

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO de ZIA et al.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 137
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 11, 1962

FINDINGS OF FACT

1. The Pueblo de Zia, Pueblo de Jemez, and Pueblo de Santa Ana are three tribes of Pueblo Indians recognized by the Secretary of the Interior, each having a regularly elected Governor and Council to represent such Pueblos and authorized under the laws of New Mexico to sue and be sued as a corporation. Petitioners now are, and for centuries have been, autonomous Indian Communities and are identifiable groups of American Indians entitled to sue under the Indian Claims Commission Act of August 13, 1946. The petitioners timely filed this claim pursuant to said Act. The said three Pueblos and their respective members have a common interest in the subject matter of the claim presented in each of the four counts of the last amended petition, and at no time have claimants ever released, assigned or conveyed their joint claim of possession and ownership of said lands in any of the counts set forth in the petition.

2. The land involved in petitioners' First, Second and Third causes of action is that tract of land known as the Ojo del Espiritu

Santo (Spring of the Holy Ghost) which is bounded and described as follows:

...from north to south, from the place Ventana to the stone ford of the Puerco River, the boundaries also of the citizens of the place San Fernando of Nuestra Senora de la Luz; and from east to west, from the Pueblo of Zia to the said Puerco River, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the center and within the boundaries of this grant... (Def. Ex. 7, p. 201)

The estimated acreage within the exterior boundaries of the above described tract is 410,000 acres exclusive of the land patented to the Pueblo petitioners.

3. The land involved in petitioner's¹ Fourth cause of action is that tract of land bounded and described as follows:

On the north by the Ventana; on the south by the stone ford of the Puerco River; on the east by a line running north and south and being the east boundary line of Range 3 East; and on the west by the Puerco River. (Pet. Amd. Petition, p. 24)

This tract of land includes the land described in petitioner's¹ First, Second and Third causes of action as well as other lands to the east. The net acreage of the above tract is 520,000 acres, exclusive of the land patented to the three Pueblos.

4. For almost three hundred years Spain had 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. When Mexico declared its independence and set up its own government, the Government of Mexico assumed ownership of all vacant 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. Except where specifically changed by the new government the Mexican authorities were governed by the laws and decrees which had originally been promulgated by the Spanish government.

5. The period of Mexican control over New Mexico was comparatively short when compared with the era of Spanish rule over this territory. The Plan of Iguala, adopted by the revolutionary government of Mexico February 24, 1821, while New Spain was theoretically a part of Spain, 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.

6. The laws of Spain applying in the territory recognized the right of the Indians to the use and occupancy of such lands as were "necessary for them to sow, cultivate or raise stock." This included not only the lands which the Indians possessed but also other lands which the Indians might need. Although strenuous efforts were made to protect the Indians in the use and possession of such lands, in many instances the laws were not administered properly or were disregarded. However, neither the Mexican nor Spanish governments at any time recognized that the Indians had "aboriginal title" to these lands in the legal sense in which that term is used in our courts today.

7. Under the Spanish government the Indians did not have a possessory right to the whole territory but only to such territory as they actually occupied, or was necessary for their use. The King of Spain claimed title in all lands within the American dominions but recognized the right of the Indians to the use of such tracts as were left in their possession. The Spanish government never adopted the policy of purchasing the "Indian title," though clearly recognizing that the Indians had rights in the lands they occupied. If lands were taken from them, however, to promote the interests of the government, the Indians were usually compensated therefor by granting them other lands.

8. The Spanish government sought to protect the interests of the Indians in the lands used and occupied by them but did not recognize any title in the Indians to such lands independently of that derived from the Crown. Under Spanish laws all lands in New Mexico were considered belonging to the Crown with the right of the Sovereign to make disposition of the same. In the exercise of this right the Crown confirmed the right of possession in the Indians to such lands as they actually occupied or were deemed necessary for their use. The Indians were not allowed to alienate their land without the consent of the sovereign.

9. When Mexico took control of the territory of New Mexico in 1821 she applied the Spanish laws then in effect relating to land policy and Pueblo Indians. These policies were continued in force until the year 1846 when the United States took control of the territory.

The United States acquired sovereignty over New Mexico by virtue of the Treaty of Guadalupe Hidalgo February 2, 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 Mexico recognized as good and valid before the cession. The change in sovereignty worked no change with respect to private rights and titles.

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, entitled "An Act to Establish the Office of Surveyor General of New Mexico, **** and for other purposes" (10 Stat. 308). By this Act Congress provided for the appointment of a Surveyor General for the New Mexico Territory, whose duty would be to 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 Sec. 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 confirming all bona fide grants and thus give full effect to the Treaty of Guadalupe Hidalgo.

The Surveyor General thus had the functions of a board of inquiry, to procure for Congress all information that was needed for Congressional action confirming all private land claims which were valid under the laws, usages and customs of Spain and Mexico.

10. At the time of the Treaty of Guadalupe Hidalgo and for many years thereafter the members of the three pueblos were ignorant and uneducated. They repeatedly protested to the United States' officials and agents, as to encroachments on their claimed lands.

11. In accordance with the provisions of the Act of July 22, 1854, the Surveyor General of New Mexico Territory investigated various land claims of these petitioners. The claim presented by the Pueblo de Zia was duly investigated and reported on favorably by the Surveyor General in his report of November 30, 1856, was confirmed by Congress December 22, 1858, and a patent issued for the Pueblo de Zia Grant November 1, 1864, containing 17,514.63 acres.

Similarly, the claim presented by the Pueblo de Jemez was investigated and reported upon favorably by the Surveyor General in his report to Congress under the date of September 30, 1856, was confirmed by Congress December 22, 1858, and a patent issued for the Jemez Pueblo Grant November 1, 1864, containing 17,510.45 acres.

The claim of the Pueblo de Santa Ana apparently was not investigated by the Surveyor General until several years after his investigation of the claims of the other two petitioners. In his report to Congress January 5, 1867, however, the Santa Ana claim was recommended for confirmation; Congress confirmed the same February 9, 1869, and a patent was issued for the Santa Ana Pueblo Grant April 25, 1883, containing 17,360.56 acres.

12. In 1766, in response to the petition of the three Pueblos, Jemez, Zia, and Santa Ana, the Governor and Captain General of the province of New Mexico (then a colonial possession of the Spanish Crown), issued a joint grant to the three Pueblos for the purpose of "... pasturing the stock and horses of the aforesaid three pueblos..."

The boundaries of this grant were described as:

From north to south from the place Ventana to the stone ford of the Puerco River, the boundaries also of the citizens of the place San Fernando of Nuestra Senora de la Luz; and from east to west, from the pueblo of Zia to the Puerco River, the eastern edge, the whole of the valley of the Holy Ghost Spring being embraced within the center and within the boundaries of this grant. (Def. Ex. 7, p. 201)

This grant embraced approximately 410,000 acres exclusive of the land patented to the three Pueblo petitioners. This area was known as the Ojo del Espiritu Santo tract.

After New Mexico became a territory of the United States, the petitioners took their claim to the United States Surveyor General's office in an effort to have the grant confirmed by Congress. James K. Proudfit, U. S. Surveyor General, on February 7, 1874, recommended the confirmation, stating that in his opinion the Indians showed an

absolute grant and full possession under it. However, no action was taken by Congress upon the Surveyor General's recommendation.

On or about October 17, 1856, a petition was filed with the Surveyor General by the heirs of Luis Maria Cabeza de Baca seeking confirmation of a Spanish grant to said Baca and his fifteen children under date of May 24, 1815, of a tract of land also called "Ojo del Espiritu Santo." This tract was described as follows:

. . . on the north by the table land of the Ventana; on the east by the summit of Jemez Mountain; on the south by Canon of La Querencia and the lands of Don Antonio Armeta, and on the west by the Rio Puerco and the point of the Prieta table land. (Def. Brief, p. 15)

After due consideration of all the evidence the Surveyor General was of the opinion that the grant to Baca and his children was a perfect claim and should be confirmed. A recommendation to that effect was submitted to Congress December 12, 1860. Congress confirmed the grant March 3, 1869 and a patent was issued to the heirs of Luis Maria Cabeza de Baca October 12, 1916, for 113,141.15 acres. Although the Baca grant and the grant to the three Pueblo petitioners are both called the "Ojo del Espiritu Santo" the Baca grant only involves a portion of the petitioners' grant of 1766.

14. Another tract located within the exterior boundaries of the lands claimed by petitioners is the San Isidro Grant. A petition was filed with the Surveyor General January 29, 1857 by the legal representatives of Antonio Armenta and Salvador Sandoval, asking for confirmation of their title to this tract, founded upon a grant made on or about May 4, 1786, by the Governor of the Province of New Mexico. The

claim was duly investigated and recommended for confirmation in the Surveyor General's report of February 3, 1860. Congress confirmed the same, June 21, 1860, and a patent was issued November 14, 1936, for 11,476.68 acres.

15. On or about June 4, 1859, another petition was filed with the Surveyor General claiming lands by virtue of a title derived from Spain and overlapping much of the northern area herein claimed by the three Pueblos. This petition was filed by Francisco Gareia, Jesue Baca, and Pablo Gallege, for themselves and others seeking confirmation of their title to a tract of land granted to them March 6, 1798, by the Spanish Governor of the Province of New Mexico. This tract was known as the Canon de San Diego Grant. The claim was duly investigated by the Surveyor General and a report submitted to Congress June 10, 1859, recommending confirmation of the grant. Congress confirmed the grant June 21, 1860, and a patent was issued October 21, 1881, for 116,286.89 acres. Of this grant 78,526 acres lie within the boundaries of the lands claimed by the three Pueblo petitioners now before this Commission.

16. The Court of Private Land Claims was established by Act of Congress March 3, 1891. This Act 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 this Act, Congress reserved to itself the determination of such claims. Under this Act the Court of Private Land Claims only adjudicated disputes between private individuals and the United States as to the

validity of Spanish or Mexican land grants to ascertain what was private and what was public property. It had no authority to determine conflicting interests in lands between private parties (26 Stat. 857-858).

17. In 1768 six Spanish settlers--namely, Paulin Montoya, Tirribio Gonzales, Bernabe Gallege, Antonio Gallege, Feliz Casado, and Antonio Casado--filed a petition with the Governor and Captain General of the Province of New Mexico for a grant of land which became known as the Ojo de San Jose Grant. On September 16, 1768, the Governor approved the petition and on September 22, 1768, the six grantees were placed in judicial possession of the land by the chief alcalde. A petition for confirmation of this grant was filed with the Surveyor General March 19, 1881, but no action was taken at that time.

Under the provisions of the Act of March 3, 1891, a petition was filed in the Court of Private Land Claims praying for confirmation of the title to this tract of land. This claim was duly investigated and a decree of confirmation was entered September 29, 1894. Because of some uncertainty as to the location of the western boundary, the decree was amended July 6, 1898, and August 16, 1900. A patent was issued February 8, 1912, for 4,340.278 acres. All this grant lies within the boundaries of the lands claimed by the three Pueblos in their Fourth cause of action.

18. On or about March 4, 1768, Nero Antonio Montoya petitioned the Governor of the Province of New Mexico for a grant of land known as the Ojo de Borrego tract. After completion of the required investigation of the allegation of the petition the requested lands were formally granted to Nero Antonio Montoya and he was placed in

judicial possession of the same March 20, 1768.

On or about February 17, 1893, a petition was filed in the Court of Private Land Claims by Jose Albine Baca and others, for themselves and for and on behalf of all the heirs, successors, assigns and legal representatives of Nero Antonio Montoya for confirmation of their title to the Ojo de Borrego tract. The Court of Private Land Claims duly investigated the allegation of the petition and found that the grant to Montoya was a valid Spanish grant and that such title was complete and perfect and should be confirmed. A decree of confirmation was entered September 29, 1894, and a patent was issued to the heirs, assigns, and legal representatives of Nero Antonio Montoya, June 19, 1913, for 16,602.40 acres. Of this grant, 10,757 acres lie within the exterior boundaries of the lands claimed by the three Pueblos in their Fourth cause of action.

19. Two petitions were filed in the Court of Private Land Claims seeking confirmation of what is commonly known as the Canada de Cochiti Grant. Since the petitioners in each case claimed title to the same tract of land under the same title, the petitions were ordered consolidated for purposes of trial.

On February 16, 1898, the Court of Private Land Claims entered a decree confirming the title of Antonio Lucero, as the original grantee, and his heirs, assigns and legal representatives, to the Canada de Cochiti Grant. In its decree of confirmation the Court of Private Land Claims found that on August 2, 1728, the King of Spain, by the Governor and Captain General of the Province of New Mexico, upon the

petition of Antonio Jucero granted to him a tract of land commonly known as the Canada de Cochiti Grant and that the title to said tract of land founded upon such grant was good, valid and complete title. A patent was issued March 7, 1901, for 19,112.78 acres. Three thousand one hundred twenty five acres of this grant lie within the exterior boundaries of the lands claimed by the three Pueblos in their Fourth Cause of Action.

20. The land referred to in the Zia Pueblo Grant, Jemez Pueblo Grant, Santa Ana Pueblo Grant, Ojo del Espiritu Santo Grant to Baca, Canon de San Diego Grant, San Isidro Grant, Ojo de San Jose Grant, Ojo de Borrego Grant, and Canada de Cochiti Grant were private property at the time of the Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848, with complete and perfect titles vested in Spanish grantees or their heirs, assigns and legal representatives. Title to those lands had passed under the laws of Spain many years before Mexico or the United States acquired sovereignty over that territory. Thus, such lands never became a part of the public domain of either the United States or Mexico.

The United States is not liable to petitioners for recognizing the rights of the various Spanish grantees in the lands granted to them under the authority of the King of Spain. Petitioners, therefore, have no claim against the defendant for lands included in any of the Spanish grants overlapping or entirely included within the exterior boundaries of the lands herein claimed by the petitioners. The total area of such land grants included within the boundaries of petitioners' claim is 221,366 acres.

21. At no time did either the United States or Mexico recognize the title of petitioners to the lands herein claimed. The authority to bind the United States by such recognition is reserved to the Congress who indicated no such intention in this case. However, under the Indian Claims Commission Act, petitioners can recover the fair market value of such public lands as petitioners exclusively used and occupied at the time United States' sovereignty attached to the Territory of New Mexico in 1848, provided these lands were taken from them by the defendant without adequate consideration or petitioners' loss of these lands was because of a lack of fair and honorable dealings on the part of the defendant. The fact that Congress did not recognize the title of petitioners to the lands herein claimed does not constitute a lack of fair and honorable dealings on the part of the defendant.

22. On or shortly before June 16, 1766, a petition was presented on behalf of the Pueblos of Zia, Jemez and Santa Ana, to the Governor and Captain General of the Province of New Mexico asking for a grant of the tract of land commonly called Ojo del Espiritu Sante, or Spring of the Holy Ghost. The lands were described as follows:

. . . on the east, the Pueblos aforesaid; on the west, the summits of the Puerco River; on the north, a place called the Ventana, where some Navajo Apaches reside; and on the south, the lands of the citizen settlers of said Puerco River. (Zia v. U. S., 168 U. S. 198, 199)

After the required investigation had been made by the chief alcalde the Governor issued a decree August 6, 1766, granting the above land to the

petitioners. In compliance with this decree the alcalde formally placed the Indians in possession of the lands granted.

On or about November 28, 1892, the three pueblos filed a petition in the Court of Private Land Claims seeking a confirmation of their 1766 grant to the Ojo del Espiritu Santo tract. Petitioners stated that the heirs of Luis Cabeza de Baca claimed a certain portion of this grant by virtue of a grant made to the aforesaid Baca May 23, 1815, of a tract of land also called the Ojo del Espiritu Sante which overlapped and conflicted with the lands claimed by the petitioners. Petitioners contended that though the Baca grant had been confirmed by Congress, that it was void as against their earlier grant in 1766.

Petitioners also alleged that in 1798 another grant was made to Jose Miguel Gardiá and his associates (known as the Canon de San Diego Grant) and that a portion of the same overlapped petitioners' grant of 1766. Petitioners contended that in spite of the Canon de San Diego grant being confirmed by Congress June 21, 1860, that such grant was void as to any portion which overlapped the earlier grant of petitioners of the Ojo del Espiritu Santo tract. Petitioners, therefore, prayed that the court might determine the validity of their title to the Ojo del Espiritu Santo tract in accordance with the laws and customs of Spain and that a decree be entered confirming their claim thereto. The case was tried upon the merits and all the evidence presented to the Surveyor General many years earlier was again submitted to the Court of Private Land Claims. On August 10, 1893, the court handed down its decision rejecting petitioners' claim, holding that the 1766 grant was

only a license to the Pueblos to pasture upon the lands in question and did not convey a fee title therein. The petition was dismissed and the Indians appealed to the Supreme Court of the United States.

The entire record from the Court of Private Land Claims went up for review before the Supreme Court in accordance with the review provisions of Sec. 9 of that act establishing the Court of Private Land Claims. The Supreme Court also had the right under this act to take new testimony in addition to that given in the court below. In upholding the decision of the court below the Supreme Court said:

. . . we are of the opinion that the court below was correct in holding that the grant in question did not vest the title to the land in the petitioners, but was a mere license to use them for pasturage; and that such license, if not revoked by the subsequent grants, was revoked by the treaty of Guadalupe Hidalgo, ceding this entire territory to the United States (Zia v. U. S., 168 U. S., 198-207)

This Commission is bound by the above adjudication and finds, therefore, that the judgment of the Court of Private Land Claims as affirmed by the Supreme Court, to the effect that the 1766 grant of the Ojo del Espiritu Santo tract to petitioners did not convey a fee title to the lands in question, is res judicata of the claim herein presented by petitioners in their third cause of action.

23. Of the 520,000 acres claimed by petitioners in Count Four by virtue of aboriginal title, only 298,634 acres became part of the public domain of the United States under the Treaty of Guadalupe Hidalgo in 1848. Petitioners can only claim aboriginal title to lands which became part of the public domain when United States sovereignty attached to the territory in question.

Petitioners have not presented the proof required to establish aboriginal title to any of the 298,634 acres of the subject lands which became part of the public domain of the United States in 1848. In addition, there is evidence to indicate that petitioners' Spanish land grants and other lands outside the above 298,634 acres, which were used by petitioners in 1848, were sufficient for their needs at that time. Therefore, we conclude that petitioners are not entitled to recover under Count Four of their Amended Petition.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner