

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE COCHITI,)	
)	
Petitioner,)	
)	
v.)	Docket No. 136
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 27, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

Finding 1

The Pueblo de Chochiti, the petitioner herein, is a tribe of Pueblo Indians recognized by the Secretary of the Interior, having a regularly elected Governor and council to represent it and authorized under the laws of New Mexico to sue and be sued as a corporation. Petitioner now is and for centuries has been an autonomous Indian community and is an identifiable group of American Indians entitled to sue under the Indian Claims Commission Act of August 13, 1946.

Finding 2

This claim, timely filed by the petitioner pursuant to said Indian Claims Commission Act, involves a tract containing 13,440 acres in the present county of Sandoval, State of New Mexico. The land lies immediately east of and adjoins the eastern boundary of another tract known as the Pueblo de Cochiti Grant constituting 24,256.50 acres, upon which the

petitioner has maintained its pueblo since about the year 1700. This tract, hereafter referred to as the Cochiti Grant, was patented to the petitioner by the United States on November 1, 1864, and no claim is herein made for said grant. The 13,440 acre tract will hereafter be referred to as the "claimed area."

Finding 3

For almost 300 years prior to 1821, Spain exercised sovereignty over Mexico, one of its colonies in the New World. New Mexico was then one of the internal provinces of Mexico, often referred to as New Spain. Mexico revolted against Spain and became independent in 1821.

Finding 4

The Spanish Government allowed the Indians of New Spain to occupy and use so much of the Crown lands as they could use and protected the occupants against trespasses until the Crown might desire to terminate the same. This policy of the Spanish Government was shown by the Recopilacion de las Indias (Def. Ex. 31). The possession and use of the Crown lands by the Indians was at the will of that government. Spain apparently made grants of Crown lands to Indians and non-Indians without regard to the rights of Indians occupying the same.

Finding 5

Land grants were made by Spanish authorities in the New World to Indian pueblos as well as to non-Indians. As early as May 28, 1561, an ordinance by the Viceroy of the Province of New Spain ordered that the Indians of the Indian pueblos as might need land upon which to live and sow, should have given to them 500 varas, and more should it be necessary,

and that from that time forward there should not be granted to any one lands or grounds unless they should be located 1,000 varas away from the pueblos and houses of the Indians. A vara was equivalent to about 33 inches. Numerous revisions were thereafter made in provisions for the extent of pueblos, sometimes measuring from the church in four directions and sometimes from the farthest house of the place, until the accepted size of the Indian pueblos of New Mexico became four square leagues, or approximately 17,000 acres. A 1924 House of Representatives Committee on Indian Affairs Report states that there were 20 Indian pueblos of New Mexico with a total population of between 6,500 and 8,000, each pueblo consisting of about 17,000 acres of land or a total of 340,000 acres in all.

In 1684 the Spanish Crown authorized Governor Cruzate to make pueblo grants whenever needed. Eleven New Mexico pueblos, including the Cochiti, possess documents dated 1689 and signed by Governor Cruzate purporting to be grants of title to their lands. These grants have been recognized and confirmed by the United States and patents issued for them.

The document setting forth the grant to the Cochiti is as follows:

Year 1689.--In the town of Our Lady of Guadalupe del Paso del Rio del Norte, on the twenty-fifth day of the month of September, in the year one thousand six hundred and eighty-nine, his excellency Don Domingo Jironza Petroz de Cruzate, governor and captain general, stated that, whereas, in overtaking, in the kingdom of New Mexico, the Queres Indians and the Apostates and the Theguas, and those of the Thanos nation, and after having fought with all the other Indians of all the pueblos, an Indian of the pueblo of Zia, called Bartolome de Ojeda, who distinguished himself the most in the battle, lending his aid everywhere, and surrendered, being wounded with a bullet and an arrow, who as afore-stated, I ordered to declare under oath, the condition of the pueblo of Cochiti, that apostatized and took part in the wars in that kingdom of New Mexico, as they were very rebellious Indians.

Questioned. If the pueblo would rebel again at any future time, as it was customary with them. The deponent answered no; that they were very much intimidated. That although they were very arrogant Indians, and was a very rebellious pueblo, but that with what had happened to them at Zia in the year previous, he judged that it was impossible for them to fail in yielding obedience.

Questioned. If he has anything further to state in regard to these Indians, concerning their rebelling and associating with the Apostates, and the deponent answered, no; and that it is true that it was a very rebellious pueblo, but with what had happened to them in the previous year, in the pueblo of Zia, he judged that it was impossible for them to fail in yielding their obedience. Therefore, his excellency, Don Domingo Jironza Petroz de Cruzate, governor and captain general, granted them the boundaries I herein set forth: On the north one league, on the east one league, on the west one league, on the south, to the point of a barren hill, near a stream of water, running in the direction of the rising sun, and which empties into the Bravo river. This they owe for being rebels.

And this, his confession, having been read and explained to him, and the deponent answered that what he had stated was the truth, under the oath which he had taken, which he affirmed and ratified several times, and such being the case, he signed with said governor and captain general, before me the present secretary of the government and war. To which I certify.

BARTOLOME DE OJEDA,
DOMINGO JIRONZA PETROZ DE CRUZATE.

Before me,

DON PEDRO LADRON DE GUITARA,
Secretary of Government and War.

This grant was confirmed and patent issued to Pueblo of Cochiti on November 1, 1864. (Def. Ex. 12).

Finding 6

Two subsequent Spanish land grants to non-Indians involve both the Cochiti Grant and the "claimed area." The La Majada Grant, made to Captain Jacinto Pelaez on February 10, 1695, overlaps the entire "claimed area." The Caja del Rio Grant, made to Nicolas Ortiz Nino Ladron de Guebara on May 30, 1742 overlaps part of the Majada Grant and covers an area

the north one-fourth of the "claimed area." In all subsequent litigation and transactions, the Cochiti Grant has been held elder and superior to both of these private grants as to conflicting areas.

The map, petitioner's Exhibit No. 16, shows boundaries of the grants referred to above and the boundary of the Cochiti lands, outside the Cochiti Grant, which are claimed here.

Finding 7 ✓

On February 24, 1821 the revolutionary government of Mexico adopted the Plan of Iguala, which declared that "all the inhabitants of New Spain without distinction, whether Europeans, Africans, or Indians, are citizens of this monarchy, with the right to be employed in any post according to their merit and virtues and that the person and property of every citizen will be respected by the government." These principles were recognized in the Treaty of Cordova between Spain and Mexico, August 24, 1821, and in the Mexican Declaration of Independence, September 28, 1821.

Thereafter, New Mexico was under Mexican sovereignty. It was a Territory of Mexico until December 30, 1836, when it became a Department. It was at that time that all of Mexico was divided into Departments.

The Government of Mexico assumed ownership of all lands formerly held by the Spanish Crown. Grants of land made by Spain were recognized by Mexico. No change in private property rights occurred as a result of the change in sovereignty from Spain to Mexico. Laws and decrees promulgated by the Spanish Government were regarded by Mexico as continuing in force, except where specifically changed by the new government.

During their sovereignty, the Mexican Government took no action which

would alter the rights of the Cochiti Indians or of recipients of the two private land grants named above and their successors in interest. No Mexican land grants were made involving any part of the "claimed area" or of the Cochiti Grant.

Finding 8

On May 13, 1846 war was declared between the United States and Mexico. On August 18, 1846 General Stephen W. Kearny entered Santa Fe and took possession of all of New Mexico in the name of the United States. On February 2, 1848 the Treaty of Guadalupe Hidalgo was signed, ratifications exchanged May 30, 1848, and the treaty proclaimed July 4, 1848.

The United States acquired sovereignty over New Mexico by virtue of the Treaty of Guadalupe Hidalgo in 1848. Under the provisions of Articles VIII and IX of that treaty the United States agreed to respect and protect all property rights within the ceded area (9 Stat. 929-930). Thus, it became the duty of Congress to recognize and establish every title and right to property which before the cession Mexico recognized as good and valid. In other words, in harmony with the rules of international law, as well as with the terms of the treaty of cession, the change of sovereignty should work no change in respect to rights and title; that which was good before should be good after the cession; and that which the law would enforce before should be enforceable after the cession.

Finding 9

In order to carry out its obligations under the provisions of Articles VIII and IX of the Treaty of Guadalupe Hidalgo, and to ascertain what lands in New Mexico were private property, the title to which should

be respected and protected, the Congress of the United States passed the Act of July 22, 1854 (10 Stat. 308), entitled, "An Act to Establish the Office of Surveyor General of New Mexico, * * * and for other purposes." By the act, Congress provided for the appointment of a Surveyor General for New Mexico Territory, who should ascertain the origin, nature, character, and extent of all claims to lands within such Territory which might have existed under the laws, usages and customs of Spain and Mexico. A full report of his findings was to be submitted to the Congress on all such claims as originated before the cession of the Territory to the United States with his decision as to the validity or invalidity of the same under the laws, usages and customs of the country before such cession; and also a report in regard to all existing pueblos in the Territory, showing the extent and locality of each, the number of inhabitants in each pueblo, and the nature of their titles to the land. Under the provisions of Section 8 of the Act, this report was to be submitted to Congress for such action as might be deemed just and proper with a view to confirm all bona fide grants and thus give full effect to the Treaty of Guadalupe Hidalgo.

Finding 10

In accordance with the provisions of the Act of July 22, 1854, this petitioner presented its claim to land to the Surveyor General. The claim presented, however, was not for the land here in issue but for the Cochiti Grant. Petitioner's claim was investigated by the Surveyor General and recommended to Congress for confirmation. Congress approved the recommendation of the Surveyor General by the Act of December 22, 1858

(11 Stat. 374), and on November 1, 1864 a patent was duly issued to petitioner for such lands, the acreage being 24,256 acres. (Def. Ex. 12).

Finding 11

It was not until the Act of March 3, 1891 (26 Stat. 854), establishing the Court of Private Land Claims, that Congress provided a judicial tribunal for the adjustment and confirmation of claims under grants from the governments of Spain and Mexico of land in New Mexico and certain other territories included within the Mexican cessions of 1848 and 1853. Prior to that act, Congress reserved to itself the determination of such claims.

The Court of Private Land Claims began work in Denver, Colorado, July 1, 1891, but soon transferred to Santa Fe, New Mexico. Its work was completed in 1904.

Finding 12

On February 14, 1893, a petition was filed in the Court of Private Land Claims seeking confirmation of the La Majada Grant, made by Spain February 10, 1695. On September 29, 1894, the court entered a final decree confirming the claim of the petitioners in that case. In its decree, the court found that on February 10, 1695, the Governor and Captain General of the Province of New Mexico, under authority of the King of Spain, granted the La Majada tract to Captain Jacinto Pelaez; that this grant was revalidated by the Spanish Government in favor of the original grantee December 13, 1698; was again revalidated and made de novo January 10, 1710, in favor of Maria Pelaez, daughter and sole heir of Jacinto Pelaez; and was again revalidated August 27, 1728, in favor of

Maria Fernandez de la Pedrera, daughter and sole heir of Maria Pelaez.

Pursuant to the above decree and in accordance with the provisions of Section 10 of the Act establishing the Court of Private Land Claims, a survey was made of the La Majada Grant in the summer of 1895. The area surveyed was found to contain 54,404 acres. Notice of the survey, with a description of the boundaries, was published October 22, 1895. The notice required by Section 10 was a notice of publication in Spanish and English, once a week for four consecutive weeks in two newspapers, one published in the capital of the Territory and the other published near the land so surveyed; ninety days from the date of the first publication was allowed for objections to be filed to such survey with the Surveyor General. No objections having been filed, the survey was approved by the Court of Private Land Claims March 25, 1896, and a patent issued October 26, 1908. (Def. Ex. No. 8).

Finding 13

Claimants to the Caja del Rio Grant, made by Spain to Nicolas Oritz Nino Ladrone de Guebara May 30, 1742, filed their petition in the Court of Private Land Claims October 14, 1892 seeking confirmation of the grant. On August 23, 1893 a decree was entered confirming the title to that grant, whereupon a patent was issued in accordance with such decree, February 20, 1897. The acreage included with the Caja del Rio Grant and patented to the "heirs, successors, assigns and legal representatives" of the original grantee from Spain was 66,848 acres. (Def. Ex. No. 10).

Finding 14

On or about March 3, 1904 an action in partition and to quiet title

to the La Majada Grant was filed by Trinidad Baca, et al., against the unknown heirs of Jacinto Pelaez, deceased, et al., in the Sandoval County District Court, which was designated Case No. 26. On or about December 11, 1909, the Pueblo de Cochiti, having first obtained leave of court, filed an amended petition as intervenor in the case. This petition was filed by F. C. Wilson, Special Attorney for the Pueblo Indians of New Mexico, a position first created by Congress in 1898 and continued from year to year thereafter with compensation annually appropriated by Congress for that specific office.

In its amended petition as intervenor the Pueblo de Cochiti alleged in part as follows:

1st. That on the 10th day of January, of the year 1710, the La Majada Grant, was revalidated and made de novo in favor of Maria Palaez, daughter and sole heir of the original grantee, Captain Jacinto Palaez.

2nd. That the said Maria Palaez married Juan Fernandez de la Pedrera, the date of said marriage being unknown to your petitioner.

3rd. That said Juan Fernandez de la Pedrera and his son Bartolome Fernandez on the 11th day of August, 1744, executed jointly a good and sufficient deed to the Indians of the said Pueblo de Cochiti in fee simple, all their right, title and interest in consideration of the sum of fifteen hundred dollars (\$1500) to a place called "Ojo de Santa Cruz", bounded and described in said deed, as follows, to-wit:

North, they reach to the hills of Santa Cruz, and on the east to the house of the little spring, on the south by the boundaries of the Pueblo of Santa Domingo and on the west by said Pueblo de San Buena Ventura, (Pueblo de Cochiti),

a translation of which deed is attached hereto and made a part hereof. (Ex. A)

* * *

11th. That the Indians of said Pueblo of Cochiti have claimed and occupied said tract of land in fee simple by virtue of said deed and have exercised ever since the year 1744, in which year they obtained title, ownership over said tract as aforesaid, under said deed.

WHEREFORE, Intervenor prays that the heirs, or their assignees or grantees, of the said Bartolome Fernandez be decreed to have no right, title or interest in that portion of the La Majada grant conveyed to the Pueblo de Cochiti by deed under date of August 11, 1744, and for such other and further relief as to this court shall seem just and equitable.

Although the translation attached to the petition does not correspond in every detail with the translation of the same deed identified as Exhibit C in the petition now before this Commission, both of which vary to some extent from the translation of petitioner's expert witness Dr. Miguel Jorin (whose translation, for instance, gives the consideration as 1,500 pesos), the variations are minor and inconsequential. The area described in the deed is the same as the present claimed area.

The case was heard by a referee, whose report, filed July 1, 1910, shows that the record included "intervenor Cochiti Indian Pueblo exhibits numbered E-1 to E-10 inclusive." Based upon similar findings in the Referee's Report, the court in its Judgment of Partition, filed July 17, 1913, made findings as to the Cochiti as follows:

V. The court further finds that there is a conflict between the Majada Grant and the Grant to the Pueblo of Cochiti Grant, as more fully shown by the pleadings; and upon the question of a conflict the court finds that as between the said grants the grant to the Pueblo of Cochiti is the elder and superior, and that the said plaintiffs and their co-tenants are not entitled to have a partition of any of the lands within said Pueblo of Cochiti Grant, the boundaries of said grant of the said Pueblo of Cochiti being more fully set forth in the patent from the United States therefor filed in this cause, and to which reference is hereby made.

VI. The court further finds that the claim of the Pueblo of Cochiti for lands within the Majada Grant and beyond the boundaries of the lands described in the patent to the Pueblo of Cochiti is not well founded, and that said Pueblo of Cochiti has no right, title or interest in or to any portion of the Majada Grant outside of the boundary lines of the lands described in the patent of the Pueblo of Cochiti.

Based upon its findings, the court ordered, adjudged and decreed that, subject to certain exceptions, the Majada Grant was owned in fee simple by certain designated parties and ordered a partition of the real estate.

A subsequent intervention by Benjamin F. Pankey, filed June 9, 1917, resulted in a Judgment and Decree filed January 13, 1920. This judgment did not alter the original findings of the court as to the rights of the Cochiti.

The July 7, 1913 judgment, not having been appealed, became a final judgment by a court of competent jurisdiction adjudging that the Cochiti had no right, title or interest in the present "claimed area" by virtue of the 1744 deed.

Finding 15

In an effort to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico, Congress provided for the creation of a Pueblo Lands Board under the Act of June 7, 1924 (43 Stat. 636). This Board consisted of three members, one representing the Secretary of the Interior, another the Attorney General, and a third appointed by the President of the United States.

Under the provisions of the Act, the Pueblo Lands Board was directed to investigate, determine and report upon all lands within the exterior

boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico under authority of the United States or of any prior sovereignty, or acquired by said Indians as a community by purchase, or otherwise, title to which the "board shall find not to have been extinguished in accordance with the provisions of this Act."

Under the provisions of Section 6, the Board was also required to investigate and determine what lands or water rights of the Pueblo had been lost. If such loss occurred as a result of the failure of the United States seasonably to prosecute the rights of the Pueblo, the United States was to be held liable therefor and an award made to the Pueblo to compensate it for such loss. Any award of compensation was subject to judicial review by the United States District Court and the Circuit Court of Appeals.

Section 2 provided that one copy of the reports of the Pueblo Lands Board had to be filed with the United States District Court for the District of New Mexico. Section 3 required the United States Attorney General, upon the filing of each report, to forthwith cause to be filed in the District Court a suit to quiet title to the lands described in said report as Indian lands the Indian title to which had been determined by said report not to have been extinguished.

Section 4 protected the right of Pueblo Indians of New Mexico to assert their title to any land in any court of competent jurisdiction at any time prior to the filing of field notes and plats by the Secretary of the Interior as provided in Section 13.

Finding 16

The Pueblo Lands Board investigated conflicting claims within the

Cochiti Grant. The Board took notice of the conflict existing between the Cochiti Grant and the La Majada and Caja del Rio Grants and found in favor of the Cochiti as to all of the areas in these grants that overlapped the Cochiti Grant. The Board made findings as to claims extinguished within the Cochiti Grant and made an award of \$7,311.62 to the Cochiti. In the final paragraph of its Report #1, dated April 30, 1930, the Board says:

Said Board has investigated and has determined that there are no lands other than the (Cochiti) Pueblo Grant herein referred to, acquired by said Indians as a community, by purchase or otherwise, or held by them.

Shortly thereafter, in case No. 2133 in the United States District Court of New Mexico entitled United States of America, as Guardian of the Indians of the Pueblo of Cochiti, in the State of New Mexico v. Manuel Aragon, et al., the court was asked to quiet title to 79 claims which the Pueblo Lands Board had found unextinguished. In the decree therein, filed April 14, 1931, title was quieted in the Cochiti with certain exceptions that altered the findings of the Board.

The Pueblo Lands Board, in its 1931 Amendments to its Report, made an additional award of \$13,130.56 to the Cochiti based upon the decision of the District Court. In 1932 the Senate Committee on Indian Affairs recommended that the Cochiti be paid an additional sum of \$36,884.93 because the Board's awards were too low. By Act of May 31, 1933 (48 Stat. 1302), Congress authorized the appropriation of \$37,826.37. This made a total award to the Cochiti of \$58,268.55 for losses within the Cochiti Grant in accordance with the original Act which created the Pueblo Lands Board.

Finding 17

On February 10, 1695 the "claimed area" became private property by reason of the La Majada Grant. Thereafter, the use of the "claimed area" by the Cochiti did not and could not give the Cochiti a compensable interest in such land.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner