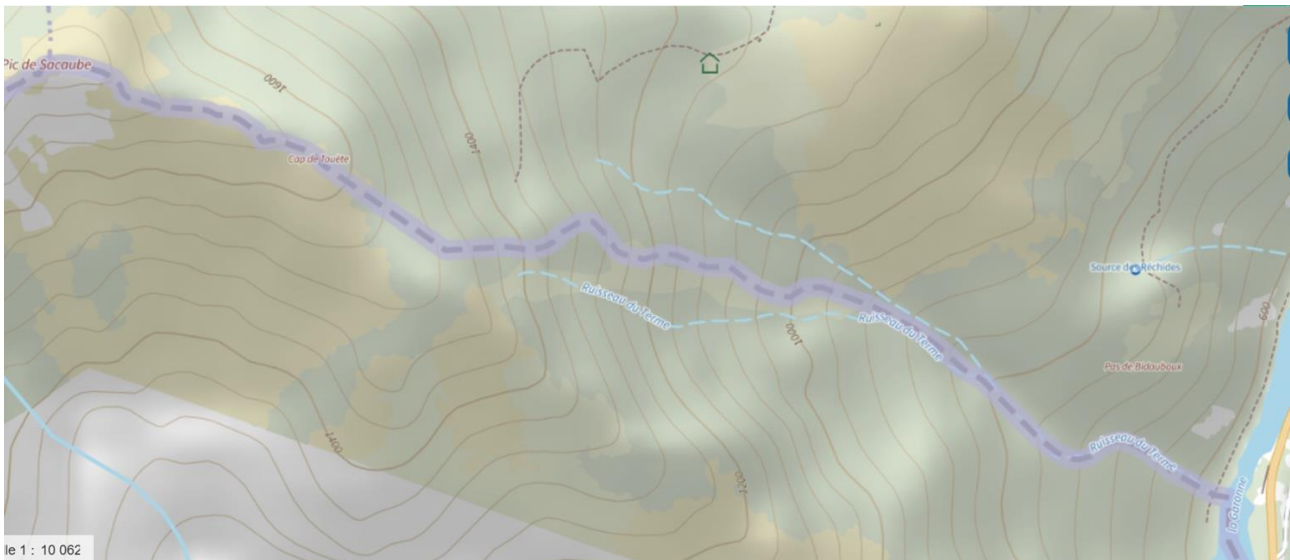


## **BETWEEN COMMINGES AND VAL D'ARAN : LES DEUX RUISSEAUX BORDER OF THE TERM**

*par Joël MOLINIER*

On contemporary maps, whether French, Spanish or Catalan, a single stream of the Terme appears, a tributary of the left bank of the Garonne on the borders of the Val d'Aran and the frontier between France and Spain. Admittedly, the location of this stream is not exactly the same on the French maps on the one hand and on the Spanish and Catalan maps on the other. The problem lies in the fact that if you follow the course of the Terme stream, you will see that it is divided into two branches. For the French, the southern branch is the upper reaches of the Ruisseau du Terme, while the northern branch is another stream called the Ruisseau des Réchets. For the Spanish, the northern branch is the real Ruisseau du Terme.



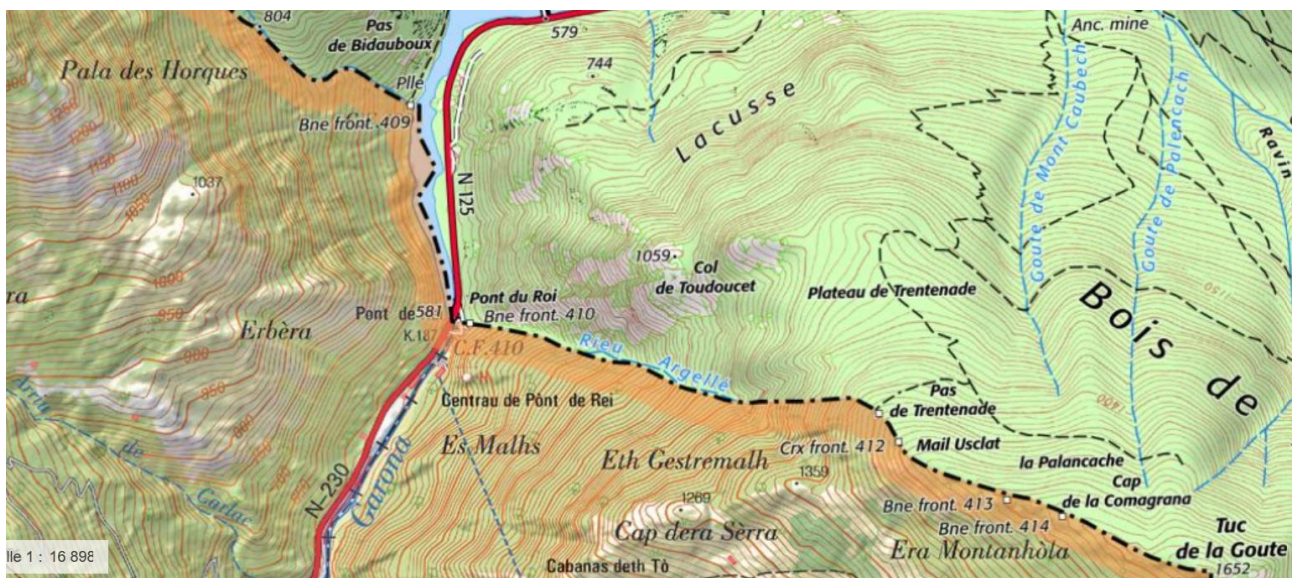
*French IGN map*

We would like to show here that the "Terme stream" corresponds, from a historical point of view, to a reality that is even more complex than it appears: in fact, this time on the right bank of the Garonne, another stream, also a border between the two countries, can historically lay claim to this name.

### **1. On the right bank of the Garonne: the Terme stream, the border between France and Spain**

On several occasions in the 17th century, "*lies and passeries*" were confirmed, treaties of peace and good neighbourliness between valleys to the north and south of the Pyrenees, which had been concluded in the past to promote trade between them and the free movement of their inhabitants. A number of these confirmations (for example, the treaty of 22 April 1513, signed at Plan d'Arem, in the commune of Fos, between the valleys of Gascony, Aran, Catalonia and Aragon) were made at the "ruisseau du Terme" (also referred to in the acts of confirmation as the "*riu denterme*"). Confirmation meetings were held there in 1655, 1661, 1668 and 1689.

In his book<sup>1</sup>, P. POUJADE writes: "*Terme, ruisseau du Terme: boundary between France and Spain; the stream in question is perhaps that of the Barranc deth Term, a tributary of the left bank of the Garonne, or that of Aigüetes, on the right bank*". The author goes no further, but there is every reason to believe that the Terme stream referred to here is the *rio d'Aigüetes* (in Spanish) or *rieu Argellé* (in Gascon, the name under which it appears on IGN maps), on the right bank of the Garonne:



Indeed:

\_ there is no road from Fos or Bausen to the Terme stream on the left bank. It is hard to imagine the delegations from the valleys concerned walking along a dirt track to get to the stream, when on the other side of the Garonne there has been a road leading to the Val d'Aran (or to France) since the High Middle Ages (and perhaps even Roman times) via the Pont du Roi, where the *Argellé stream* flows into the Garonne;

<sup>1</sup> Patrice POUJADE, *Une vallée frontière dans le Grand Siècle : Le Val d'Aran entre deux monarchies* (Universatim, 1998), p. 308.

The *rieu Argellé* is in the extension of the Plan d'Arem, where the old treaty of 1513 was concluded: the confirmations made in the 17th century logically led to the choice of a contiguous location, on the boundary of the two kingdoms.

In fact, an 1894 map<sup>2</sup> shows the ravine (known as "B. - for *barranco* in Spanish or *barranc* in Catalan - *del Terme*) through which this stream flows:



There are therefore two Terme streams, which is understandable: 'Terme' does not designate a specific place, which would be the only one to bear this name, but as a synonym for 'limit', 'end' or 'confines', it can be applied to different places. The right bank of the Garonne, as we have just seen, but also the left bank.

## **2. On the left bank of the Garonne: the Terme stream, boundary of the undivided Bidaoubous land and border between France and Spain**

During the discussions leading up to the 1862 Treaty of Bayonne (more specifically at the meeting of the joint boundary commission on 31 March 1859), the Spanish representatives referred to an "*escritura*" dating from 1619, consisting of a

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<sup>2</sup> On the website of the Catalan Cartographic Institute.

"*sentencia de amojonamiento*" (demarcation sentence). The deed in question is said to have fixed the Terme stream (on the left bank of the Garonne, known as the *Poudét stream* in Gascon) as both the boundary of undivided land between Fos and Bausen (known as Bidaoubous) and the border between France and Spain.

Little is known about this act: neither its precise date, nor the nature (presumably arbitral) of the body that made the "award", nor the context in which it was made, are known. We are reduced to what the Spaniards drew from it during the negotiations:

*"la frontera siendo la divisoria la de las vertientes, excepto con el último; pues baja aquí la linde sobre las laderas de la parte de Francia, hay un terreno en que los pastos son comunes entre Bausen y Fos, del cual dice una escritura de 1619 que es el que se extiende desde ciertas señales que se pondrían, hasta el arroyo que es término entre España y Francia: el amojonamiento se hizo en el mismo año" .<sup>3</sup>*

It would appear that the purpose of the ruling was not to delimit the border (this was forty years before the Treaty of the Pyrenees) but, more simply, to delimit the grazing land over which the inhabitants of Bausen and Fos had a right to graze that belonged to them in common (*compascuité*). We know that many other examples of agreements (or disagreements) relating to access to grazing land existed all along the border. Although it was not its purpose, the 1619 ruling could not ignore the question of border demarcation. On the occasion of the demarcation of the undivided land, it recalls that this land is bounded by the stream which is "*the term between Spain and France*". It was this reminder that the Spanish would use as an argument during the negotiations.

In this area, two boundaries based on a natural feature are possible: the ridge running from the Pic de Touète to the Garonne (the historical boundary between the former county of Comminges and the kingdom of Aragon, to which the Val d'Aran belonged, and the watershed between the Aranese watershed and that of the St-Béat valley) or the Terme stream. If, at the beginning of the 17th century, the boundary was already presumed to be at the Terme stream, the indivision would have been to the advantage of the inhabitants of Fos, who could go beyond the stream to graze their cattle. This could have been a kind of compensation for Fos, which had previously lost the northern slope. Partial compensation, moreover, since while the southern boundary of the Bidaoubous land follows the ridge line in its upper part, it breaks away from it in its lower part to descend onto the northern slope.

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<sup>3</sup> Quoted in Joan CAPDEVILA y SUBERANA, *Historia del deslinde de la frontera hispano-francesa, Del tratado de los Pirineos (1659) a los tratados de Bayona (1856-1868)* (Centro Nacional de Información Geográfica, 2009), p. 83. With around a hundred pages of documents in the appendix.

As it can be reconstructed, the boundary of this plot of land follows a line to the south linking four crosses<sup>4</sup> :



Reconstructed boundary of the undivided land of Bidaubous (Spanish IGN map)

This issue resurfaced during the negotiations leading up to the Treaty of Bayonne in 1862. In their memorandum (dated 23 May 1861) in response to the Spanish party's observations, the French representatives took a position on the question of ownership of the land:

*" There is no doubt that the Counts of Comminges owned up to the line of the summits claimed today by the commune of Fos, but not having had the State recognised as the owner of Bidabus and the small slope of which this territory forms part, as was done by the municipalities of Bagnères and St.-Mamet who were disputing the valleys bordering Aran, Fos could have sold them voluntarily or lost them by prescription, without the State having anything to do with it. However, this could not happen because Fos never had the power to sell what, having passed intact from the Counts of Comminges to the Crown of France in 1454, must be claimed by the Emperor's plenipotentiaries up to their former ridge boundary with Bausen" .<sup>5</sup>*

<sup>4</sup>According to art. 5 of the Additional Convention of Bayonne of 1863. These crosses, carved into the rock, are difficult to locate today.

<sup>5</sup>Quoted in Joan CAPDEVILA y SUBERANA, p. 104.

At some time before 1619, therefore, the border was "lowered" from the ridge separating the Val d'Aran from the county of Comminges to the Terme stream below. According to the memorandum submitted by the French representatives, this change could only have been made in one of two ways:

\_ either by the sale of the land on the northern slope of the ridge from the community of Fos to that of Bausen. In 1861, the French representatives pointed out that Fos did not have the power to sell these lands, without mentioning that they remained under the sovereignty of the State as they had passed to the French crown in 1454. However, the Spanish considered that this was an internal French matter that did not concern them.

or by prescription: Fos allowed the Bausen shepherds to use the northern slope (or was unable to oppose them), over time the Val d'Aran effectively "annexed" this slope by considering it part of Bausen, Fos did not react (nor did the authorities representing the King of France, for that matter...) and, when the French representatives appeared in 1861, it was too late: the Spaniards argued that they were statute-barred. This is what is known in law as "acquisitive prescription".

The existence of the undivided land is better suited to the first hypothesis than the second: by selling the land on the northern slope, Fos would have reserved the right to continue to use the lower part of this land, near the Terme stream, for his herds (the upper, rocky part being of no use to him). It is this right of compascuity whose limits are set out in the 1619 *escritura*.

But above all, with regard to the question of the boundary delimitation, the end of the paragraph quoted above is significant: the "*old ridge boundary with Bausen*" is mentioned; earlier in the text it is stated that "*this municipality [that of Fos] complains of the inconveniences resulting from the abandonment of the old boundary*". This corresponded to the representation of the border given in the previous century on the Cassini map:



*Sheet 76, published in 1781, based on field surveys carried out between 1772 and 1777.*

On this map, the border follows the ridge line as far as Pont du Roi, after which it continues with the *rieu Argellé* (the other Terme stream). The French would be tempted to reclaim this border, which had been "abandoned" before the 1619 ruling, as can be seen from two letters dated 19 September 1860 and 25 August 1861<sup>6</sup> addressed to the Prefect of Haute-Garonne by General CALLIER, who was one of the main protagonists in the demarcation of the border.

In one case, it is written: "*the municipality of Fos having expressed the desire to see the indivision of the territory of Bidaoubous cease and to see the international boundary that separates it from the Aranese municipality of Bausen brought from the Terme stream, which is no more than a simple ravine unworthy of separating two large countries, to the ridge line of the buttress that ends near the Pont du Roi (...)*". For Fos, this was a new position since, in a document dated 1834<sup>7</sup>, the mayor of Fos mentions an agreement with the mayor of Bausen on the dividing line, set at the Terme stream, between their respective communities. In the other letter, General CALLIER wrote: "*it would be no less important for us to be able to set the political boundary at this point at the ridgeline*".

In their efforts to recover the northern slope and bring the border back to the ridge, the French representatives were not helped by the commune of Fos, as shown by this deliberation of the Fos town council dated 1<sup>st</sup> December 1861<sup>8</sup>. General CALLIER, the French plenipotentiary, had proposed to the council that Bausen be compensated for the loss of his rights to the undivided land and that the land between the undivided land and the ridge line be purchased. The municipal council agreed to call for an end to the indivision, which, in its opinion, had only caused the people of Bausen and Fos "*particular violence and litigation*", but refused to compensate Bausen or purchase the land between Bidaoubous and the ridge, on the grounds that it was "*rocky, of no product whatsoever and of no value*".

Fos did, however, have an interest in maintaining the undivided land, as can be seen from this deliberation by its municipal council dated 15 September 1868<sup>9</sup>, in which the council complained that the boundary to the north and west of the land did not comply with the delimitation treaty, that the markers had been set in the absence of the Fos delegates and that some of the crosses that had been put up (according to the 1863 Convention, they were to be engraved on the rock) had been replaced by others, without it being known who had made the change. A quarter of a century later, the same grievances can be found in a deliberation by the town council on 14 April

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<sup>6</sup>Haute-Garonne Departmental Archives

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

In any event, the French attempt to return to the historic border was unsuccessful: the Treaty of Bayonne confirmed the "second" Terme stream as the border between the two countries. Furthermore, article 21 of the treaty stipulated that "*the French commune of Fos and the Spanish commune of Bausen shall continue to jointly own the small plot of land at Bidaoubous*". On this point, the treaty clarifies the purpose of the joint ownership: until then, it referred to "common pastures" and "common enjoyment", which might have led one to think that the joint ownership only concerned the use of the land (as was the case at other points on the border). It is now accepted that the joint ownership relates to the ownership of the land. Fos and Bausen are joint owners of the land across the border on the Spanish side.

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The two Terme streams show, each in a different way, how the Franco-Spanish border has evolved over time. On the one hand, the stream on the right bank marks a border that has been attested since the early 16th century, but is probably even older. In all likelihood, it is simply the continuation of a boundary that in fact dates back two centuries, to 1313, when Philip the Fair ceded the Val d'Aran, which had been disputed between the two kingdoms, to the Crown of Aragon .<sup>11</sup>

In contrast, on the other side of the Garonne, the left bank stream is still the subject of controversy, with the 1863 Convention, additional to the 1862 Treaty of Bayonne, still subject to differences of interpretation between the French and Spanish as to the exact identification of this stream or, more precisely, its upper reaches<sup>12</sup> . Admittedly, in the interests of compromise, a new boundary line, intermediate between the two branches that feed the stream, was adopted in 2015 by the joint demarcation commission<sup>13</sup> . But for the time being, even if it has already been transcribed onto both Spanish and French maps, it only has the value of a rebuttable presumption, pending validation by the International Pyrenees Commission, after further work has been carried out.

Using the example of the two Terme streams, we can see that the Franco-Spanish border has not been definitively stabilised: at times, it may have been fixed a long time ago and may still be subject to the occasional adjustments required by the

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<sup>10</sup> *Ibid.*

<sup>11</sup>No treaty, which could have drawn a border, accompanied this transfer.

<sup>12</sup>On this controversy, see *Contestation sur la frontière avec le Val d'Aran* (website of the Conseil national de l'information géolocalisée), as well as Eef BERN'S' very comprehensive website (<http://www.grpdesbf.nl/index.html>).

<sup>13</sup>This adoption was made as part of the implementation of the European INSPIRE directive, which provides for the determination, by common agreement, of digital border lines between EU Member States, defined by geolocated points.



drawing, thanks to modern technological developments, of digital border lines<sup>14</sup> . We can also verify that any boundary, even if it coincides with a physical feature provided by nature (a stream, a river, a ridge line, etc.), is not "natural": it is always a human creation, which takes into account multiple factors: historical, political and social, which it translates into reality.

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<sup>14</sup>These lines are not intended to replace the delimitations made by the treaties, but to give them a cartographic interpretation recognised by all.