

CASE No.

66

SOUTHERN DISTRICT

---

OTAY GRANT

---

MAGDALENA ESTUDILLO

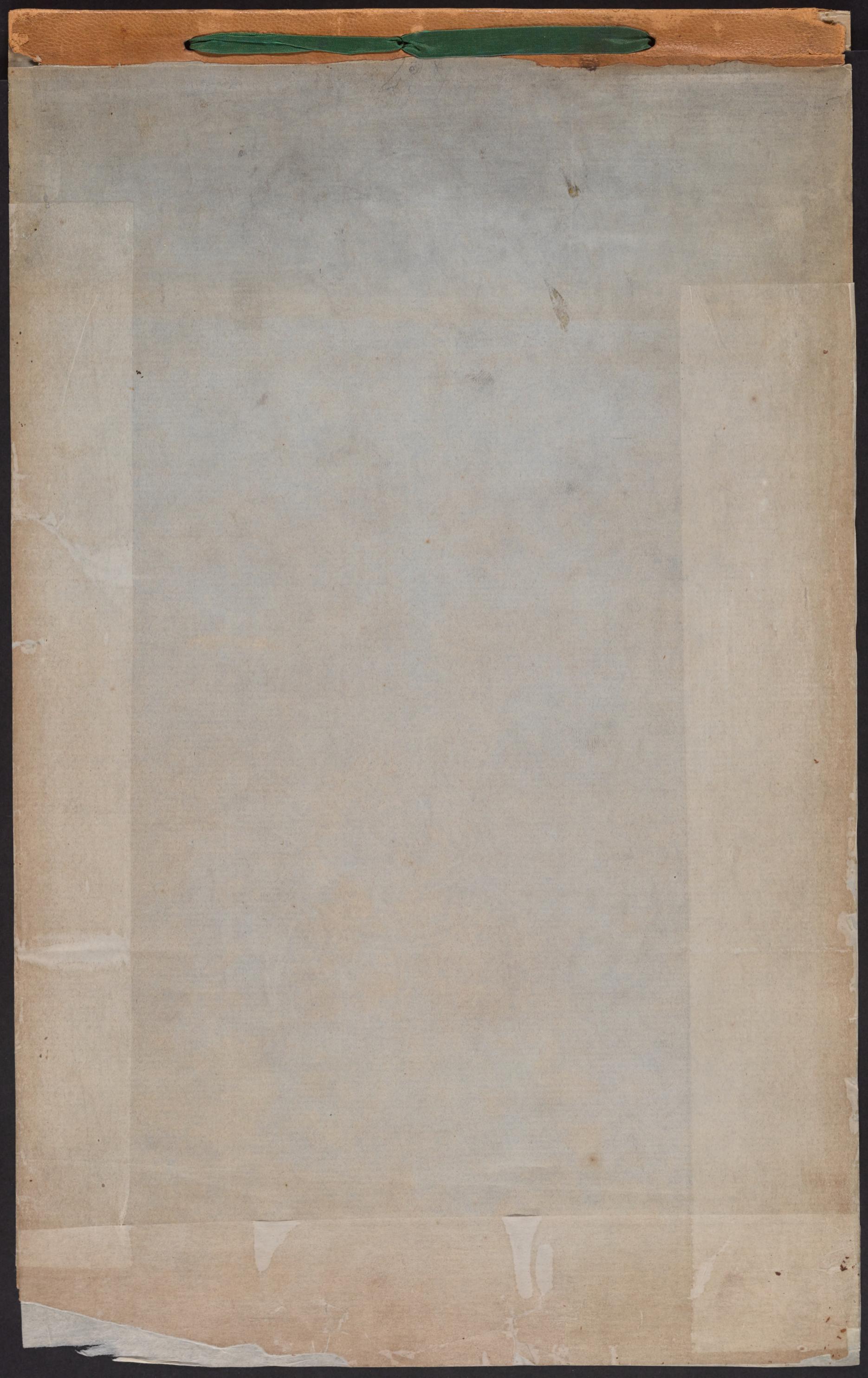
CLAIMANT

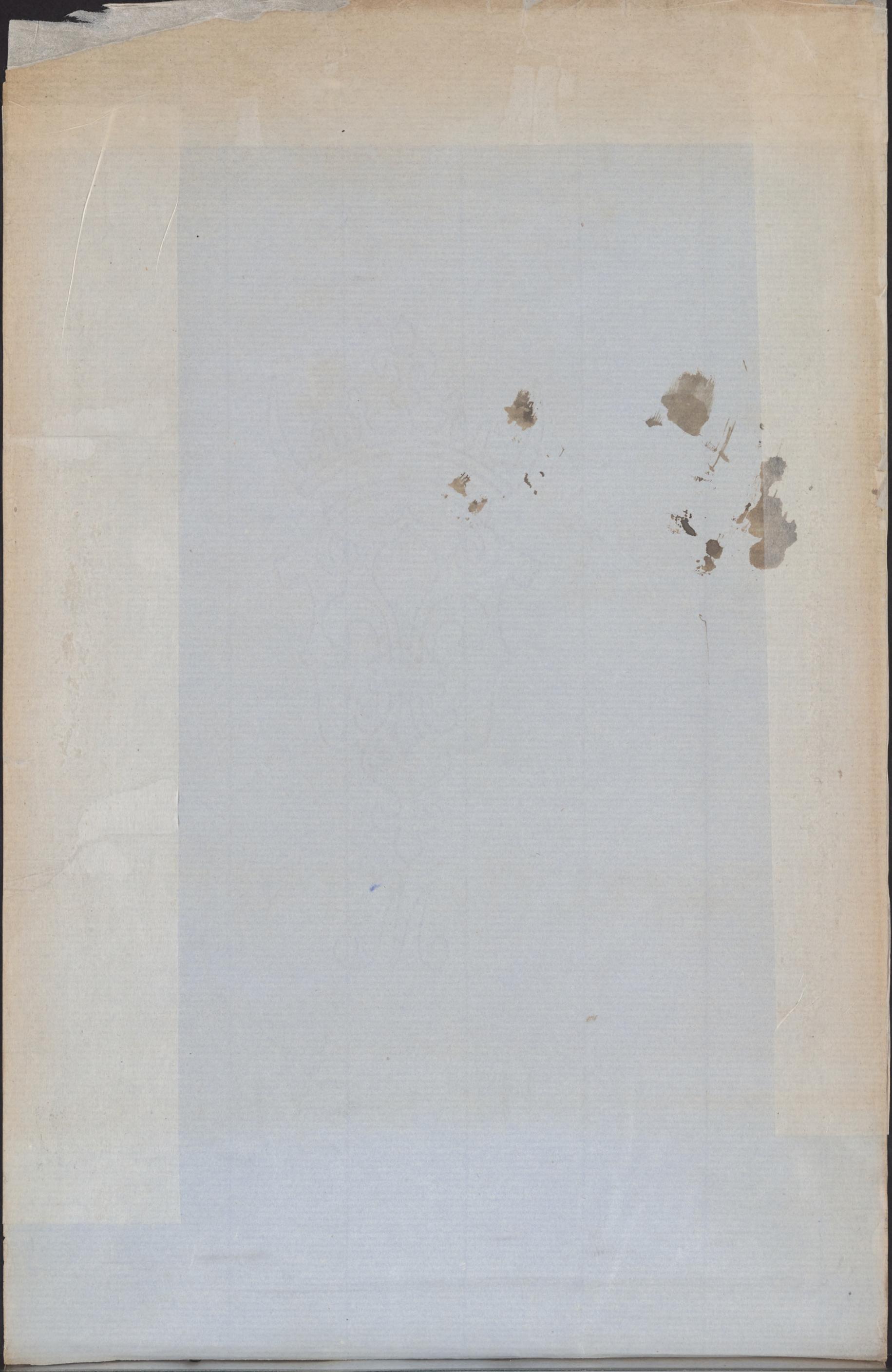
LAND CASE 66 SD pgs. 45

FEB 17 1963

10-2-V  
SPECIAL COLLOID PAPER  
BROOKER BOND

*Handwritten signature*





# TRANSCRIPT

OF THE

# PROCEEDINGS

IN CASE

NO. 437

*Magdalena Estudillo*

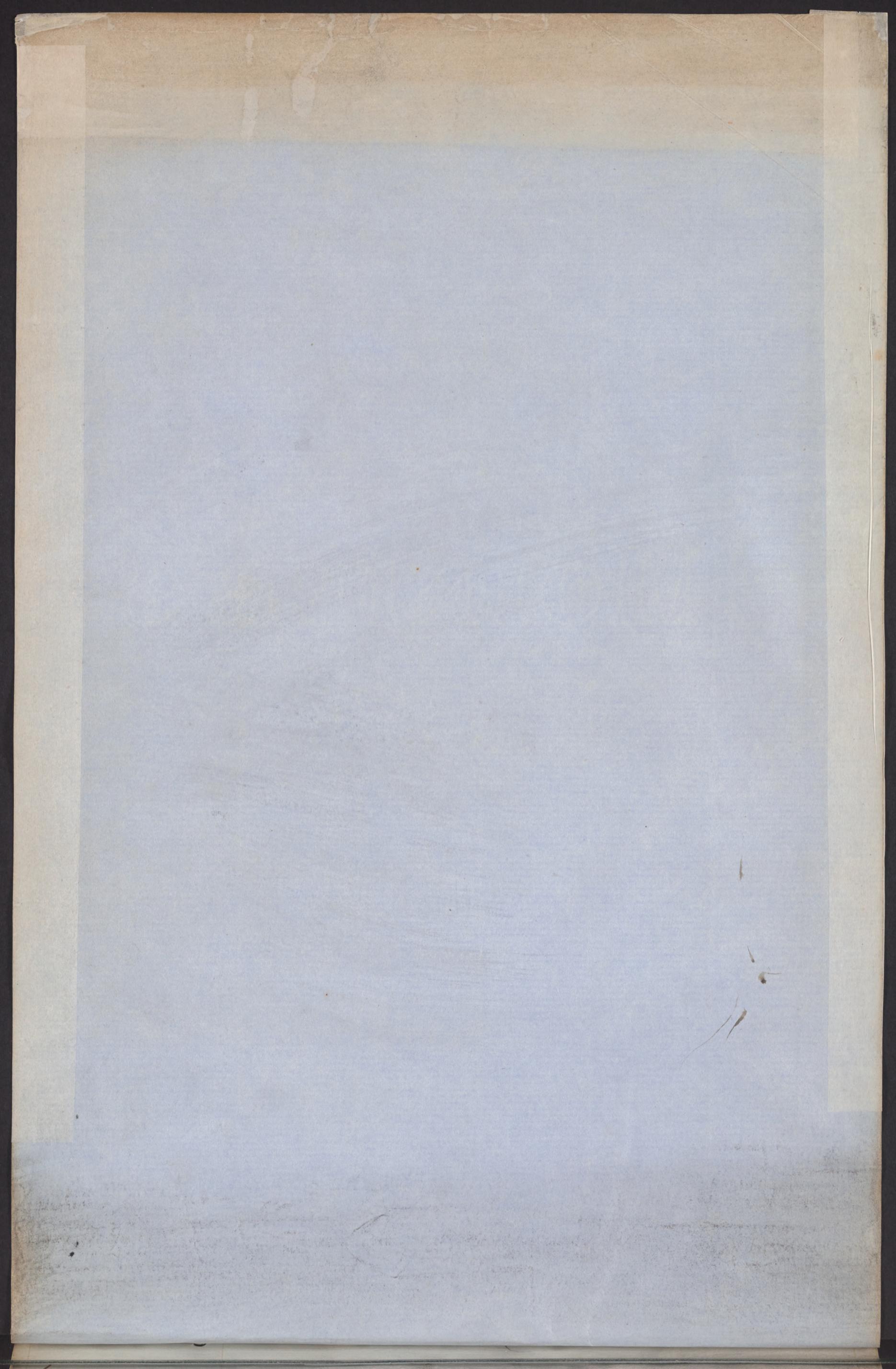
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

*"Tay."*



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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PAGE 2

Be it Remembered, that on this *first day of November*, 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 *Magdalena Estudilla* for the Place named *Olay* was presented, and ordered to be filed and docketed with No. *437* 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;

*Los Angeles November 5<sup>th</sup> 1852.*  
In case no. *437* Magdalena Estudilla for the place named "Olay", the deposition of Abel Stearns, a witness in behalf of the claimant, taken before Commissioner Helena Wall with documents marked N. N. Nos 1 & 2 and translations thereof marked B. & D. Auncenal thereto, was filed;  
(vide page of this Transcript)

*San Francisco Aug. 17<sup>th</sup> 1853*  
Case no. *437* (Magdalena Estudilla for the place named "Olay") called; The Counsel for the claimant read the evidence; Argued, submitted and taken under advisement;

San Francisco Nov. 4<sup>th</sup> 1853.  
In the same case Commissioner Alpheus  
Fitch delivered the opinion of the Board  
concerning the claim.  
(See page of this Transcript.)

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PAGE 3

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To the Honble the Board of U S Land Commis  
sioners appointed to settle private land  
claims in California

Petition

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The petition of Donna Magdalena Estudillo  
respectfully shews that  
That here tofore to wit about the 4<sup>th</sup> day of  
may ad 1846 Don Pico then Governor of Cal  
ifornia in the name of the Mexican Nation  
by virtue of the Laws of 18<sup>th</sup> August 1824  
& Regulations of No 21 1828 the various Laws  
of Mexico in force at that time the customs  
& usages of the country affecting grants of  
land in California granted in full  
property unto your petitioner the tract of land  
known by the name of Olay in the several  
county of San Diego bounded by la Truja  
the highway that goes from the table  
land to the Rancho of the Nation by the  
mountain range & the born dunes of  
La tra Juana & by the same table lands  
containing two square leagues of land  
(sitio de ganado mayor) as described in  
the papers & maps relating to said grant  
of land. That so soon as copies of the re  
cord of this grant in the Archives in cus  
tody of the Surveyor General for California  
can be procured your petitioner & please  
to file the same as part of this petition And  
your petitioner further shews that on or about  
the fifteenth day of June 1846 said grant  
was approved by the Departmental As  
sembly of California as appears by an  
original paper a copy of which is herewith  
filed as part of this petition the original  
being in the hands of your petitioner  
ready to be produced & proved & your petitioner  
further shews that she received a previous  
grant of the same tract of land as early  
as the year 1829 this present title being given

300

in ratification & confirmation of said previous title. Your petitioner has been in peaceable and quiet occupation of said land up to the present time a period of over twenty three years unquestioned & undisturbed occupation of said lands, there are no conflicting claims to said lands known to your petitioner & the same have not been surveyed by the U S Surveyor General for California and the evidence upon which your petitioner relies in this case consists of the records of this grant papers & maps in the archives in custody of the U S Surveyor General for California original papers & maps in possession of your petitioner relating to said tract of land & the testimony of witnesses to be produced before your Honor Board Respectfully submitted for such action as the justice & nature of the claim may require

E. O. Crosby  
Attorney for Claimant

265

Filed in office Nov 1<sup>st</sup> 1852  
S. Fisher  
Clerk

5

Los Angeles Nov 5<sup>th</sup> 1832

Deposition

On this day before Court Hall came  
Abel Stearns a witness in behalf of the  
Claimant Maydalena Estudillo petition  
No 437 & was duly sworn his evidence  
being given in English

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The U S Associate Land Agent was present

In answer to questions by counsel for the  
Claimant the witness testified as follows

My name is Abel Stearns my age is fifty  
four & I reside at Los Angeles I have  
lived in California over twenty three years

I am acquainted with the handwriting  
& signatures of Pio Pico & Jose Moreno  
Moreno

A paper is now shown me purporting  
to be a grant to Maydalena Estudillo  
of a tract of land called Otoy dated  
May 4. 1846 The signatures of said Pico  
& Moreno appearing on said paper I believe  
to be genuine It is here to annexed  
& marked H H No 1

A paper is also shown me purporting to  
be a certificate of the approval of the  
Departmental Assembly dated 15 June  
1846 The signatures of said Pico & Moreno  
on said paper I believe to be genuine It  
is here to annexed & marked H H No 2

I know the land before mentioned It is  
situated about six leagues in an easterly  
direction from San Diego in the County  
of San Diego The grantee has occupied  
the land from about the years 1829 or 1830  
There was a house on the land occupied by

6  
servants & she had a stock of cattle & sheep  
there & lived there a part of the time & herself  
she has continued to occupy the land to the  
present time

In answer to questions by the Associate  
Land Agents. I think the Departmental  
assembly were in session at this place  
the 15<sup>th</sup> of June 1846 I think Gov Pico  
went away the 19<sup>th</sup> of June on his way to  
Montevideo but returned some time in July  
not having reached Montevideo by reason of  
its occupation by Commodore Sturges  
Abel Stearns

Sworn & Subscribed before me  
Richard Hall  
Clerk

Filed in Office Nov 5<sup>th</sup> 1832  
Geo Fisher  
Clerk

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7  
Sitio de Otay de D<sup>na</sup> Magdalena Estuadillo.

El ciudadano José María de Echandi, Teniente Coronel de Ingenieros, Comandante general, Inspector de la Alta California y Jefe Superior Político de ambas. Respecto a q. el Sitio de Otay aparece efectivamente vacío sin ocupacion alguna. Segun el informe q. con relacion a el me pasó el Comandante Militar del Departamento de S. Diego encargado tambien de lo Civil Capitan D. Pablo De La Portilla y señaladamente q. a poco mas ó menos efectua porvenirmente considerando q. por medio de tales ranchos se proporcionaria a los extranjeros la causacion de buenos rebos y semillas cuyo giro hace el comercio del pais, no apareciendo oposicion ó reclamo alguno de parte de ningun otro q. que sirva de título provisional a D<sup>na</sup> Magdalena Estuadillo a quien le conviene el paraje ó sitio denominado Otay comprendiendo este desde la cumbre ó cima de la Sierra en cuyo pie esta la posta llamada Finuja siguiendo la cumbre por la parte hasta una legua proximas, donde termina el corso ó Sierra que esta del lado del Precidio hasta al Yrualto del Genitil Francisco, a quien desde el arroyo por el lado opuesto a S<sup>to</sup>. Cerro se le demarcaran las suertes cuadradas de tierra de diezcientos varas de lado, cada una en q. se comprendan las pocas arboles frutales y pequeños labores q. tiene, siguiendo el arroyo del sitio de D<sup>na</sup> Magdalena desde la cañada incluíendo las cumbres y cañadita del lado del Precidio hasta el arroyo del pedregoso y se encuentra comenciendo a la lina Juan, de modo q. el total de su amplitud ó superficie no parece de legua y media cuadrada. Siendo ademas en caso que la ocupacion del mencionado Sitio sea provisional hasta la aprobacion del Sup<sup>r</sup> Gob<sup>no</sup> y salvar las disposiciones del reglamento que se formare para prevenir las caudalosas y obligaciones a que se sujete el reparto de tierras, obligandose desde luego por su parte al pago de derechos y a las reglamentos de probia para las rancharias o q. en adelante se otieren. Dicho de S<sup>to</sup> Diego D<sup>to</sup> de Manzo de 1829. = José María de Echandi.

Queda tomada razon de este título provisional a fol. 73 de el Guadernio de registros de S<sup>to</sup>. Pedro

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pendiente

6.

7.

8.

8  
y de reales respecto que existe en la Secretaría de mi  
cargo. Indigo 18 de Mayo de 1839. x

Agustín V. Zamorano.

Es copia.

Zamorano.

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

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10.  
I Samuel D. King, Surveyor General of the United States for the State of California and as such having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican Territory Department of Upper California, do hereby certify that the two inditing and percutio numbered pages of tracing paper numbered from one to two, and each of which is marked by my initials (S. D. K.) exhibit two accurate copies of certain documents now on file and forming part of the archives in this office. viz two pages from a book (unbound) of letters.

In testimony whereof I have hereunto signed my name officially and affixed by my private seal (not having a seal of office) at the City of San Francisco this 30. Day of October 1852.

Samuel D. King.  
Surveyor Genl Cal.

Piled in Office Aug. 8. - 1853.

Geo. Fisher  
Secy.

11 - folios.

SD

Sitio de Chaya Magdalena Estudillo

Translation  
Exhibit No 2

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The citizen Jose Termino de Echandén Lieutenant  
 enant Colonel of Engineers Comandante  
 General Inspector of Alta California and  
 Superior Political Chief of both Californias  
 Respecting the sitio de Chaya it appears to be effe-  
 ctually vacant without any occupation accord-  
 ing to the report which relative thereto the  
 Honorable Comandante of the Department of  
 Diego sent me recommended by the Civic Cap-  
 tain Don Pablo de la Torre and the assignment which  
 a little more or less he executed subsequently  
 considering that by means of such ranchos  
 there will be offered to the foreigners an  
 attraction for hides and skins the Exch-  
 ange of which constitutes the support of  
 the country, there not appearing any oppo-  
 sition or declination by any party I issue  
 this that it may serve as a provisional  
 title deed to Don Magdalena Estudillo to whom  
 I grant the location or sitio denominated Chaya  
 this being comprised from the top or serras  
 of the highland at the foot of which is the stop-  
 ping place called Termino following the Canada  
 along the coast to a league a little more where  
 terminates the rock or highland which  
 is from the side of the presidio in front of  
 the heathen Francisco to whom from the  
 creek along the opposite side to said  
 Rock hill is marked out two square lots  
 of land of 200 varas on each side in which  
 are comprised the few fruit trees and  
 little trees banding he has regulating the  
 breadth of the sitio of Don Magdalena  
 from the Canada inclusive of the tops  
 & Canaditas (small valleys) from the side  
 of the presidio to the strong creek which is  
 found passing to the Arroyo San Joaquin so that the  
 total of its circuit on superficies do not pass a

leagues and a half being made known that  
the occupation of the said sites shall be provision-  
al until the approbation of the Superior Govern-  
ment & signing the dispositions of the reg-  
ulations that shall be established to pre-  
scribe the conditions & obligations to which  
the distributions of lands may be subjected  
obliging her from hence of course to the  
payment of tithes & to the regulations of police  
given for the Ranchos or those to be given  
in future

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PAGE 11

Presente de S. Diego 24<sup>th</sup> March  
1829 Jose Yumia Echeuntin. This provis-  
ional title deed has been entered on folio  
73 in the Memorial book of the register  
of sites & ranchos respectively which exists in  
the Secretarys office in my charge San  
Diego 28<sup>th</sup> March 1829  
Agustin W. Lamorano

the copy  
Lamorano

125

Filed in office August 8<sup>th</sup> 1833  
George Fisher  
Deputy

case 21  
M. J. J. J.

Pro Pro Gobernador Constitucional del Departamento de California.

Por cuanto D<sup>a</sup> Magdalena Estivillo a pretendido p<sup>a</sup> su beneficio personal y el de su familia el terreno conocido con el nombre de Otay colindante con la Linaja, con el camino real y pasa a la uera al rancho de la nacion con la terrana y linderos de la fin - Juana por la misma m<sup>a</sup> mere; cuyo terreno a precedido p<sup>a</sup> su titulo q<sup>ue</sup> le fue librado No. 1 annua. p<sup>a</sup> el Jefe Politico D<sup>o</sup> Jose Maria de Schemundia desole el año de mil ochocientos veinte y nueve y que ahora solamente se of Abel Starns revalida agua, practicando previamente las diligencias y averiguaciones convenientes segun lo dispuesto, de conformidad con la ley de 18 de agosto de 1826 y reglamento de 21 de noviembre de 1828, he venido en uso de las facultades que me son conferidas a nombre de la nacion Mexicana al hacer esta revalidacion en concederle el expresado terreno declarandole la propiedad de el p<sup>a</sup> las presentes letras a reserva de la aprobacion de la misma Asamblea Departamental y bajo las condiciones siguientes: 1<sup>a</sup> Pedro Serecarlo sin perjudicar las transas caminos y servidumbres, lo disputara libre y escluido a este destino lo al uso o cultivo q<sup>ue</sup> mas le convenga.

2<sup>a</sup> Se sujetara a la precision q<sup>ue</sup> ya con anterioridad tiene clara reconocido p<sup>a</sup> linderos y señalamiento de lugares que se le hizo p<sup>a</sup> la autoridad q<sup>ue</sup> estubo facultada.

3<sup>a</sup> El terreno que se menciona y de q<sup>ue</sup> se ratifica su Donacion en favor de la interesada expresando ante la extension de las Sitias de Guadalupe en cuyos limites p<sup>a</sup> otra las majoneras necesarias.

En consecuencia mandado que tomase el presente titulo p<sup>a</sup> firme y valido se tome ragon de el en el libro respectivo y se entregue a la interesada p<sup>a</sup> su serguarado y demas fines. Dado en la ciudad de los Angeles en este papel comun por absoluta falta del Sello, a cuatro de Mayo de mil ochocientos Cuarenta y Seis.

Pro Pro.

José Maria Moreno. Jefe Int<sup>o</sup>  
Queada firmada segun de este Superior Despacho

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Doc. H. N.

No. 1 annua.

to the Depo.

of Abel Starns

2

3

13

en el libro respectivo. Moreno.

Filed in office November 5<sup>th</sup> 1852.

J. W. Fisher. Secretary.

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PAGE 13

Vic Rici Constitutional Governor of the  
Department of California

Exhibit B  
Translation Grant

(L S)

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Whereas Dona Mary de la Estrella  
has claimed for her personal benefit &  
that of her family the tract known as the  
Otay bounded by La Triaja by the high  
way that goes from the table land to the  
Rancho of the Nation by the mountain  
range & by the border dunes of La Triaja  
(San Juan) & by the same table land  
which premises she has possessed under  
a just title which was delivered to her by  
the Chief Civil Magistrate Don Jose Ma  
de Echandia from the year one thousand  
and eight hundred & twenty nine which  
title is now only sanctioned over after  
taking over the proceedings & investigations  
in that behalf conformably with the  
law of 18 of August 1824 & regulation of 21  
of November 1828 I do now in the exercise  
of the powers conferred upon me in the name  
of the Mexican Nation make this sanction  
& grant to her the said tract declaring  
unto her the ownership thereof by the  
present letters under reservation of the  
approval of the Most Excellent the Depart  
mental Assembly & under the following  
conditions

1<sup>st</sup> She may enclose it without prejudicing  
the cross roads highroads & rights of way  
she shall enjoy it freely & exclusively devoting  
it to such use or cultivation as best may  
suit her

2<sup>d</sup> She shall limit herself to the possession  
which was for her given to her when con  
ceding for boundaries the spots then assign  
ed to her by the competent authority

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3<sup>d</sup> The terms in question whose grant is validated in favor of the party in interest consists merely of the extent of two ranges of land for neat cattle within whose limits the shall place the necessary land marks consequently I order that the present title being held as firm and valid be entered of record in the appropriate book and delivered to the party in interest for her protection & other purposes

Given at the city of Los Angeles on this common paper for absolute want of the Stampen on the fourth of may one thousand eight hundred & forty six

Pio Pico  
Jose Montias Moreno  
Secretary ad interim

This superior patent is entered of record in the appropriate book  
Moreno

120

Filed in office Nov<sup>r</sup> 1852  
Geo Fisher  
Clerk

2.  
15

Pro Dico Gobernador Constitucional del Departamento de las Californias.

La Exma Asamblea Departamental en sesion del dia 12 de Junio del presente tubo a bien votar lo siguiente

Docu. H. H. No. 42  
ann. 2  
to the Dep. of Abel Stearns

Se aprueba la revalidacion de la concesion hecha a favor de D<sup>a</sup> Magdalena Estudillo del pasaje conocido como Estay, Jurisdiccion de S<sup>ta</sup> Diego de las litijs de ganado mayor, segun titulo librado por el Superior Gobierno Departamental con fecha 14 de mayo del presente año en virtud conformidad con la ley de 11 de Agosto de 1824 y art. 5<sup>o</sup> del Reglamento de 21 de Noviembre de 1828.

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PAGE 16

Y para requerir de la parte de D<sup>a</sup> Magdalena Estudillo lo hago asi saber. Dado en la Ciudad de Los Angeles en este papel comun por falta de sellado a quince de Junio del año de mil ochocientos Cuarenta y Seis.

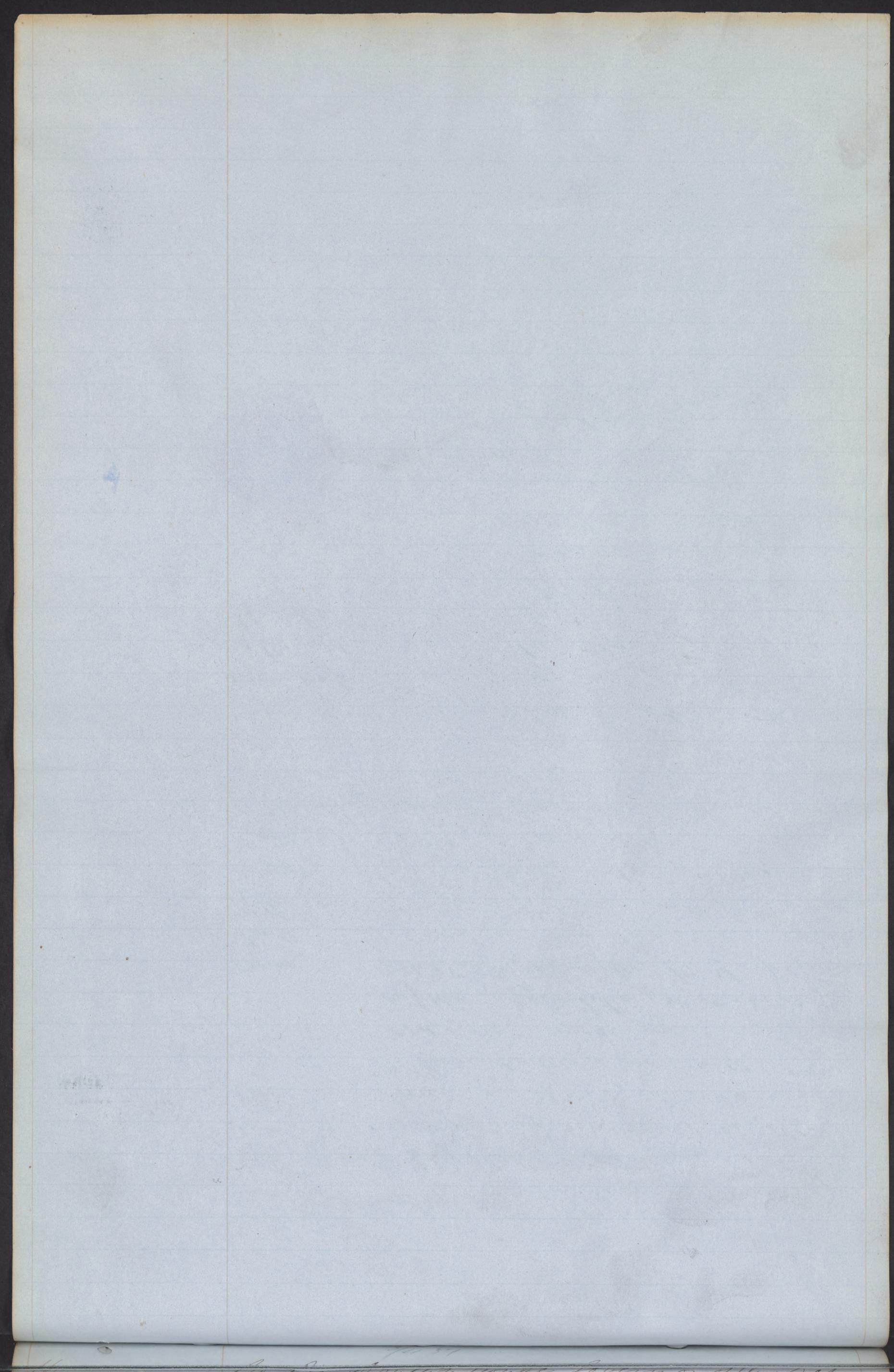
5.

Pro Dico.

Jose Martin Morera,  
Pro Dico.

Filed in Office November 5<sup>th</sup> 1852.

Geo. Fisher Secretary.



7431  
 Pio Pico Constitutional Government of the Dep  
 artment of the Californias

(L 9)

Exhibit D  
 Translation

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The most Excellent Departmen  
 tal Assembly in its session of the 12<sup>th</sup> of  
 June Instant saw fit to decree the following  
 The new sanction of the concession in  
 favor of Do<sup>a</sup> Magdalena Estudillo of the  
 tract called Otay in the jurisdiction of  
 San Diego of two ranges (sitios) for meat cattle  
 according to title granted by the Supreme  
 Departmental Government under date  
 of the 4<sup>th</sup> of May of the present year in entire  
 conformity with the law of 18<sup>th</sup> of August 1824  
 & art 5<sup>th</sup> of the Regulation of the 21 of November  
 1828 And for the protection of said Do<sup>a</sup> Mag  
 dalena Estudillo I make it so known

Given at the city of Los Angeles on this com  
 mon paper there being none stamped on the  
 fifteenth of June of the year one thousand and  
 eight hundred & forty six

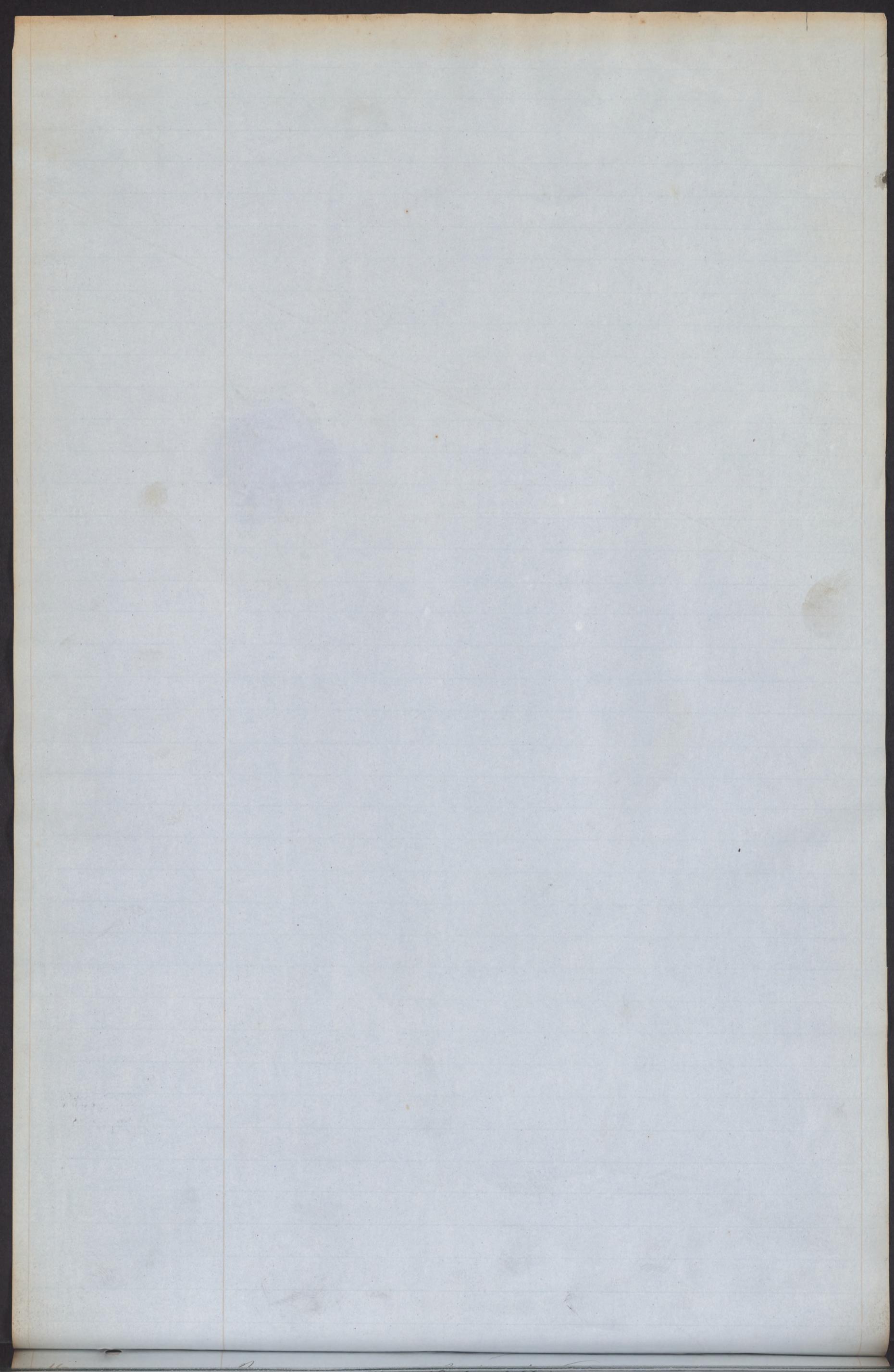
Pio Pico

Jose Maria Moreno  
 Secretary ad interim

175  
 Filed in office Nov 1852

Leo Fisher

Secy



17

Magdalena Estudillo }  
 As }  
 The United States } For the plan called  
 } (lay containing) two  
 } square leagues of land  
 } in the county of San Diego

Opinion

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The original grant of the land in question is filed in the case duly proved It is signed by Governor Pio Pico & his secretary & bears date May 4. 1846 A certificate of the approval of the grant by the Departmental Assembly on the 12<sup>th</sup> of June 1846 is also given in evidence

The grant by Pio Pico recites that the claimant has possessed the land by just title since 1829 by grant from Governor Echlan dia & that it is sanctioned over again in conformity with the colonization Law of 1824 & the Regulations of 1828 A traced copy from the Archives is also introduced exhibiting what purports to be a record of the grant of the premises to the claimant on the 24 March 1829 giving the occup any of the land but making the grant of title subject to the future approbation of the Superior Government

We think the proof filed in the case must be regarded as sufficient to entitle the claimant to retain the land under a confirmation of this commission. She was in possession long before the last grant was made & no judicial possession was required The premises are described in the grant by metes & bounds according to which she is entitled to confirmation

275

Filed in office Nov 4 1853  
 Geo Fisher Secy

Decree

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Margdalena Estudillo  
vs  
The United States

In this case on hearing the proofs & allegations it is adjudged by the Commission that the said claim of the petitioner is invalid & it is therefore hereby decreed that the same be confirmed to her. The land hereby confirmed is that known by the name of Olay is situated in San Diego County & is occupied by the claimant bounded by La Tijera by the high way that goes from the table land to the Rancho of the Nation by the Mountain Range & the born domis of La tra Maana and by the same table land containing two square leagues of land more or less reference for further description of said premises to be had to the original grant of the same by Governor Pio Pico & the traced copy of agrants by Jose Maria de Escheandea both of which are filed in this case

Alpheus Felch  
Thompson Campbell  
R Aug Thompson  
Clerk

Filed in office Nov 24th 1853  
George Fisher  
Suy

110

23 Tolson

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 *Eighteen* pages, numbered from 1 to 18, 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. 437 on the Docket of the said Board, wherein *Magdalena Estudillo* is

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



In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 185\_\_\_\_, and of the Independence of the United States of America the seventy-*ninth*.

*Geo. Fisher*  
*[Signature]*

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

No. 66. *Booklet*

THE UNITED STATES,

vs.

*Magdalena Estudillo*  
*"Oray."*

**TRANSCRIPT OF THE RECORD**

FROM THE  
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *437*

Filed, *August 30<sup>th</sup> 1854*

*W. H. Carter*  
*Clk*

**66**

*Ms. 1037*



66.

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Office of the Attorney General of the United States,

Washington, 26th October 1854.

Magdalena Estudillo

vs.

The United States.

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 26th day of July 1854 the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

*Oliver*

Attorney General.

437 s

No 66  
W. S. District Court.  
Southern District of California.

No 66.  
Magdalena Estudillo  
Appn.

ads

The United States, Applt.

No 437.

Notice of Appeal.  
Filed Dec 5th 1854

J. S. Janes  
clk.

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In the District Court of the United States for  
the Southern District of California.  
Los Angeles County.

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Magdalena Estudillo }  
                  ade,         } N<sup>o</sup> 437.  
The United States     }

To the Honorable Isaac S. K. Ogier Judge of the  
District Court of the United States for the South-  
ern District of California

The petition of Pacificus Ord (of Monterey County)  
Attorney of the United States for the Southern  
District of California, who petitions in this behalf  
for the United States, and being present here in  
court in his proper person, in the name and behalf  
of the United States, represents as follows.

That heretofore, to wit, on or about the 1<sup>st</sup> day of  
November AD 1832, Magdalena Estudillo pre-  
sented a petition to the Commissioners to ascertain  
and settle the private land claims in the State  
of California, claiming the tract of land called  
Otay, containing about two square leagues, in  
the present County of San Diego, in the words  
and figures following, to wit. The petition of  
"Dona Magdalena Estudillo respectfully sheweth  
"That heretofore, to wit about the 4<sup>th</sup> day of May  
"AD 1846 Pio Pico then Governor of California

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"in the name of the Mexican Nation by virtue of  
 "the laws of 18<sup>th</sup> August 1824 and regulations  
 "of Nov 21 1828 the various laws of Mexico  
 "in force at that time the customs and usages  
 "of the Country affecting grants of land in  
 "California granted in full property unto your  
 "petitioner the tract of land known by the name  
 "of Otay in the present County of San Diego  
 "bounded by La Tinja the highway that goes  
 "from the table land to the Rancho of the Nation  
 "by the Mountain range and the boundaries  
 "of La tia Juana and by the same table lands  
 "Containing two square leagues of land (sitios  
 "de ganada Mayor) as described in the papers and  
 "maps relating to said grant of land. That so  
 "soon as Copies of the record of this grant in the  
 "Archives in custody of the Surveyor General for  
 "California can be procured your petitioner prays  
 "leave to file the same as part of this petition And  
 "your petitioner further shows that on or about  
 "the fifteenth day of June 1846 said grant was  
 "approved by the Departmental Assembly of  
 "California as appears by an original paper a  
 "copy of which is herewith filed as part of this  
 "petition the original being in the hands of your  
 "petitioner ready to be produced and proved  
 "and your petitioner further shows that she received  
 "a previous grant of the same tract of land as"

early as the year 1829 this present title being given  
in satisfaction and confirmation of said previous title  
your petitioner has been in peaceable and quiet occu-  
pation of said land up to the present time a period  
of over twenty three years unquestioned and undisturbed  
occupation of said lands. There are no conflicting  
claims to said lands known to your petitioner and  
the same have not been surveyed by the U.S. Surveyor  
General for California. The evidence upon which  
your petitioner relies in this case consists of the  
records of this grant papers and maps in the archives  
in custody of the U.S. Surveyor General for Califor-  
nia original papers and maps in possession of your  
petitioner relating to said tract of land and the  
testimony of witnesses to be produced before your  
Honor Board. Respectfully submitted for such ac-  
tion as the Justice and nature of the claim may  
require."

Your petitioner further represents that thereafter,  
to wit, on the 4<sup>th</sup> day of November AD 1853, the said  
Commissioners confirmed by final decree the said  
claim of the said Magdalena Estudillo in the  
words and figures following, to wit: "Magdalena  
Estudillo vs The United States. In this case  
on hearing the proofs, and allegations it is ad-  
judged by the Commission that the said claim  
of the petitioner is valid and it is therefore  
hereby decreed that the same be confirmed to

"her. The land hereby confirmed is that known  
 "by the name of Otay is situated in San Diego  
 "County and is occupied by the claimant bounded  
 "by Ca. Finaja by the high way that goes from  
 "the table land to the Rancho of the Nation by  
 "the Mountain range and the boundaries of La  
 "tia Juana and by the same table land con-  
 "taining two square leagues of land more or  
 "less reference for further description of said  
 "premises to be had to the original grant of the  
 "same by Governor Pio Pico and the traced copy  
 "of a grant by Jose Maria de Echeandea both  
 "of which are filed in this case."

66 SD  
 PAGE 26

"Alpheus Fitch  
 "Thompson Campbell } Comr.  
 "R Aug Thompson" }

"Filed in Office Nov 4<sup>th</sup> 1853. George Fisher Secy"  
 "That thereafter; to wit, on the 30<sup>th</sup> day of August AD  
 1854, a duly certified transcript of the said decree  
 and proceedings, and the papers and evidence on  
 which it was founded in said cause, was filed in  
 the Office of the clerk of the District Court of the  
 United States for the Southern District of California,  
 and marked N<sup>o</sup> 437, reference to which it is prayed  
 may be had and made a part of this petition.

"That on the 26<sup>th</sup> day of July. AD 1854 the Hon  
 orable Caleb Cushing Attorney General of the  
 United States received a duly certified duplicate

of said transcript of said final decree and proceedings of said Commissioners in said cause (No. 437) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 5<sup>th</sup> day of December AD 1854, the said Attorney General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said District Court for the Southern District of California, that the Appeal in said cause of Magdalena Estudillo vs the United States from the decision of the said Commissioners to ascertain and settle the private land claims in the State of California, in the District Court of the United States for the Southern District of California would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid, is within the Jurisdiction of this Honorable Court

And your petitioner further represents and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause now on Appeal from said Commissioners to this Honorable Court.

And your petitioner further represents that the said claim is invalid, and the said decree erroneous

on the following grounds.

1. That the said Magdalena Estuñillo shows no valid title to the said land claimed by her as aforesaid. And it is denied that she has any.

66 SD  
PAGE 28

2. That the said alleged grant of Governor Pio Pico was made in violation of the 4<sup>th</sup> Article of the Colonization law of Mexico of the 18<sup>th</sup> of August AD 1824, in this, that the land granted, as alleged by claimant, was and is within ten leagues of the Sea Coast. And there is no evidence by claimant, that the Supreme general Executive power of Mexico previously approved of the Colonization of the lands of California, within ten leagues of the sea Coast. And it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

3. That at the date of the said alleged grant the said land claimed as aforesaid, was occupied by, and in the possession of the Misiones of California; and particularly by the Mission of San Diego, and could not therefore be colonized.

4. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the law of Mexico of the 18<sup>th</sup> of August AD 1824, and the regulations for the Colonization of the Territories of Mexico of the 21<sup>st</sup> of November AD 1828.

5. That the claimant shows no provisional grant

of the land claimed, which she alleges she received as early as the year 1829. And it is denied that she ever received such provisional grant for said land as alleged.

66 SD  
PAGE 29

6. That the alleged grant of the said land by Governor Pio Pico of the date of the 4<sup>th</sup> of May AD 1846, is not upon stamped paper. That it is not made in exact conformity with the provisions of the law. That it has not the condition requiring the grantee to build a house on the land within a proportionate time, and that it should be occupied. That it contains no definite and certain description of the land. That it refers to no maps to aid the description. That no original map of the land is shown by the claimant. And that the said grant is vague and indefinite, and void for uncertainty.

7. That the alleged certificate of the approval of the Departmental Assembly of California, dated the 15<sup>th</sup> of June AD 1846, is not on stamped paper. That such certificate is not sufficient evidence of such alleged approval.

8. That there is no evidence that the said claimant ever asked for, or received Juridical possession of the said land. And it is denied that she ever asked for, or received Juridical possession of the said land. And it is denied that said land was ever segregated from the public.

lands of Mexico.

9. That said claimant had no lawful right to occupy said land, without having first obtained Juridical possession of the same.

10. That there is no evidence that the said claimant ever built a house on the said land described in her said petition within a year from the said date of said alleged grant, and that it was occupied; and that she cultivated the said land. And it is denied that she ever built a house on said land described as aforesaid, within one year from the said date of said alleged grants, or within a reasonable time thereafter, and that it was occupied, and that she cultivated the said land.

And no proof having been made by said claimant of the allegations of her said petition or in support of her said claim filed as aforesaid no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed and said claim rejected by said Commissioners upon the grounds aforesaid.

Wherefore the said Pacificus Ord Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and the laws and Statutes in such case made and provided, prays that the said Magdalena Estudillo, or her Attorney,

66 SD

PAGE 30

may be served with a copy of this petition, and that this Honorable Court will review the said decision or final decree of confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Magdalena Estudillo for said land claimed and Confirmed as aforesaid, and that the same may be decreed invalid. And all such other Orders, Judgments or decrees as may be just. With Costs and general relief.

*P. Ad.*

Attorney of the United States  
for the Southern Dist. of Cal.

66.

N<sup>o</sup> 66.

(N<sup>o</sup> 437. *Manuscript*)

Magdalena Estudillo app<sup>er</sup>  
ads.

The United States app<sup>t</sup>.

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Petition of alls of MS for  
review &c.

Filed Jan'y 5<sup>th</sup> 1855.

J. S. Carr  
clerk.

In the District Court of the United States for the Southern District of California

66 80  
PAGE 33

Madelena Estudillo

Appellee

+ vs

The United States

Appellant

Ranch of Otay

Located in

The County of

San Diego

And now at this day comes Madelena Estudillo appellee in the above cause by W. C. Ferrell her attorney and moves the court to ~~open up~~ <sup>reopen</sup> the judgment by default against the appellee in the above cause & that leave be granted to the appellee to file verine pro tunc and answers to the appeal taken by the United States from the decision of the Board of Land Commissioners to settle private land claims in California

W. C. Ferrell

Atty. of Appellee

Madalena (interdillo)

vs } In the United States District Court  
The United States } for the Southern District of California

66 3D  
PAGE 34

J. J. Warner of the Town and County  
of San Diego State of California being duly sworn  
deposes and says that in the above entitled case he was  
employed as the Agent of the legal claimants to interfere  
into the litigation of the aforesaid case on appeal  
from the Hon the Board of U.S. Commissioners to settle the  
private land claims in California. That from some  
misunderstanding between the claimant and the de-  
fense suspecting the defense of the case by the attorney  
E. D. Crosby Esq who presented the case at the aforesaid  
Board of Land Commissioners no answer was filed &  
the appeal taken in said case by the District  
Attorney of the U.S. for this District

As the Attorney Case is one of a meritorious  
character and as great loss and damage will  
ensue to the claimant the deponent asks  
that the case may be subpoenaed and permission  
given to file an answer

and further the deponent deposes that

J. J. Warner

sworn to & subscribed  
before me this 5th day  
of Feb'y A.D. 1856.

J. E. Jones  
Clerk.

No. 66.

Madalena Estrada

appce

vs.

The United States

applr.

---

Motion for new

Trial

---

Filed Feb 9<sup>th</sup> 1886.

J. E. Jones  
Clerk

66.9D

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In the District Court of the United States for the Southern District of California - City and County of Los Angeles

66 SD

PAGE 36

Madrelena Estudillo  
Appellee  
For the Ranch  
of Otay -  
No. 66.  
Advs -  
The United States  
Appellants

And now comes Madrelena Estudillo the appellee by W. C. Ferrrell her attorney and for answer to the petition of the appellant avers that she has a good and valed title to the tract of land located in the County of San Diego and State aforesaid known as Otay and more particularly described in the petition of the appellant.

The Appellee therefore prays that the Decree of the Board of Land Commissioners referred to in said petition confirming the Appellees title to said lands may be affirmed by this Honorable Court and that the Appellees title to the said Ranch of Otay may be decreed to be valed

W. C. Ferrrell  
Appellees  
Atty -

Answer of  
Madelena Estudillo  
appeller  
ads  
The United States  
appellant  
for the confirmation  
of the Ranch of Olay

---

Filed July 5<sup>th</sup> 1856

66 SD  
PAGE 37

W. Ferrell  
att

In the United States District Court for the  
Southern District of California

Magdalena Estadillo - Appellee ) Case no 66  
vs )

The United States - Appellants ) "Otay"

66 SD

PAGE 38

This cause coming on to be heard on appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California under an act of Congress approved March 3<sup>rd</sup> 1851 on the transcript of the proceedings and decision of said Board and of the papers and evidence upon which said decision was founded and it appearing to the Court that the said transcript and the notice of appeal have been duly filed according to Law, and Counsel for the respective parties having been heard; It is ordered adjudged and decreed that the said decision of said Commissioners be affirmed, and it is further adjudged and decreed that the claim of the above named Appellee to the land described in the grant is a good and valid claim, and it is ordered adjudged and decreed that the same be and is hereby confirmed. The land of which confirmation is hereby made is situated in the County of San Diego and known as "Otay" and is described and bounded in a provisional grant made by José Maria Echandia political chief of Upper California dated May 28<sup>th</sup> 1829 a copy of which is on file with the papers in this case and to which reference is made for boundaries and quantity to the extent of one and one half square leagues provided said quantity of one and one half square leagues be contained within the boundaries, but if there be a less quantity than one and one half square leagues within said described boundaries then

The claim of Appellee to said logs quantity is hereby  
confirmed

Edward K. Ogden  
U. S. Dist. Judge

No. 11.

U. S. District Court  
South West Territory

Magdalena Estrada  
vs  
The United States  
appellants -  
appellee

Deceit

Filed July 13<sup>th</sup> 1886.

J. S. Lane  
Clerk.

CC SD

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Recorded on Page 197

United States of America, }  
 Southern District of California. } SS.

TO

The President of the United States,

Magdalena Estudillo.

66 SD

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GREETING:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, and each of you, in the District Court of the United States, in and for the Southern District of California, on the *Fifth* day of *January* in the year of our Lord one thousand eight hundred and fifty-five at the City and County of Los Angeles, in said District, by *Pacificus Ord, attorney of the United States for the Southern District of California, in behalf of the United States* praying the said Court to review, upon the grounds therein set forth, the decision of final confirmation of the Commissioners to ascertain and settle the private land claims in the State of California, of the claim of Magdalena Estudillo, for a tract of land called "Otay", in the County of San Diego, California, to the extent of about two square leagues; which said claim was presented by you, to said Commissioners, on or about the 1<sup>st</sup> day of November A.D. 1852. and by them confirmed on or about the 4<sup>th</sup> day of November A.D. 1853.

and that you, and each of you, are required to appear at said Court, in said City, within ten days after the service hereof, if served on you within the County of Los Angeles, and within twenty days if served on you in the County of San Diego or San Bernardino, and within forty days if served on you in any other County of said State, exclusive of the day of service, and answer said petition, or that judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted, with costs. ~~the plaintiff will apply to the Court for the relief demanded therein.~~

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of the said Court, this *Twentieth* day of *February* in the year of our Lord one thousand eight hundred and fifty-five at Los Angeles aforesaid.

*J. E. Farr*  
 Clerk.

*Marshals costs*  
*Printing Summons*  
*and petition each*  
*\$ 3.00 — 5.00*  
*Copying Summons 190*  
*Mileage 150 miles 13.50*  
26.40

Marshals cost

actual marshals expenses \$64.00

I served this summons by leaving a true and certified copy thereof together with the proper copy of the petition with Magdalena Estudillo at the house of Santiago E. Arguilla in the Rancho of "La Punta" in the County of San Diego in the Southern District of California on the thirteenth day of September A. D. 1855

Edward Hunter  
U.S. Marshall  
By J. I. Warner  
Deputy

Noted 1855  
J. I. Warner

United States of America,  
Southern District of California,  
U. S. DISTRICT COURT.

Magdalena Estrada, appx  
ad. } 437.  
The United States, appx

SUMMONS.  
Return made July 21, 1855  
Edward Hunter  
U. S. Marshal

66 SD  
PAGE 41

~~I served this summons along with the proper copy of the petition upon~~

After due search for Magdalena Estadillo I am informed and believe she does not reside in this District April 4<sup>th</sup> 1855

at the day of in the Southern District of California on A. D. 1855.

Sworn to and subscribed before me, this 4<sup>th</sup> day of April 1855.  
J. S. Jan. Clerk

Edward Hunter  
U. S. Marshal  
By W. W. Harvey  
Deputy

California Land Claims  
Attorney General's Office  
4 October, 1856.

66 SD  
PAGE 42

Sir:

In the case of the  
claim of Magdalena Estudillo,  
conferred to the claimant  
by the Commissioners, Case  
No. four hundred and thirty  
seven, (437), and also con-  
ferred an appeal by the  
District Court, appeal in the  
Supreme Court will not be  
prosecuted by the United  
States.

I am

Respectfully  
Ours

P. Ord. Esq.

U. S. Attorney  
Los Angeles

W 66

Madlena Estudillo

437

Filed 24th February 1857  
Clerk  
J. H. Coleman  
Deputy

FILED  
FEB 24 1857  
H. S. [unclear]

66 SD

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Recd Nov 4 1836

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

Los Angeles,.....December Term, 1855.

*Magdalena Estrada*

66 SD

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APPELLEE,

VS.

UNITED STATES,

APPELLANT.

No. 66.

(No. 437 of Transcript.)

On Appeal from the United States Land Commission.

On motion of P. ORD, Attorney of the United States for the Southern District of California, it is hereby

ORDERED by the Court, that an appeal be granted the United States, to the Supreme Court of the United States, from the judgment of this Court against the said United States in the above entitled cause, rendered on or about the 11<sup>th</sup> day of February - A. D. 1856.

*P. Ord*  
*Dist. Ct.*

No. 66.

Wm Duffout  
Trustee of California

---

Magdalena Estrada  
appellee

ad  
The United States  
appellants

---

Wm Duffout

Filed March 17, 1885  
C. E. Lewis clk  
By Callaghan Deputy

---

66 SD

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