before me  
 this 15<sup>th</sup> of July 1853 -

Harry J. Thornton.  
 Comr.

Filed in Office July 15-1853.

Geo: Fisher  
 Secy.



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*Expediente*

*promovido por el C. Fulgencio Higuera en pretension del  
puerage llamado el Agua-Caliente.*

*1839.*

*125.*

Exmo Señor.

Monterrey Nov<sup>ra</sup> 24 de 1837.

Fulgencia Higueroa de la vecindad del Pueblo de S<sup>to</sup> José ante V. E. respetuosamente traslado a la parte y conforme haya lugar en derecho digo: que de D<sup>no</sup> Antonio Sunol como consta por los documentos que tengo p<sup>o</sup> el tiempo necesario presentados al Gobierno haciendo reclamaciones para que otorga la que del derecho imprescriptible que me asiste tenga conveniente a la posesion del paraje nombrado el Sobre la presente So. Oquira Caliente del cual fue adjudicado con titulo del antecesor de V. E. D<sup>no</sup> Nicolas Gutierrez a favor de Don Antonio Sunol me diriji nuevamente por medio de este escrito a la acreditada bondad de V. E. para que se sirva en obsequio de la justicia voir mis quejas. Yo tenia anticipada una solicitud pretendiendo el paraje mencionado y solo se aguarda el informe del P. Ministro de San José para que se terminara mi asunto mas habiendose unperpuesto con igual pretencion al dicho Sor. Sunol obtuvo inmediatamente el informe favorable de otro Ministro anticipandolo al que debia dar a mi favor para que pudiese aquel individuo obtener la concecion con perjuicio de mis derechos. Este solo procedimiento E. S. fue bastante para cerrar me a mi el camino de mis representaciones, mas como la Exma. Diputacion aun no ha confirmado aquella concecion del Sor. Geje, dicho eres tener lugar a mis representaciones. Y no aspiro E. S. a hacer perjuicio a ninguno de mis semejantes hiciera el sacrificio mas benévolo callar si no me meantase y voderado de una erecida familia con derecho a una parte del terreno mencionado en donde se establecido desde ante mis labores y donde deca poner algunos bienes de campo. El Senor Sunol puebe sin embargo ocupar otra parte de el y ambos con igual derecho a la posesion podremos ser agraciados por la ley.

Sirvase V. E. tener una consideracion a una erecida familia y las justas reclamaciones que hago. Por tanto de las consideraciones de V. E. espero el resultado mas favorable sirviendose asi mismo admitir esta en papel comun por no haberlo del sello correspondiente

Monterrey Nov<sup>ra</sup> 24 de 1837.

Arruego del interesado.

Fulgencio Higueroa.

En vista del informe que V. S. me pide otorgo que no sola

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mente solo al interesado la parte que pide sino todo el terreno que me estaba sepeliendo siempre que dicho Señor me cumple de pagar los gastos y perjuicios que estienda, ese es el convenio que emos tenido y de lo contrario de su parte no puedo ser un palmo de tierra por ser el parage muy chico. V. S. disponga lo que mejor le parezca sobre mi informe  
Santa Fe de Vera 21 de Diciembre de 1837.

Antonio Sunol.

Monterrey Dic<sup>re</sup> 24 de 1837.

Siendo conforme la parte de Fulgencio Biqueroa en satisfacer al Señor Sunol la cantidad expresada pueden de común acuerdo ambos interesados escriturar su contrato ante el Alcalde respectivo para la exhibicion de documentos y demas formalidades.

Alvarado.

Señor Jefe Político

Sta Clara. Abre. 24. 1838. El ciudadano Fulgencio Biqueroa no se impedira al de la vecindad del Pueblo de 1<sup>o</sup> José interesado en esta rep ante V. E. con el mas debido respeto y resentacion p<sup>o</sup> el Alcalde como mas halla lugar en derecho se de 1<sup>o</sup> José la pacifica presenta y dice: que el siete de Enero de posesion del terreno q. 1837 presente ano se libre un contrato de mención. Con el Sr. Antonio Sunol de ocupar y la parte que representaposeer el citio de agua caliente que se quemará con estos vob pertenecia al expresado Sunol: cuyos documentos a la sent<sup>a</sup> convenio fue precedido de un informe publico en donde se que V. E. me pidio para la realizacion hallen los antecedentes de otro trato y fue dado en 21 de Diciembre de 1837. - embre del año p. p. como consta del adjunto titulo q. acompaño para que V. E. se informe de mi verdad.

Mas como ahora el Alcalde del Pueblo de San José me empuja por peticion el trabajar en las tierras que devo reputar por mias en virtud del contrato causabido ocurrido a V. E. Suplicando a su justificacion importa las ordenes que mas fusque conveniente para que no se logren unicas tener contrarios o injustos a nuestro convenio pues aun no sido se llega el mes de Septiembre para pagar las 300 pesos que me comprometi mi poseer el Señor de Sunol el tal titulo que conserro para reclamar me cosa alguna que pueda pertenecer le. Esto Suplico de V. E. como igualmente el que se me de la posesion

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para lo que acompaño como arriba dije el título que acredita el derecho que me asiste. P. F. A. V. E. pido que atiendanme y mirandome con la bondad y justicia que le esar. ar. ter. idase a mi solicitud lo que crea de justicia.

Pulgencio Biquerra.

Monterrey. Ab'l 4 de 1839.

Vista la petición que da prin-  
cipio a este Expediente el documento firmado por Don Antonio Sunol cediendo el derecho del paraje de la Laguna Caliente en favor del interesado con todo lo demás que se tuvo presente y ver con vino de conformidad con las leyes y reglamentos de la materia se declara al ciudadano Pulgencio Biquerra dueño en propiedad del terreno mencionado entendiéndose esta excepcion a reserva de la aprobacion o desaprobuacion de la Ex. Junta Departamental. Asi Yo Juan B. Alvarado Gobernador Int<sup>o</sup> del Departamento de las Californias lo decreté mandé y firmé disponiendo al mismo tiempo se libere el despocho correspondiente y se tome raron en el libro respectivo.

Alvarado. Manuel Jimeno. Seco.

Monterrey 19 de Mayo de 1840.

Da da Cuenta a la Ex. Junta Departam<sup>l</sup> devolvió en sesion de hoy que pase a la Comision de agricultura.

José F. Fernandez. Seco.

En veinte y dos del mismo lo devolvió la comis-  
ion con el dictamen que acompaña.

Fernandez.

Monterrey. 13 de Junio de 1840.

En vista de la aprobacion otorgada en veinte y dos del mes p. p. do por la E. Junta Departamental, librese testimonio de ella a la parte de Don Pulgencio Biquerra en confirmacion del terreno nombrado Laguna Caliente que obtuvo en cuatro de abril del año p. anterior. El Sr. Don Juan B. Alvarado Gober-  
nador Constitucional del Departamento de las Californias asi lo proveyo y firmó de q. doy fei.

Alvarado.

here follows a map or plan.

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Por el presente documento digo que seda todo el derecho que tengo sobre este titulo en el Señor Bulguisio y guerra y para que conste doy este en el pueblo de San José a 7 de Enero de 1832.

Antonio Sunol.

Dolores Pacheco.

John Burton. Luis Chuboya.

Sello Primero Seis pesos.

Abilitado provisionalmente por la administracion de la Aduana Maritima de Montney de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Figueroa.

A Ramirez.

Revalidado para los años de 1836 y 1837.

(Seal) chuo.

Angel Ramirez.

Nicolas Gutierrez Teniente Coronel de Caballeria de su Magestad Comandante Gnal. Inspector y Jefe Politico Interimario de la Alta California.

Por cuanto D<sup>o</sup> Antonio

Sunol ha pretendido para su beneficio personal y el de su familia el terreno q. indica el dibujo que obra en el expediente (conocido con el nombre de) inmediato a la Misión de San José: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por Leyes y reglamentos de la materia en decreto de este dia usando de las facultades que me son conferidas y a nombre de la Nacion Mexicana he venido en expedirle el terreno mencionado declarandole la propiedad de el por las presentes letras a reserva de la aprobacion de la E. Diputacion y bajo las condiciones siguientes.

1<sup>o</sup> Que se sometera a las que estableciere el reglamento que se ha de formar para la distribucion de terrenos baldios y que entretanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica inponer censo, vinculo fiduciario, ni otro gravamen aunque sea por causa piadosa, ni pasarlo a manos muertas.

2<sup>o</sup> Podra cercarlo sin perjudicar las travesias caminos y servidumbres, destinandolo al uso y cultivo que mas le acomode pero dentro de un año a lo mas fabricar una casa y estada habitada.

3<sup>o</sup> Solicitara del Juez respectivo se le de la posesion definitiva en virtud de este Despacho por el cual se demarcaran los linderos en cuyos limites, se pondran a mas de las misioneras algunos arboles frutales o silvestres de alguna utilidad.

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4.º El terreno de que se hace donacion es de los sitios de Ganado Mayor segun aplica el diseño que corre en el Expediente. El Juez que diere la posesion lo hara cumplir conforme a ordenanza que otorgo el sobante que resulte a la nacion para los usos convenientes.

5.º Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciado por otro.

En consecuencia mande que se le otorgue el presente y teniendose por firme y valedero; se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterrey a trece de Octubre de mil ochocientos treinta y seis. Nicolas Gutierrez.

Manuel M<sup>a</sup> Gonzales. Sr. Int.<sup>o</sup>

Monterrey. Octubre. 13 de 1836.

Dros. 10p.º. Se da razon de este titulo en el libro correspondiente a f. 120. y marcado con el n.º que obra en esta oficina por ahora de mi cargo.

Manuel M<sup>a</sup> Gonzales.

Exmo. Sr.

La Comision de agricultura y comercio unidas encarga por V. E. de dictaminar los Expedientes que en la sesion anterior acompaño el Exmo. Sr. Gobernador y consecutivos por el mismo Gobierno y encontrandolos conformes, segun lo actuado e informes y demas q. ver se ha provido propone a la deliberacion de V. E. los articulos siguientes.

Art 1.º Se aprueba la concesion hecha por el Gobierno Departamental con fecha 4 de abril de 1839 en la persona del ciud.º Fulgencio Siquiera del paraje llamado Agua Caliente.

2.º que se devuelva al Exmo Sr. Gobernador el Expediente para los fines convenientes.

Monterrey. Mayo 21 de 1840.

José Rafael Durales.

L. Argüello.

Monterrey. 22 de Mayo de 1840.

En sesion de este dia aprueba la J. Junta Departamental el dictamen anterior en los dos articulos con que concluye.

Manuel Jimenez. Presidente.

José F. Fernandez. Sr.

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Office of the Surveyor General of the United States for California.

I Samuel D. King, Surveyor General of the United States for the State of California and as such now having in my Office and under my charge and control a portion of the archives of the former Spanish and Mexican territory a Department of Upper California do hereby certify that the fifteen preceding and hereunto annexed pages of tracing paper numbered from one to fifteen inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private Seal (not having a seal of office) at the City of San Francisco Cal. this 8<sup>th</sup> day of March A.D. 1852.

Samuel D. King.

Sur<sup>or</sup> Genl. Cal.<sup>a</sup>

Filed in Office. Sept<sup>r</sup> 27<sup>th</sup> 1852

Geo. Fisher.

Secretary.

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PAGE

Sello cuarto una cuartilla.

Habilitado provisionalmente por la Notuana Maritima del puerto de Monterrey en el Departamento de las Californias para los años de mil ochocientos Cuarenta y mil ochocientos Cuarenta y uno.

Alvarado.

Antonio Maria Osio.

(Seal) Exmo. Sr. Pulgencio Niqueroa de la vecindad del pueblo de San José ante V. E. respectivamente y conforace haya lugar en derecho oligo que como consta por los documentos que tengo presentados al Gobierno haciendo reclamaciones del derecho imprescriptible que me asiste a la posesion del parage nombrado el Agua Caliente el cual fué adjudicado con titulo del anterior de V. E. D<sup>o</sup> Nicolas Gutierrez a favor de Don Antonio Sunol me dirijir nuevamente por medio de este escrito a la agradesada bondad del Sr. para que se servia en obsequio de la justicia oír mis quejas. Yo tenia anticipadas una solicitud peticionando el parage mencionado y solo se agradaba el informe del Sr. Ministro de San José para que se terminara mi asunto, mas habiendose interpuesto con igual peticion el dicho Sr. Sunol obtubo inmediatamente el informe favorable de dicho Ministro anticipandolo al que devia dar a mi favor para que pudiese aquel individuo obtener la comision con perjuicio de mis derechos. Este solo procedimiento S. S. fué bastante para servarme a mi el camino de mis representaciones, mas como la Exma. Diputacion aun no ha confirmado aquella comision del Señor José Dicho: creo tener lugar a mis representaciones. Yo aspiro S. S. a hacer perjuicio a ninguno de mis semejantes bicia el sacrificio mas bien callar sino me encontrase valido de una buena familia con derecho a una parte del terreno mencionado en donde he establecido desde antes mis labores y donde deseo poner algunos bienes de campo. El Sr. Sunol puede sin embargo ocupar otra parte de él y ambas con igual derecho a la posesion podremos ser agraciados por la ley. Sirvase V. E. tener una consideracion a una crecida familia y las justas reclamaciones que hago. Por tanto de las consideraciones del Sr. espero el resultado mas favorable sirviendo así unívus admitir esta en papel comun por no haberlo del sello correspondiente.

Monterrey. Noviembre 24 de 1837. = aruego del interesado.

Pulgencio Niqueroa. Monterrey. Noviembre 24 de 1837.

Has dado a la parte de D<sup>o</sup> Antonio Sunol por el tiempo necesario para que oligo lo que tenga conveniente sobre la presente solicitud. = Alvarado. = En virtud

del informe que V. E. me pide digo que no solamente se lo al  
 interesado la parte que pide sino todo el terreno que me  
 estaba sedido siempre que dho. Señor. me cumple de pagar  
 los gastos y perjuicios que he tenido ese es el convenio que hemos  
 tenido y de lo contrario de mi parte no puedo ser un  
 palmo de tierra por ser el parrage muy chico. V. E. disponga  
 lo que mejor le parezca sobre mi informe. = Santa Teresa  
 21 de Diciembre de 1837. = Antonio Sunol. = Monterey  
 Dbre. 31 de 1837 = Sendo Conforme a la parte de Don Fulgencio  
 Abigueria en satisfacer al Sr. Sunol la cantidad expresada  
 pueden de comun acuerdo ambos interesados esenturar  
 su contrato ante el Alcalde respectivo para la exhibicion  
 Sello Cuarto una Cuartilla.

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Habilitado provisoriamente por la Autoridad Maritima  
 del puerto de Monterey en el Departamento de las Calif  
 orniias para los años de mil ochocientos Cuarenta y  
 mil ochocientos Cuarenta y uno.

Alvarado. Antonio Maria Osio.

de documentos y demas formalidades. = Alvarado. =  
 Sr. Jefe Político. = El Ciudadano Fulgencio Abigueria  
 de la vicinidad del pueblo de San José ante V. E. con el mas  
 debido respeto y como mas halla lugar en derecho se pres  
 -enta y dice: que el siete de Enero de 1838 presente año  
 sobre un contrato con el Sr. Antonio Sunol, de ocupar y poseer  
 el sitio de ctegua caliente que le pertenecia al expirado Sunol  
 cuyo convenio fué precedido de un informe que V. E. me  
 pidió para la celebracion de dho. trato que fué otado en  
 21 de Dbre del año ppdo como consta del adjunto titulo que  
 acompaño para que V. E. se informe de mi verdad. Mas  
 como ahora el Alcalde del pueblo de San José me impide  
 por petreion el trabajar en las tierras que devo reputar  
 por mias en virtud del contrato consabido ocurro a  
 V. E. Suplicando a su justificacion importa las oraciones  
 que mas jusque conveniente para que no se lo quen mias  
 tan contrarias e injustas a nuestro convenio pues aun  
 no solo no se llega el mes de Septiembre para pagar los 300  
 pesos que me comprometi ni posee el Señor de Sunol  
 en tal titulo que conserro para reclamar cosa alguna  
 que pueda pertenecerle. Esto duplico de V. E. como  
 igualmente el que de me dé la posesion para lo que  
 acompaño como arriba dije el titulo que acredita  
 el derecho que me asiste. P. S. A. V. E. pido que atentandome  
 y mirandome con la bondad y justicia que le escuro et  
 -erese, a cretenda a mi solicitud lo que vea de justicia.

Pulgencio Biquerra. Santa Clara. Nro 21 de 1838.  
No se impetora al interesado en esta representación por  
el Alcalde de San José la preciosa posesión del  
terreno que se menciona. La parte que representa olur  
ina con estos documentos a la Secretaria política en  
donde se hallan los antecedentes. Alvarado. Monterey

Monte 21 de 1839. = Vista la petición con que el  
pupilo este Expediente el documento firmado por  
Don Antonio cobrando el derecho del pasaje de la Agua  
Caliente en favor del interesado con todo lo demás que  
se tuvo presente y ver con vino de conformidad con las  
leyes y reglamentos de la materia se declara al ciudadano  
Pulgencio Biquerra dueño en propiedad del terreno  
mencionado estendiéndose esta concesión a reserva de  
la aprobación o desaprobación de la Junta Dep-  
-artrimental. Asi Yo Juan Bautista Alvarado Gub<sup>no</sup>  
ynterino del Departamento de las Californias lo mandé  
decreté y firmé así poniendo al mismo tiempo se libre  
el despacho correspondiente y se tome razón en el libro  
respectivo. Alvarado. Manuel Jimeno. Srio. =

Monterey, 19 de Mayo de 1840. = Dada Cuenta a la  
J. Junta Departamental a crédito en sesión de hoy que pose  
a la comisión de agricultura.

José Y. Fernandez. Srio. = En veinte y dos del  
mismo lo devolvió la comisión con el dictamen que  
acompaña. Fernandez. = Monterey, 13 de Junio  
de 1840. = En vista de la aprobación otorgada  
(Seal) en veinte y dos del mes pasado por la J. Junta  
Departamental, librese testimonio de ella a la parte  
de Don Pulgencio Biquerra en confirmación al terreno  
nombrado Agua Caliente que obtuvo en cuatro de  
Abril del año p<sup>ro</sup> anterior. El Sr. Don Juan B.  
Alvarado, Gobernador Constitucional del Departamento  
de las Californias así lo parejó y firmó de que voy fe.  
Alvarado.

Nicolas Gutierrez, teniente Coronel de Caballeria  
Permanente, Comandante General, Inspector y Jefe sup<sup>or</sup>  
político Interino de la Alta California.

Por Cuanto D<sup>o</sup> Antonio Linares ha pretendido para  
su beneficio personal y el de su familia el terreno que  
sustenta el diseño que obtuvo en el Expediente (expedido  
con el nombre de) inmediato a la Misión de San José  
practicadas previamente las diligencias y averiguaciones  
convenientes segun lo dispuesto por leyes y reglamentos

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de la materia en decreto de este dia, usando de las facultades que me son conferidas ya nombre de la nacion Mexicana he venido en concederle el terreno mencionado declarando le la propiedad de el por las presentes letras a reserva de la aprobacion de la E. Legislacion y bajo las condiciones siguientes. 1º Que se sometera a las que estableciere el reglamento que se ha de formar para la distribucion de terrenos baldios y que entretanto ni el agruante ni sus herederos podran dividir ni enagenar el que se les adjudica, sin poner censo, vinculo, fianza ni otro gravamen aunque sea por causa piadosa, ni pasarlo a manos muertas.

2º Podra cercarlo sin perjudicar las heredades comunales y servidumbres destinando lo al uso y cultivo que mas le acomode pero dentro de un año a lo mas fabricara casa y estara habitada.

3º Veleitara del Juez respectivo se le de la proteccion Judicial en virtud de este despacho por el cual se demarcan los linderos en cuyos limites se podran a mas de las moyoneras algunos arboles frutales o silvestres de alguna utilidad.

4º El terreno de que se hace donacion es de dos sitios de ganado mayor segun explica el decreto que corre en el expediente. El Juez que diere la posesion lo hara medir comprehen a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

5º Si contraviniere a estas condiciones perderra su derecho al terreno y sera denunciado por otro.

En consecuencia mando que sirviendo le de titulo el presente y teniendolo por firme y valido se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterrey a trece de Mayo de mil ochocientos treinta y seis. = Nicolas Puriñez. Manuel Gonzales Jefe Int. Monterrey a trece de Mayo de 1836. = Se tomo razon de este titulo en el libro correspondiente a folio 120 y marcado con el numero 117 que obra en esta oficina.

Sello Cuarto una Cuartilla.

Abilitado provisionalmente por la Administracion de la Aduana Maritima del puerto de Monterrey para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Alvarado. Antonio Maria Oro. por ahora de mi cargo. = Manuel M<sup>a</sup> Gonzales =

3. 18

Por el presente documento digo que solo tengo el derecho que tengo sobre este titulo en el Sr. José Figueroa y para que conste doy este en el Pueblo de San José a 4 de Mayo de 1838.

Antonio Junot. = Dolores Pacheco.

Juan Buerton. Luis Charrya.

Srmo Sr.

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La Comision de agricultura y comercio unidas encargada p. A. E. de dictaminar los Expedientes que en la sesion anterior acompaño al Srmo. Sr. Gobernador y concedidas por el mismo Gobierno y encontrando las impresiones segun lo actuado e impresiones y demas que verso ha podido proponer a la deliberacion de V. la proposicion siguiente. Se acuerda la concesion hecha por el Gobierno Departamental con fecha 21 de Abril de 1839 en la persona del Cuid. Pulgencio Figueroa del paraje llamado Agua Caliente.

2º Que se devuelva al Srmo Sr. Gobernador el Expediente para los fines convenientes. Monterrey, Mayo 21 de 1840. S. Anquillo. José Rafael Godales.

Monterrey. 23 de Mayo de 1840.

En sesion de este dia aprobó la Junta Departamental el dictamen de los dos antecedentes siguientes. Manuel Jimeno. Secretario. Agustín Zamorano Srta.

Manuel Jimeno Srta del Gobierno Departamental de las Californias.

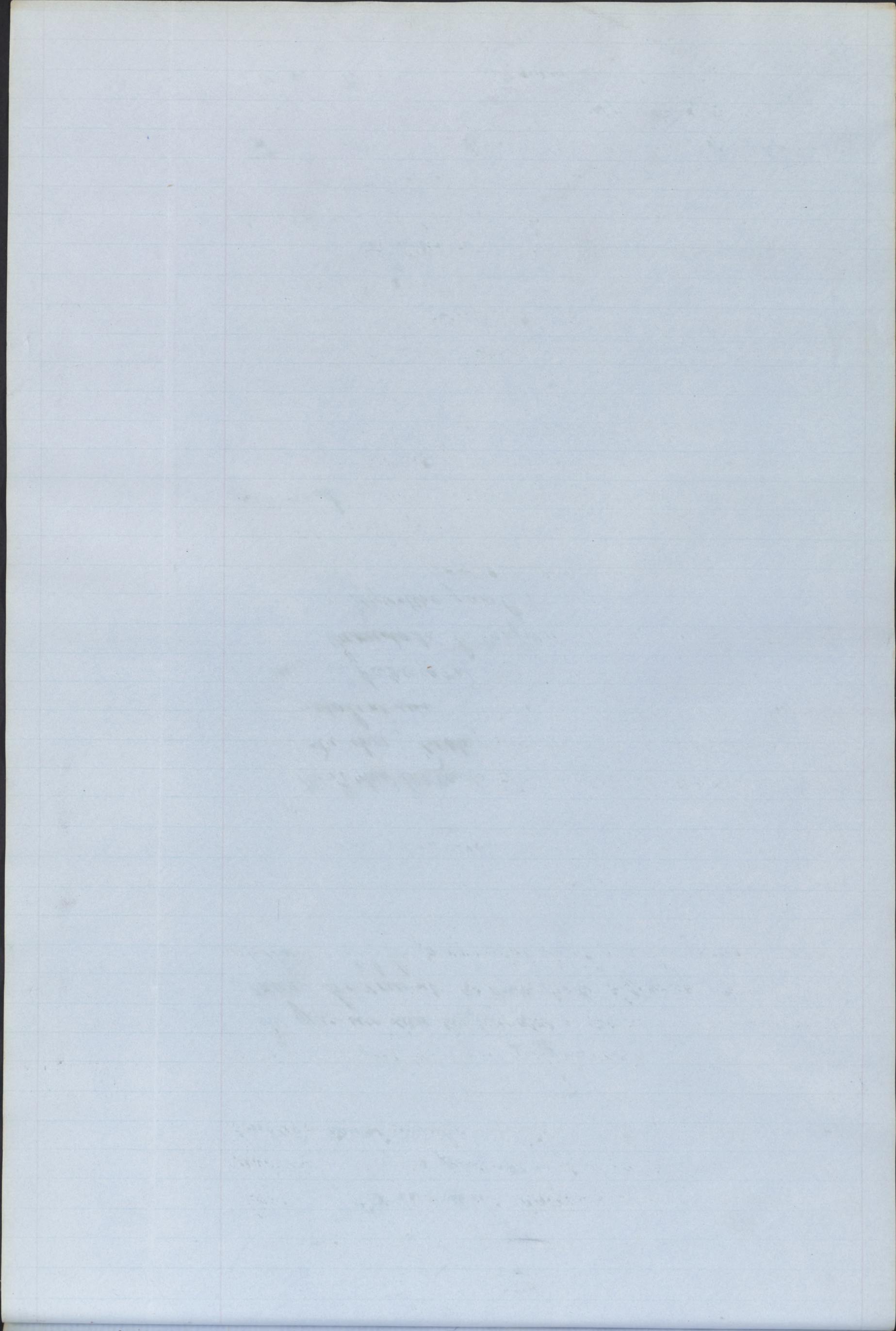
Certifico que la antecedierte copia es fielmente sacada del Expediente original que existe en la Secretaria de mi cargo y a peticion del interesado Don Pulgencio Figueroa estando la presente en Monterrey a 19 de Agosto de 1840.

Manuel Jimeno.

Filed in Office. Feby. 27<sup>th</sup> 1852.

Geo. Fisher.

Seary



Juan B. Alvarado, Gobernador Interino del Departamento de las Californias.

23

(Seal) Por cuanto el Sr. Fulgencia Mequena ha presuvido para su beneficio personal y el de su familia el rancho conocido con el nombre de "Agua Caliente" practicando y cumpliendo las diligencias y averiguaciones convenientes segun lo dispuesto por las leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la Nacion Mexicana, he venido en concederle el rancho mencionado de el cual yo le he propiedad de el por las presentes letras entendiendo dicho Concedido con entera confianza a lo dispuesto por las leyes a reserva de la aprobacion de la Santa Junta Departamental y bajo las condiciones siguientes.

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8 especifico c.

24

1º Poder crearlo sin perjudicar las haciendas Caminos y servidumbres; lo distinguiera libre y esclusivamente destinandolo al uso i cultivo q. mas le acomode, pero dentro de un año fabricara casa y estera habitable.

2º Cuando se le confirme la propiedad, selecciona del Jefe respectivo que le di posesion Judicial avisado de este despacho por el cual se demarcaran los linderos en cuyos limites podran o mas d. las mojones o algunas arboles frutales o Sitios de alguna utilidad.

3º El terreno q. se le hace donacion es de la extension q. explica el dictum q. corre en el expediente con sus limites respectivos. El Jefe que diene la posesion lo hara medir conforme a ordenanza, para ser clar los linderos quedando el sobrante que resalte a la nacion para los usos convenientes.

25

4º Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciado por otro.

En consecuencia mande que se le entregue el titulo el presente y teniendolo por firme y ratado, se tome razon en el libro q. corresponde y se entregue el interesado para su resguardo y otros fines.

26

Dado en Monterrey a cuatro de abril de mil ochocientos...

Cientos treinta y nueve. Este es el presente en  
su papel como por no haber del q. corresponde. —

Juan de Alvarado. Manuel Limas. Sr. del  
Despacho.

Queda tomada razón en el libro correspondiente y para que conste  
lo firmo. Manuel Limas. Sr. del Despacho.

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Nota. El Sr. Gobernador, dispone se tome razón de este  
despacho en la Secretaría de la Prefectura del Sr. Ministro.  
Limas.

Queda tomada razón a p. 5. y devueltos con el n. 5. del  
libro correspondiente q. obra en el archivo de la Secretaría  
del Sr. Ministro.

Sr. Juan de Castro. abril 6. de 1839.

José María Covarrubias.

28

Filed in office. Feby. 24<sup>th</sup> 1852.

Geo. Fisher.

Feby.

Excellent-Sir,

Fulgencio Higuera, of the vicinity of the Pueblo of San José, respectfully, & as may be most acceptable in law before your Excellency says: That as it can be proved by the documents by me presented to Government, reclaiming my indisputable right to the possession of the place called El Agua Caliente, which was adjudicated by title deed of your Excellency's predecessor, Don Nicolas Gutierrez in favor of Don Antonio Suroel, I now address myself anew to your Excellency's distinguished goodness by these presents; that in conformity with Justice, you may hear my complaints. I had previously presented a petition, claiming the aforementioned place & to complete the same there was only wanting the report of the Father, the Minister of San José, but said Señor Suroel, having intervened through a similar claim, he obtained at once a favorable report from said Minister, thereby anticipating the one he should have made in my favor, thus enabling that individual to obtain the commission in detriment to my own rights. This procedure alone was sufficient, Excellent-Sir, to cut off the avenue to my representations, but as the Exc<sup>l</sup>. Deputation have not as yet confirmed that concession of the said Chief, I believe I am in time to make my reclamations. I do not mean Exc<sup>l</sup>. Sir, to cause injury to any of my fellow beings. I would make a sacrifice in silence, were I not surrounded by a numerous family, & having the right to a portion of the above-mentioned land, where I had previously commenced my labors, & where I wish to keep some stock. Señor Suroel may nevertheless occupy another

D.  
Translation.

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portions of the same, & both with equal right to the  
possessions may be favored by the law. May your Excy  
please consider my numerous family & the just re-  
-lamations I make. I therefore hope a favorable de-  
-cision from your Excy requesting you may admit  
this on common paper, there being none of the required  
stamp. Monterey Nov 24<sup>th</sup> 1837.

at the request of the interested party. Fulgencio Noguera.  
Monterey Nov 24<sup>th</sup> 1837. I transmit it to the other  
party Don Antonio Suro for the necessary time, that  
he may state whatever he deems to the purpose upon the  
present petition - Alvarado -

Agreeably to the statement your Honor asked me to  
make, I say that, not only do I cede to the interested  
party, the petition he asks, but also all the land that  
was granted me, provided he fully pays me for the  
expenses & damages I have undergone - This is the  
argument; otherwise, I cannot on my part, yield a  
span of land, because the place is very small. Your  
Honor will dispose what may seem best upon this my  
statement. Santa Teresa, Dec 21<sup>st</sup> 1837. Antonio  
Suro. Monterey Dec 24<sup>th</sup> 1837. On the part of  
Fulgencio Noguera he having agreed to outdo to  
Sr Suro the stated sum, both parties by common  
agreement may make their contract in writing before  
the proper Alcalde for the exhibition of documents &  
other forms. Alvarado -

To his Excy the Political Chief. The citizen Fulgen-  
-cio Noguera of the vicinity of the Pueblo of San Jose  
with due respect, & as it may be most acceptable in  
law, before your Excy presents himself & says. That on  
the 7<sup>th</sup> Jan'y 1838 the present year, I made a contract  
with citizen Antonio Suro to enable me to occupy

I possess the place called Agua Caliente which belonged to him - said agreement being preceded of a statement which your Excellency asked me to make in order to accomplish said contract, dated the 21<sup>st</sup> Dec in the year last past, as is evidenced by the accompanying letter which I annex for your Excellency's information to show that I state the truth - But as the Alcalde of the Pueblo of San Jose through a petition, prevents me now from working the lands, I must repeat as more, by virtue of the aforementioned contract, I now apply to your Excellency, requesting you to give such orders as you may deem proper, in order that views or contrary & unjust concerning an agreement, may not be carried into effect; for the term has not only not expired to pay him the \$ 300. I promised to satisfy on the 1<sup>st</sup> of Sept, but Señor de Suroel does not possess such letter (which I now have) to claim anything that might belong to him. This I ask, as well as, that possession may be given me, for which I annex as before stated, the letter which proves my right - I therefore request that while viewing me with that goodness & justice that characterize your Excellency, you will accede to my petition, as far as you may deem it conformable with justice. Felguicio Niguera.

Santa Clara March 24<sup>th</sup> 1838. By this representation the Alcalde of San Jose shall not prevent the interested person from the quiet possession of the land herein mentioned. The party representing it, will proceed with these documents to the Political Secretary's Office where the antecedent acts are to be found.  
Abrardo.

Monterey April 4<sup>th</sup> 1839. In view of the petition first annexed to these proceedings - the document signed by Don Antonio Suroel ceding the right

to the place of la Agua Caliente, in favor of the interested party, with all that has been represented, seeing it is in conformity with the laws & regulations in the matter, citizen Fulgencio Niguera is declared to be owner in fee of the afore mentioned land - this concession to be understood to be subject to the approval or disapproval of the Exec Departmental Board. Thus did I, Don Basillita Alvarado, acting Governor of the Department of the Californias, command, decree & sign, declaring at the same time that the corresponding patent be issued & entered in the respective book.

Alvarado.

Manuel Jimenez, Secy.

Monterey May 19<sup>th</sup> 1840. It being submitted to the Exec Departmental Board they agreed that the same be referred to the committee on agriculture.

Jose Fernandez, Secy.

On the 22<sup>nd</sup> day of the same month the committee returned the accompanying opinions. Fernandez.  
Monterey 13<sup>th</sup> of June 1840. In view of the approval issued on the 22<sup>nd</sup> of last month by the Exec Departmental Board, let the testimony be delivered to Don Fulgencio Niguera, in confirmation of the parcel of land called Agua Caliente, which he obtained on the 4<sup>th</sup> April of the year last past. Signed Don Juan V. Alvarado, Constitutional Governor of the Department of the Californias thus provided & signed, which I attest. Alvarado -

Nicolas Gutierrez, Lieutenant Colonel of the Permanent Cavalry, Commandant General, Inspector & Political Chief, ad interim of Upper California.  
Whereas Don Antonio Linares has petitioned for his personal benefit & that of his family, the

parcel of land included by the design arranged to these proceedings (known by the name of) — near to the Mission of San Jose, having complied with the requirements & investigations of the laws & regulations on the subject, by decree of this day & the authority in me vested, & in the name of the Nation, I have thought proper to grant him the aforementioned tract of land, declaring the same to be his property by these letters patent, subject to the approval of the Exact-Deputation, & under the following conditions — viz.

1. That he shall submit to the conditions that the regulations which are to be made for the distribution of public lands may establish, & that meanwhile neither the grantee nor his heirs, shall divide nor alienate that which is adjudicated to him, nor subject it to rent, entail, mortgage nor any other incumbrance whatever, though the same might be for charitable purposes, nor convey it into mortmain.
2. He may fence it without obstructing owners roads & arriales, putting it to such use & culture he may best think proper, but within a year at the furthest, he shall build a house which is to be inhabited.
3. He shall solicit the proper Judge to give him judicial possession by virtue of this patent, by whom the boundaries shall be marked, at the limits of which besides the land marker, there shall be set some fruit trees, or the wild ones of some usefulness.
4. The land of which donation is made is of two leagues, (sitios) & de grande mayor, a quadrangle to the design arranged to these proceedings. The Judge who shall give possession shall cause it to be measured according to ordinance, leaving the vacies (sobrados) which might result to the nation for such uses as may be deemed convenient.

5. If he continues to these conditions he shall lose his right to the land, which can be denounced by another person.

Consequently, I command, that holding the present to be a firm & valid title, it shall be entered in the preceptor book, & be returned to the interested party for his own security & other purposes. Given in Montevideo on the 13<sup>th</sup> of October 1836.

Nicolás Gutierrez.

Manuel M<sup>o</sup> Gonzalez.

Acty Secretary.

Montevideo Oct 13<sup>th</sup> 1836. This title was entered in the corresponding books on folio 120 & marked with the same number 117 filed in this office, at present under my charge. Manuel M<sup>o</sup> Gonzalez.

I hereby declare that I cede all the right I have on this title, to Fulgencio Noguera, in witness whereof I give this at the public of San José. Given 7<sup>th</sup> 1838.

Antonio Suñol.

Dolores Pacheco. John Buston.  
Luis Chaboya.

Excellent Sir.

The joint committee of agriculture and commerce charged by your Excy to give the opinion upon the proceedings which in the last session his Exc. the Governor transmitted, & were granted by the same Government, now finding them in conformity with the acts, reports, & everything concerning them, they propose to the deliberation of your Excy the following Articles.

27

1. They approve of the concessions made by the Departmental Government dated April 4<sup>th</sup> 1839 in favor of citizen Fulgencio Nigrona of the place called Agua Caliente.  
 2. That the proceedings be returned to his Excellency the Governor for the purposes that be deemed convenient.  
 Monterey May 21<sup>st</sup> 1840.

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 PAGE 28

J. Arguilla.

Josi Rafael Gonzalez.  
 Monterey 22<sup>nd</sup> May 1840.

In their session of today the Ex<sup>ist</sup> Departmental Board approved the opinion in the two last articles.

Josi F. Fernandez. Manuel Jimeno.  
 Secretary. President.

Manuel Jimeno, Secretary to the Departmental Government of the Californias.

To certify that the preceding copy is faithfully taken from the original proceedings now in the Secretary's office under my charge, & is at the request of the interested party person, Don Fulgencio Nigrona, giving the present in Monterey on the 19 Aug. 1840.  
 Manuel Jimeno.

Annexed to the design (plot) there is the following certificate.

Manuel Jimeno, Secretary of the Government of the Department of the Californias.

To certify that the copy of the design exhibited on the reverse side, corresponds to the original annexed to the proceedings, now in the Secretary's office under my charge, belonging to Don Fulgencio Nigrona relative to the place called La Agua Caliente. Monterey 19<sup>th</sup>  
 Manuel Jimeno.

Correct translation August 1840.  
 J.C.

Isaac B. Alvarado, Governor, ad interim of the Department of the Californias.

Whereas citizen Fulgencio Higuera has claimed for his personal benefit & that of his family, the place known by the name of Agua Caliente, having complied with the requirements & investigations of the laws and regulations on the subject, now by virtue of the authority vested in the name of the Mexican Nation, I have thought proper to grant him the said place, declaring it to be his property by this patent, said concession is understood to be in conformity with the laws, subject to the approval of the Dept. Departmental Board and that of the Supreme Government under the following conditions.

1. He may fence it without obstructing the crossing roads & corridors, he shall enjoy it freely & exclusively putting it to the use or culture he may deem best, but within a year he shall build a house which shall be inhabited.

2. When the property shall be confirmed, he shall select the proper Judge, to give him judicial possession by virtue of this patent, by whom the boundaries shall be fixed, at the limits of which besides the land marks he shall set some fruit tree, or else wild ones of some usefulness.

3. The land of which donation is made, is of the extent expressed by the design annexed to the proceedings with the respective limits - the Judge who shall give possession will cause it to be measured agreeably to ordinance, in order to fix the boundaries leaving the surplus (sobrante) that might result to the Nation for such use as may be convenient.

4. If he should contravene to these conditions he

shall lose his right to the land, which can be deman-  
-ed by another person.

I therefore command that considering this to be  
his title & holding it as firm & valid, it shall be  
entered in the corresponding book & be delivered to the  
interested party for his care security & other purposes.

Given in Monterey on the 4<sup>th</sup> of April 1839, this  
present, being on common paper, because there is not  
the corresponding stamped paper.

Manuel Jimeno.

Juan B. Aburto.

Secretary of State.

A note has been made in the respective book, in  
evidence whereof I sign it.

Manuel Jimeno.

Secretary of State.

Note - His Excy the Governor directs that the  
proceedings be entered in the office of the Secretary to the  
Prefecture of the 1<sup>st</sup> District.

Jimeno

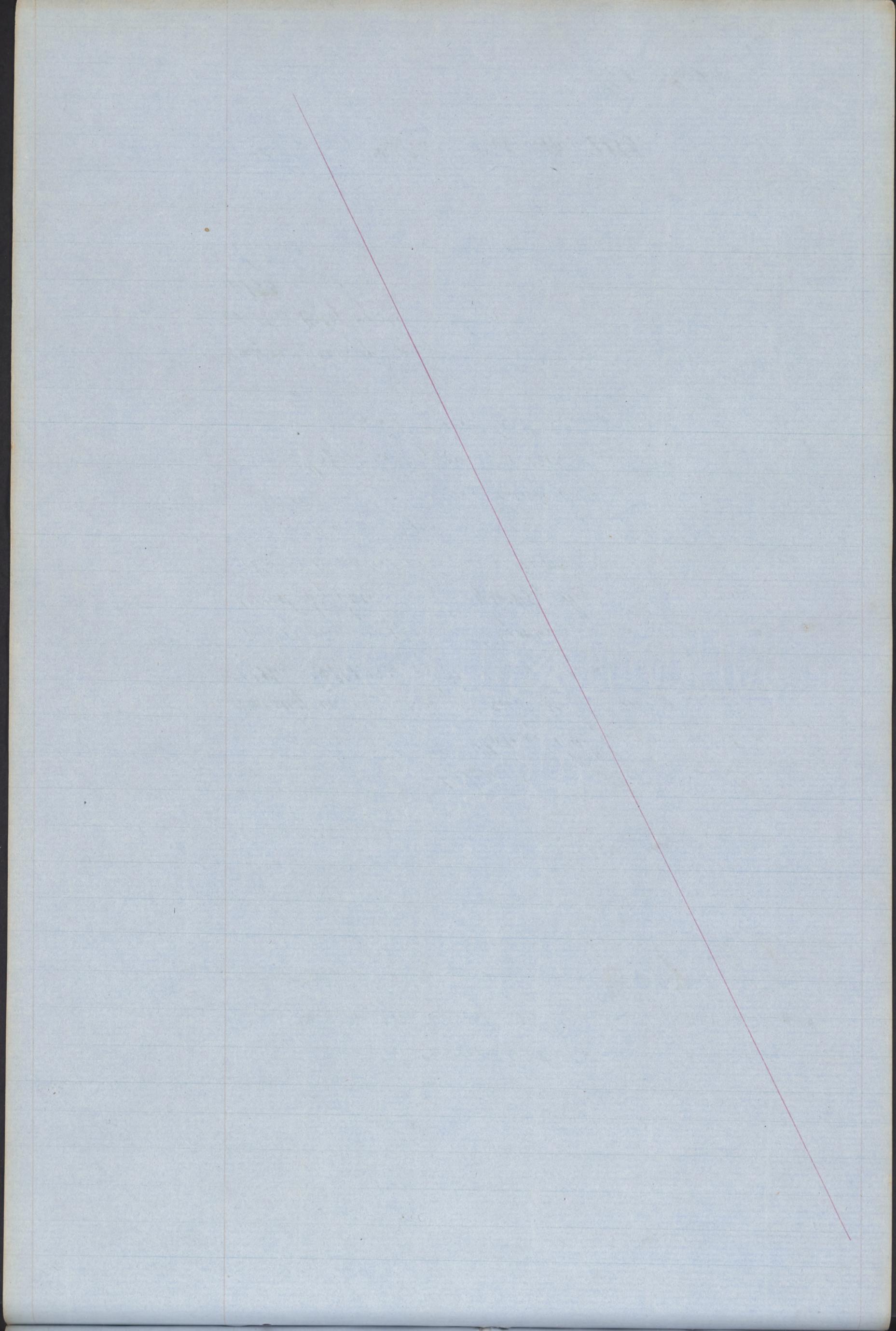
Entered on folio 5. marked with No 5. of the corres-  
-ponding book in the Archives of the Secretary's office  
to the Prefecture of the 1<sup>st</sup> District.

San Juan de Castro, April 6<sup>th</sup> 1837.

Filed in Office Feb'y 27<sup>th</sup> 1852.

Geo. Foster.

Secy.



Sesion del dia 23 de Mayo.

Se aprueba la concesion hecha por el N. 125.  
Gobierno departamental con fecha de abril de 1839 en  
la persona del C. Fulgencio. Figueroa del paraje  
llamado "Agua Caliente."

Office of the Surveyor General of the United States for  
California.

I John C. Hayes Surveyor General of the  
United States for the State of California and as such now  
having in my charge and under my custody a portion  
of the Archives of the former Spanish and Mexican territory  
or Department of Upper California, by virtue of the powers in me  
vested by law, do hereby certify that the preceding and herewith  
attached pages of tracing paper is a true and accurate copy  
being an extract from the proceedings of the *deparatamntales*  
-assembly, contained in a book entitled *Sesiones Publicas* for  
1830, all of which from a certain document now on file and  
forming a part of the said archives in this office.

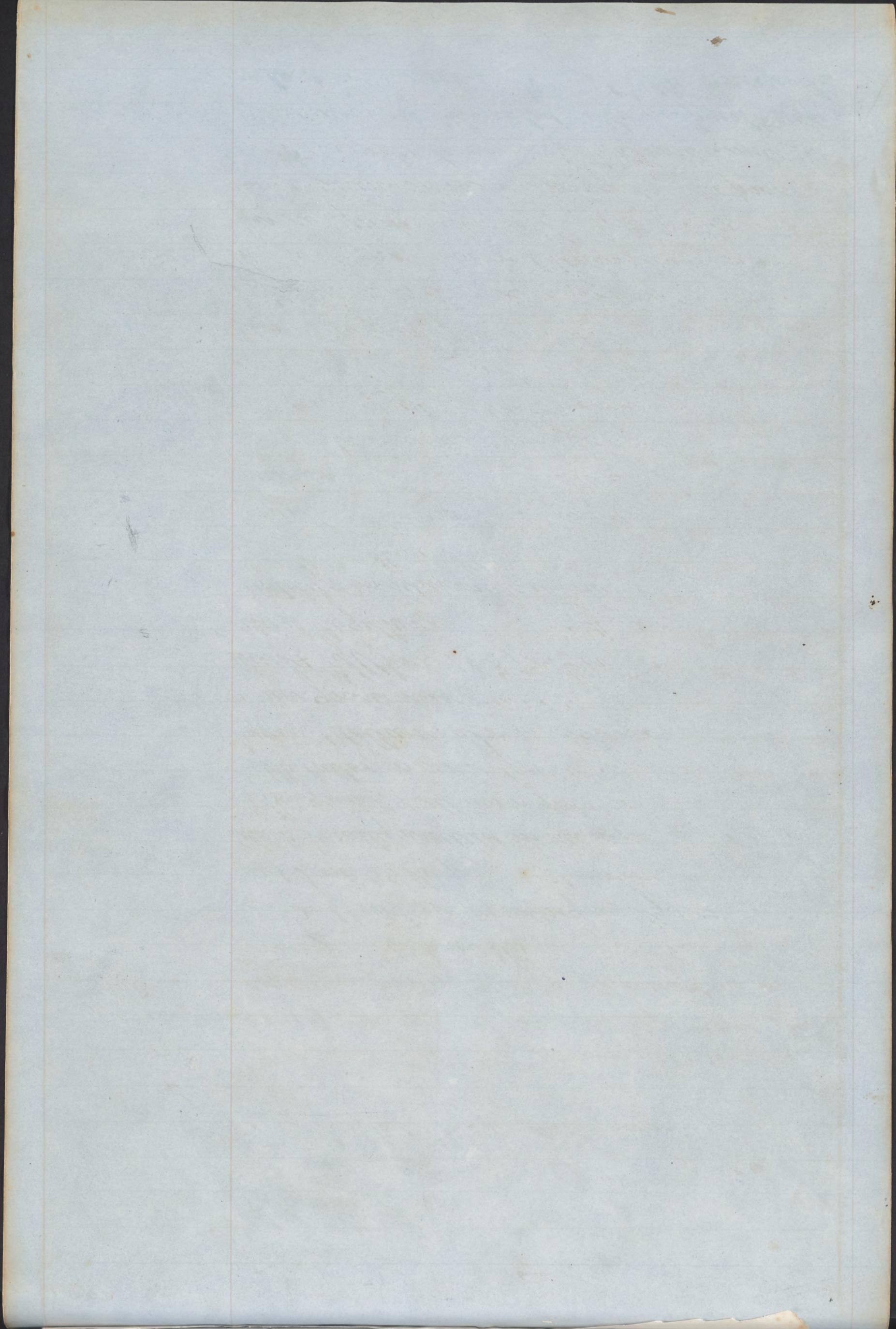
In testimony whereof I have hereunto signed  
my name officially and caused my seal of office to be affixed  
at the City of San Francisco, Cal. this 3<sup>rd</sup> day September  
1853.

(Seal)

John C. Hayes.  
Sur. Genl. Cal.

Filed in Office. Oct. 30, 1853.

Geo. Fisher.  
Secy.



Fulgencio Higuero.

78-2

vs  
 The United States } Agua Caliente  
 } In Santa Clara County

Opinion of the  
Board by Comr.

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The land claimed in this case, as shown by the traced copy of the Expediente from the archives, was originally granted by Governor Nicolas Gutierrez to Antonio Suroel on the 13<sup>th</sup> of October 1836. A controversy subsequently arose between said Suroel & the present claimant in relation to it, which finally resulted in the surrender by the former of his grant, & all his right & interest in the land, to the latter, in consideration of the sum of three hundred dollars. In accordance with this agreement a new grant was issued to Fulgencio Higuero, on the 4<sup>th</sup> of April 1839 by Gov. Juan P. Alvarado, which together with a copy of the record of the proceedings in relation to it, duly certified by the Secretary, Manuel Amaro, were delivered to the grantee. The grant was approved by the Departmental Assembly on the 22<sup>d</sup> of May 1840, & a certificate of such approbation dated 13<sup>th</sup> of June 1840 & signed by the Governor, delivered to the party. The claimant in his petition claims two square leagues of land, & the original grant made by Gutierrez to Suroel is for that quantity, while the same grant from Alvarado to Higuero is for no specific quantity, but for the extent shown by the division or map annexed to the proceedings with the respective limits. These limits and boundaries are delineated on the map with sufficient certainty & precision, to enable the surveyor to

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identify & locate the land; & they show it is about to be about the quantity claimed. It is proved by the deposition of Antonio Surice that the claimant pastured his cattle on the land prior to the year 1839, that in that year or 1840 he built a house on it & went to live there with his family, & has continued to reside there ever since. He also proves the genuineness of the original grant to the claimant, which is in evidence.

The evidence is clearly sufficient to entitle the petitioner to a confirmation of his claim.

Filed in Office Feby 14 1854  
Geo. Fisher  
Secy.

Case No 78.

Decree of Fulgencio Niguero.  
Confirmation of The United States vs Agua Caliente

In this case of hearing the proofs & allegations, it is adjudged by the Commission that the claim is valid, & it is therefore decreed that the same be confirmed. The land of which confirmation is made, is situated in the County of Santa Clara & is known by the name of Agua Caliente, being the same which has been held & occupied by the claimant from the year 1839 to the present time. It is bounded on the South by a creek which separates it from the lands of

Jose Niquero, on the North by the Cañada del Ulla,  
on the West by the bay, & on the East by the low hills  
at or near the foot of the Sierra. Reference for a  
more particular description to be had to the original  
grant & to the map contained in the Expediente, a  
certified copy of which, with the grant aforesaid  
are filed with the papers in the case.

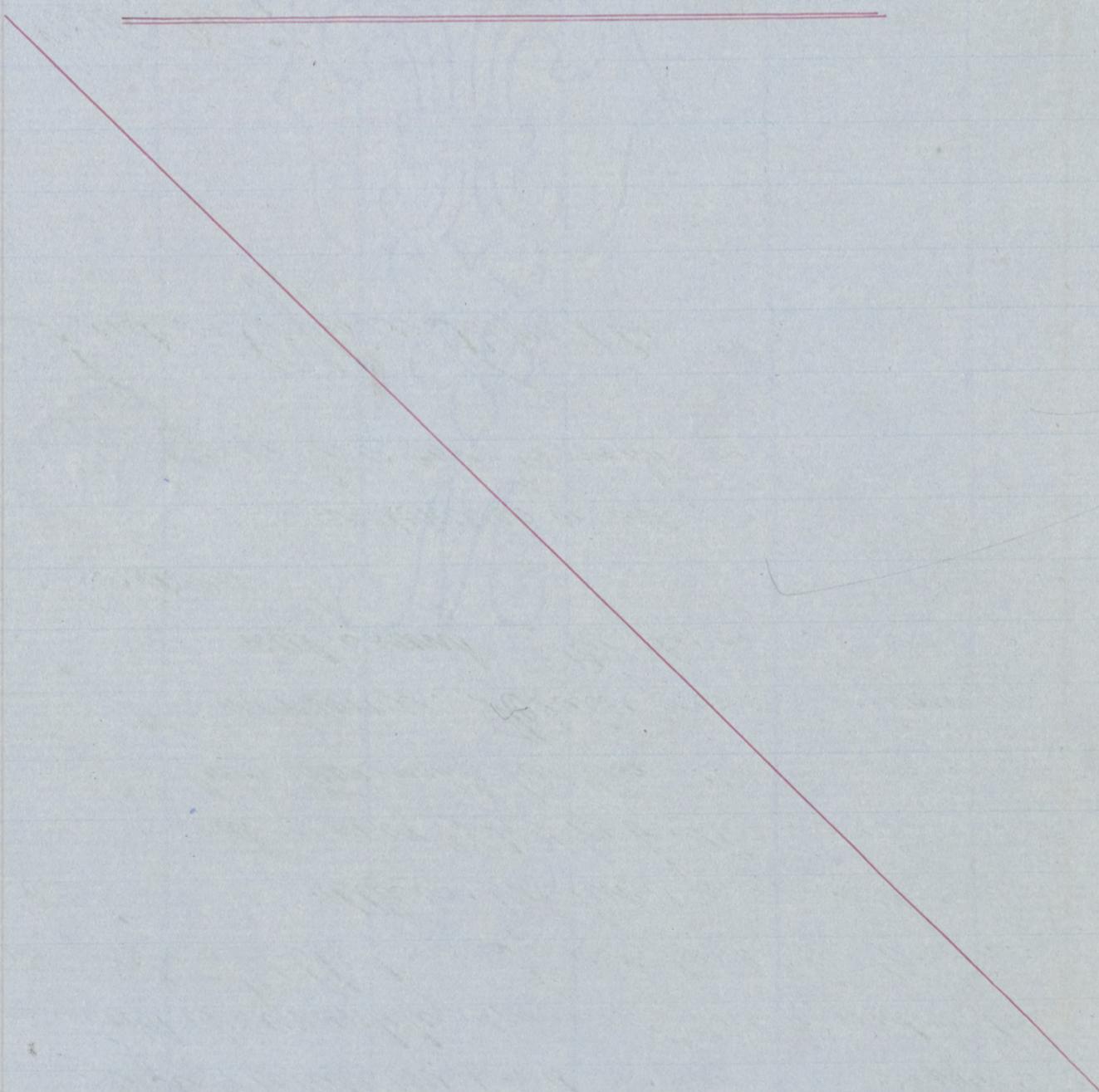
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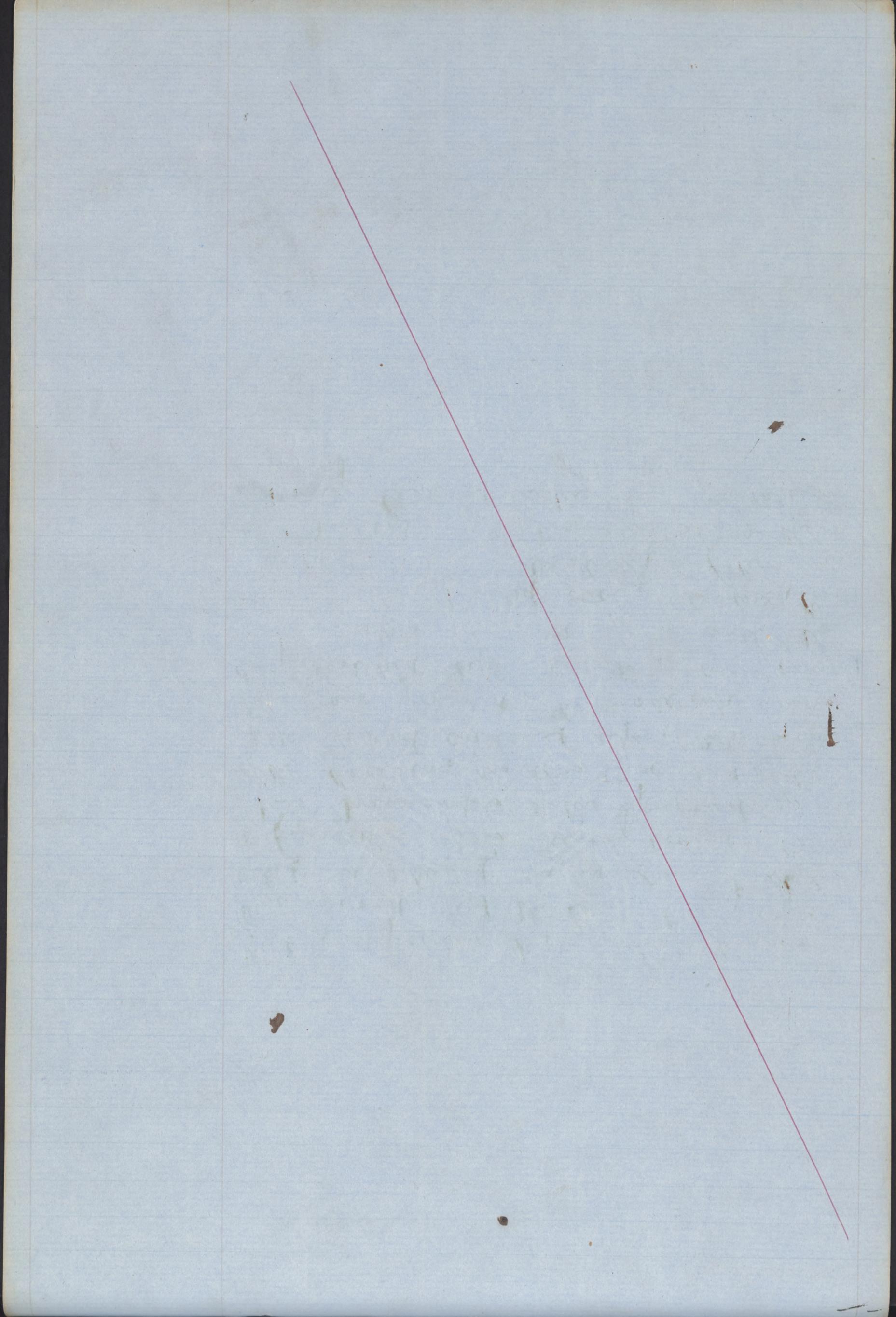
Alfonso Felix.  
Thompson Campbell.  
W. Aug. Thompson. } Commissioners.

Filed in Office Feby 14 '1854.

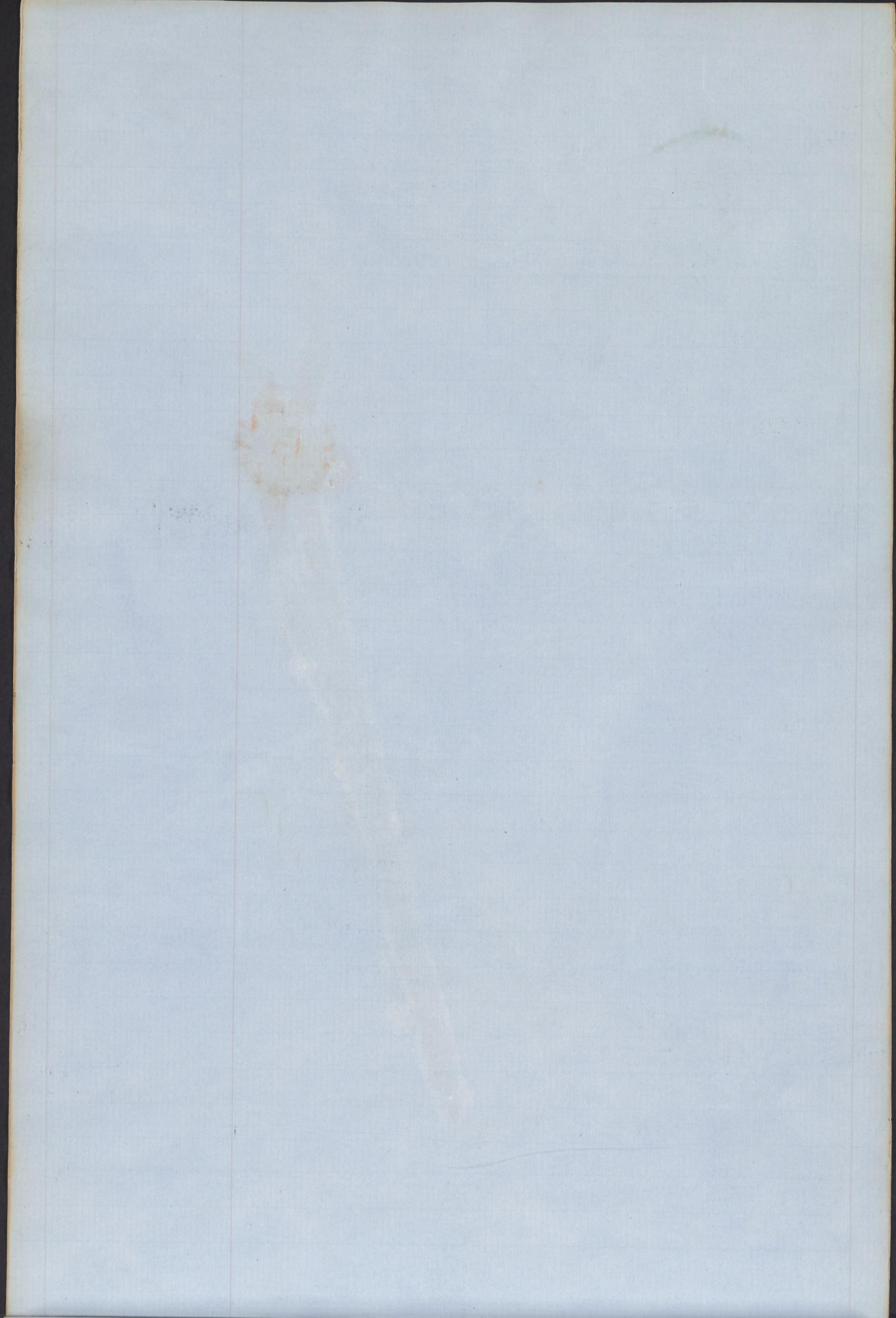
Geo. Fisher.  
Secy

4286 = 42 1/2 fol





And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California it is hereby ordered that two transcripts of the proceedings and of the decision in this case and of the papers and evidence upon which the same are founded, be made out and duly certified by the Secretary, one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States.



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

I, *George Fisher*, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing *thirty three* pages, numbered from 1 to *33*, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. *78* on the Docket of the said Board, wherein *Fulgencio Neguera* is

the Claimant against the United States, for the place known by the name of "*Agua Caliente*"



In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this *thirtieth* day of October A. D. 1854, and of the Independence of the United States of America the seventy-ninth.

*Geo. Fisher*  
*Geo. Fisher*

133 MD

U. S. DISTRICT COURT,  
*Northern* District of California.

No. *133-*

THE UNITED STATES,

vs.

*Fulgencia Yiguera*

TRANSCRIPT OF THE RECORD

FROM THE  
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *78*

Filed, *November 2* - 185 *4*

*Geo. A. ...*  
*Ch*

Office of the Attorney General of the United States,  
Washington, 17th January 1855.

Fulgencio Higuera  
vs.  
The United States. } 78.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September 1854 the appeal in the district court of the United States for the ~~Southern~~ district of California will be prosecuted by the United States.

Clatney

Attorney General.

No 133

U. S. District Court  
Southern District

The United States  
vs -  
Fulgencio Noyera

Notice of appeal

Filed Feb 21<sup>st</sup> 1855.

Wm. A. Moore.

Clerk

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U. S. District Court.

No. 133.

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The United States }  
vs. }  
Fulgencia Wiguera. }  
Appeal from  
the U. S. Land  
Commission

Sir,

Please take notice that you are  
required to file a petition in this case  
within five days from this notice.

Wm. Carey Jones,  
Atty.

S. W. Ingers, Esq.  
Dist. Atty.

U. S. Dist. Court.

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N<sup>o</sup> 133.

The U. States,

v.  
Fulgencio Figueroa.

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Notice to file Petition.

Filed June 19, 1855.

by Cheever  
Deputy

Service admitted.

19 June, 1855.

J. W. Page  
U. S. Dist. Atty

Per John Hooprey

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To the Honorable District Court  
of the United States in & for the  
Northern District of California.

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The United States  
Appellants  
vs  
Fulgencio Arqueia } No  
133.

The petition of the United States  
by their Attorney represents: that this  
Cause is an application for a review of  
the decision of the Board of Commissioners  
whereby the claim of the said Appellee  
was confirmed as appears by reference  
to the records in in the case.

That a transcript of the said Records  
was filed in this Court on the 1<sup>st</sup>  
day of May 1854; that a notice of  
appeal was filed on the 1<sup>st</sup> day of  
June 1854 and that the land claimed  
lies in the said District.

That the said claim is invalid.  
Wherefore appellants pray that the said  
decision of the Board be reversed &  
that this Court decree the said title  
to be invalid. Respectfully,

W. Russell  
Asst. U.S. Dist. Atty

No 133

U.S. Dist Court

The United States

vs

Fulgencio Figueroa

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Petition of U.S.  
No 133.

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Filed June 20, 1855,  
by Cheever  
Deputy

The United States  
vs appellant  
Julgencia Figueroa

In the U. S. District Court for the  
Northern District of California.  
On appeal from the Board of U.  
S. Land Commissioners.

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The answer of Julgencia Figueroa, by his attorney, to the petition herein filed by the U. S. District Attorney, admits that his claim to the tract of land named Agua Caliente was confirmed and declared valid by the Board of U. S. Land Commissioners, as is in said petition alleged, and, also that said land lies and is situated within the Northern District of California and within the jurisdiction of this Honorable Court; but he denies the other allegations in said petition contained.

Wherefore he respectfully prays that the petition of appeal herein filed on behalf of the United States be dismissed, and that the decision and decree of said Land Commissioners be affirmed by this Honorable Court. And he will so pray &c.

Julgencia Figueroa,  
by his attorney  
Wade & Howen

U. S. District Court  
No. 133

The United States, appellants

vs

Rulgenia Figueroa

Answer of defendant  
and appellee

Filed April 21. 1856.

Chancellor.

Deputy.

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Wade & Howen  
Attorneys

California Land Claims.

Attorney General's Office

17 October 1856.

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Sir:

In the case of the claim of Sub-  
gencio Hoiguera, confirmed to the claim-  
ant by the Commissioners, case no.  
seventy-eight, (78), appeal will not  
be prosecuted by the United States.

I am

Respectfully

Yours

Wm. Standing Esq

U. S. Attorney

San Francisco.

In the District Court of the United States,  
Northern District of California.

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The United States

vs

Fulgencio Niguera

Case - No. 133  
Transcript - No. 78.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that the appeal heretofore taken in this case from the decision of the United States Land Commission to ascertain and settle private land claims in California be dismissed, and the notice of intention to prosecute said appeal filed in this Court by the Attorney General of the United States be withdrawn, and that the claimant have leave to proceed under the decree of the said Land Commission in his favor, as under final decree.

Nov 24. 1856.

Wm Blandy  
Dist Atty  
Wade & Flower  
Atty for Claimant

No. 133,  
United States  
District Court

The United States  
vs  
Fulgencio Niguera

Case — No. 133  
Transcript — No. 78

Stipulation.

Filed Nov: 24, 1856,  
by W. H. Chew, Jr.  
Deputy

At a *stated* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court Room* in the City of SAN FRANCISCO, on *Monday* the *24th* day of *November* in the year of our Lord one thousand eight hundred and fifty-*six*.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States  
vs  
Fulgencio Higuera

Case No. 133.

Transcript No. 78

The Attorney General of the United States having given notice that no appeal will be further prosecuted in this case, and a stipulation having been entered into by the United States District Attorney for the dismissal of the appeal from the decision of the Board of United States Land Commission heretofore rendered in his favor, on motion of the District Attorney, it is ordered, adjudged and decreed, that the appeal pending in this Court be dismissed, and that the claimant have leave to proceed under the decree of the Land Commission heretofore rendered in his favor, as a final decree.

Ogden Hoffman  
U. S. Dist Judge

No. 133.

United States District Court, Northern  
District of California.

The United States

vs.

Fulgencio Figueroa

Case — No. 133

Transcript — No. 78

order

Filed Nov: 24. 1856,

J. A. Monroe,  
CLERK.

J. M. H. Chivers  
DEPUTY.

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The United States,  
appellant  
vs  
Fulgencia Higuera,  
Respondent

In the United States  
District Court for the  
Northern District of  
California.  
On appeal from the  
Board of the U. S. Land  
Commissioners.

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July 27<sup>th</sup> 1852 - Fulgencia Higuera (Claimant) files his petition for the rancho "Agua Caliente", containing two Sitios de Ganada mayor (two leagues) in <sup>the</sup> Santa Clara County, p. 3 of transcript, - and also files his Cyfediente, which shows (p. of transcript), that:

1<sup>o</sup> October 13<sup>th</sup> 1836, Nicholas Gutierrez, Political Chief, ad interim of the Governmental Department of the Californias, made a grant to Antonio Sunol of two leagues, exhibited by a design (or map) accompanying the proceedings (p. 24, 25, 26 of transcript);

2<sup>o</sup> That (p. 21, 22) Fulgencia Higuera, on the 24<sup>th</sup> November 1837, petitioned Juan B. Alvarado, Governor &c, for the same lands, & referred to the previous grant to Sunol, and Alvarado transmits the petition to A. Sunol "that he may state what he deems to the purpose upon the present petition";

That, Dec 21, 1837, Sunol endorses & approves the cession to Higuera, provided the latter pays damages &c (p. 22.);

That, Dec 27, 1837, Alvarado directs that both parties may make their contract before Alcalde &c (p. 22.);

That, January 7<sup>th</sup> 1838, Sunol executes the cession of all his right on this title to Fulgencia Higuera. (p. 26.);

That, on same day, Higuera petitioned Alvarado, representing his contract the execution of his contract with Sunol for Agua Caliente, complaining of Alcalde for preventing his working the land &c, & asking for order &c (p. 22, 23.);

That, March 24, 1838, Alvarado made an order against the Alcalde's disturbing claimants' quick possession, & directing him to proceed to Secretary's office &c (p. 23) ;

3<sup>o</sup> That April 4<sup>th</sup> 1839, Juan B. Alvarado, Governor &c, by decree, referring to <sup>Higuera's petition, &c</sup> concession by Junot, Higuera's compliance with the laws and regulations, grants the afore mentioned lands to Higuera, subject to the approval of the Departmental Assembly, & with the usual conditions of improvement, cultivation &c. - Grant also countersigned by Manuel Arce Secy of State - (p. 23, 24, 28, 29) ;

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4<sup>o</sup> That, May 19<sup>th</sup> 1840, the Departmental Board, to whom it was submitted for approval, referred it to the Committee (p. 24) ;

5<sup>o</sup> That May 21<sup>st</sup> 1840, the Committee reported their approval of the concession of the place called Agua Caliente in favor of Higuera; and on the 22<sup>nd</sup>, the Departmental Board adopted said report & so approved the grant (p. 26, 27)

6<sup>o</sup> And that, June 13<sup>th</sup> 1840, Alvarado, Gov of Cal., in view of the approval by the Departmental Assembly &c, made a decree, confirming the grant of Agua Caliente to Higuera &c (p. 24.)

## Testimony

Execution of Grant - Deposition of A. Sunol (p. 546), who proves the genuineness of the signatures.

Boundaries & Extent - Depositions of A. Sunol (p. 545) and W. W. Meeks (p. 445); also plan or "design" forming part of the Expediente (p. ) ; and Grant (p. ) referring to said design for explanation of the extent and limits -

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Occupation & Improvement - Deposition of Sunol (p. 546) & Meeks (p. 445), which show that claimant took possession in 1839 or 1840, if not before, built houses, cultivated and has occupied it ever since with his family, enjoying quiet & undisputed possession -

U. S. District Court

(No 133)

The United States, Appellants

vs

Julguicia Figueroa,  
Appellee.



Brief for appellee.

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Wadett Flower  
Of Counsel.

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

San Francisco,

1854

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John A. Monroe, Esq.

Clerk of the U. S. District Court for the  
Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 78 on the Docket of the said Board, wherein Fulgencio Niguera is —

the Claimant against the United States, for the place known by the name of "Agua Caliente," —

and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

Geo. Fisher.

