

BEFORE THE INDIAN CLAIMS COMMISSION

SOUTHERN UTE TRIBE OR BAND OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 328
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 6, 1966

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Petitioner, the Southern Ute Tribe of the Southern Ute Reservation, Colorado, organized and incorporated under the Indian Reorganization Act and composed of the allotted Moache and Capote Bands of Ute Indians, seeks to recover (1) just compensation for its lands taken and disposed of by the United States and (2) for the wrongful use by the United States of the proceeds of other lands of petitioner.

2. The lands involved in this proceeding lie within the boundaries of the present day Southern Ute Indian Reservation. The reservation was originally part of a larger reservation in western Colorado to which the Moache and Capote Bands, together with other Ute Indian bands, compositely known as the Confederated Bands of Ute Indians, held recognized title pursuant to a treaty negotiated on March 2, 1868.

3. Historically, the Moache and Capote Bands, together with the Weeminuche Band of Ute Indians, resided on the southern part of the 1868 reservation where a separate agency was established for them on the Rio de los Pinos in accordance with Article IV of the 1868 Treaty. Pursuant to an agreement set forth in the Act of June 15, 1880 (21 Stat. 199), the Confederated Bands of Ute Indians relinquished their Colorado lands in trust to the United States except such lands as were reserved for the Uncompahgre Utes and for the Moache, Capote and Weeminuche Bands (referred to in the agreement as "Southern Utes"), to reside upon. Thereafter, the Uncompahgre Band and other Ute Indian groups, identified as the White River Band, left Colorado and removed to Utah, while the "Southern Utes" remained in Colorado in the southern part of the 1868 reservation.

4. The Act of July 28, 1882 (22 Stat. 178), provided as follows:

~~***~~ * That all of that portion of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Utes be, and the same is hereby, declared to be public land of the United States, and subject to disposal from and after the passage of this act, in accordance with the provisions and under the restrictions and limitations of section three of the Act of Congress approved June fifteenth, eighteen hundred and eighty, chapter two hundred and twenty-three, except as hereinafter provided, under regulations to be prescribed by the Secretary of the Interior in accordance with the provisions of this act.

SEC. 2. That the Secretary of the Interior shall, at the earliest practicable day, ascertain and establish the line between the land mentioned in section one of this act and that now or lately occupied by the Southern Utes in said State; and for that purpose there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of five hundred dollars.

SEC. 3. That all entries, settlements, or locations heretofore made, under any law of the United States, by duly-qualified persons, upon a strip of land extending northerly and southerly, not exceeding ten miles in width, within that part of the Ute Indian Reservation in the State of Colorado lately occupied by the Uncompahgre and White River Ute Indians, and bounded on the east by the one hundred and seventh meridian of longitude west from Greenwich, shall legally date from the time they were respectively made; and the rights of said persons shall be in all respects the same as if the lands had been legally subject to their claims when the same were initiated: Provided, however, That if homestead entries have been made on said strip, the lands so entered shall be paid for in cash, after proof which would be satisfactory under the pre-emption laws: And provided, further, That none of said lands shall be disposed of for any consideration other than cash, nor for a less price than one dollar and twenty-five cents per acre.

5. Under authority of the Act of June 15, 1880 (21 Stat. 199), and the Act of July 28, 1882 (22 Stat. 178), and within the original reservation established in 1868, a reservation was surveyed for the "Southern Utes", Moache, Capote and Weeminuche Bands approximately 110 miles long, east and west, and 15 miles wide, identified as Royce Area No. 617, Colorado. The Moache and Capote Bands resided in the eastern part and the Weeminuche Band resided in the western part of the newly surveyed reservation.

6. By the Act of May 1, 1888 (25 Stat. 113, § 4), Congress authorized negotiations with the Moache, Capote and Weeminuche Bands as follows:

The Secretary of the Interior is hereby authorized to appoint a commission, consisting of three persons, with authority to negotiate with the band of Ute Indians of southern Colorado for such modification of their treaty and other rights, and such exchange of their reservation, as may be deemed desirable by said Indians and the Secretary of the Interior; and said commission is also authorized, if

the result of such negotiations shall make it necessary, to negotiate with any other tribes of Indians for such portion of their reservation as may be necessary for said band of Ute Indians of southern Colorado if said Indians shall determine to remove from their present location; the report of said commission to be made to and subject to ratification by Congress before taking effect; and for this purpose the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated, which shall be immediately available.

The Commissioners appointed to negotiate with the Indians were successful in obtaining an agreement whereby the Indians would exchange their reservation in Colorado for a new reservation in the Territory of Utah, but Congress declined to act upon the agreement and, instead, passed the Act of February 20, 1895 (28 Stat. 677), which provides in pertinent part as follows:

* * * That the agreement made by J. Montgomery Smith, Thomas S. Childs, and R. B. Weaver, commissioners on the part of the United States, with the Southern Ute Indians of Colorado, bearing date November thirteenth, eighteen hundred and eighty-eight, be, and the same is hereby, annulled, and the treaty made with said Indians June fifteenth, eighteen hundred and eighty, be carried out as herein provided, and as further provided by general law for settling Indians in severalty.

SEC. 2. That within six months after the passage of this act the Secretary of the Interior shall cause allotment of land, in severalty, to be made to such of the Southern Ute Indians in Colorado as may elect and be considered by him qualified to take the same out of the agricultural lands embraced in their present reservation in Colorado, such allotments to be made in accordance with the provisions of the Act of Congress approved June fifteenth, eighteen hundred and eighty * * *. And the amendments thereto, as far as applicable hereto, and the treaties heretofore made with said Indians * * *.

SEC. 3. That for the sole and exclusive use and occupancy of such of said Indians as may not elect or be deemed qualified to take allotments of land in severalty,

as provided in the preceding section, there shall be, and is hereby, set apart and reserved all that portion of their present reservation lying west of the range line between ranges thirteen and fourteen west of the New Mexico principal meridian, and also all of townships thirty-one and thirty-two of ranges fourteen, fifteen, and sixteen west of the New Mexico principal meridian and lying in the Territory of New Mexico * * *.

SEC. 4. That at the expiration of six months from the passage of this Act the President of the United States shall issue his proclamation declaring the lands embraced within the present reservation of said Indians except such portions as may have been allotted or reserved under the provisions of the preceding sections of this Act, open to occupancy and settlement, and thereupon said lands shall be and become a part of the public domain of the United States, and shall be subject to entry under the desert, homestead, and town site laws and the laws governing the disposal of coal, mineral, stone, and timber lands; but no homestead settler shall receive a title to any portion of such lands at less than one dollar and twenty-five cents per acre, and shall be required to make a cash payment of fifty cents per acre at the time filing is made upon any of said lands * * *.

SEC. 5. That out of the moneys first realized from the sale of said lands so opened up to public settlement there shall be paid to said Indians the sum of fifty thousand dollars, as follows: Five thousand dollars annually for ten years, and, when paid, the money to be equally divided among all of said Indians per capita, irrespective of age or sex; also the sum of twenty thousand dollars of said proceeds shall be paid to the Secretary of the Interior, who shall invest the same in sheep and divide the said sheep among the said Indians per capita equally, irrespective of age or sex; also to Ignacio, head chief; to Buckskin Charlie, as chief of the Moaches, and Mariano, as chief of the Weeminuches, the sum of five hundred dollars each; also to Tapucke and Tabewatch, as chiefs of the Capotes, the sum of two hundred and fifty dollars each; that the balance of the money realized from the sale of lands, after deducting expenses of sale and survey, shall be held in the Treasury of the United States in trust for the sole use and benefit of said Southern Ute Indians. That nothing herein provided shall in any manner be construed to change or interfere with the rights of said Indians under any other existing treaty regarding any annuities or trust funds or the interest thereon.

SEC. 6. That the foregoing provisions of this Act shall take effect only upon the acceptance thereof and consent thereto by a majority of all the male adult Indians now located or residing upon the reservation, which acceptance shall be at once obtained under such regulations as the Secretary of the Interior may prescribe.

7. Following acceptance by the Indians of the provisions of the Act of February 20, 1895, the Moache and Capote Bands, occupying the eastern part of the original reservation, accepted allotments, but the Weeminuche Band declined allotments and remained on the western part of the reservation where a new agency, the Navajo Springs agency, was established for them near Ute Mountain roughly 40 miles southwest of Mancos, Colorado. The lands occupied by the Weeminuche Band were set apart and reserved from entry by Section 3 of the Act of February 20, 1895 (28 Stat. 677). The Weeminuche Band and the lands which they occupied came to be known as the Ute Mountain Tribe and the Ute Mountain Reservation respectively. No lands or proceeds of lands within the Ute Mountain Reservation are claimed by petitioner.

8. The eastern part of the reservation occupied by the Moache and Capote Bands, excepting allotted lands, was opened to entry under the terms of the Act of February 20, 1895, by Presidential proclamation on April 13, 1899 (31 Stat. 1947). Years later, on September 14, 1938, all of the opened lands which had not been disposed of by the United States were restored by order of the Secretary of the Interior, to tribal status as part of the present day Southern Ute Reservation belonging to petitioner.

9. Following the opening of the Moache and Capote lands to entry, Congress passed the Act of May 17, 1900 (31 Stat. 179), entitled "An Act Providing for Free Homesteads in the Public Lands for Actual and Bona Fide Settlers, and Reserving the Public Lands for that Purpose."

That Act provides in pertinent part as follows:

* * * That all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this Act by treaty or agreement from the various Indian tribes, who have resided or shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry; Provided, That the right to commute any such entry and pay for said lands in the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect: Provided, however, That all sums of money so released which if not released would belong to any Indian tribe shall be paid to such Indian tribe by the United States. * * * And provided further, That no lands shall be herein included on which the United States Government had made valuable improvements, or lands that have been sold at public auction by said Government.

SEC. 2. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

The purpose and effect of the Act of May 17, 1900, was to extend to persons who desired homesteads on opened Indian reservation lands the same opportunity enjoyed by settlers on the public domain, under the (free) homestead law of 1862 (12 Stat. 392), to obtain land without a cash payment.

10. After the Moache and Capote lands were opened to entry in 1899 and before the order of the Secretary of the Interior restoring the opened lands to tribal status in 1938, the defendant took from petitioner and disposed of a large part of petitioner's lands, as follows:

Free homesteads	230,066.93 acres
Soldier's additional homesteads	<u>480.51 acres</u>
Total	230,547.44 acres

No payment has been made to petitioner for the 230,547.44 acres of land so taken and disposed of.

11. From certain sales of petitioner's lands the defendant collected and deposited in the Treasury of the United States in varying amounts, beginning July 26, 1899, and ending June 30, 1928, the total sum of \$215,977.58. The proceeds of petitioner's land sales were recorded on the books of the Treasury to petitioner's credit in a fund entitled "Proceeds of Southern Ute Reservation." The United States thereby became the borrower of petitioner's money and had the use of it under Revised Statutes § 3644 which provides:

All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depository so drawn upon shall make returns to the Treasury and Post Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster General.

12. By the Act of April 1, 1880 (21 Stat. 70), Congress authorized the Secretary of the Interior:

* * * To deposit, in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust-fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semi-annually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

The rate of interest to be paid on the proceeds of sales of Indian trust lands is 5% as prescribed by Revised Statutes § 3659:

All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than 5 per centum per annum.

No interest was paid on the proceeds of sales of petitioner's lands until January 31, 1930, when the fund "Proceeds of Southern Ute Reservation" began to be credited with interest at 4% per annum, purportedly under the authority of the Act of February 12, 1929 (45 Stat. 1164), as amended by the Act of June 13, 1930 (46 Stat. 584), which provides as follows:

That all funds with account balances exceeding \$500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum.

SEC. 2. All tribal funds arising under the Act of March 3, 1883 (22 Stat. 590), as amended by the Act of May 17, 1926 (44 Stat. 560), now included in the fund "Indian Money, Proceeds of Labor," shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding \$500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930.

SEC. 3. The amount held in any tribal fund account which, in the judgment of the Secretary of the Interior, is not required for the purpose for which the fund was created, shall be covered into the surplus fund of the Treasury; and so much thereof as is found to be necessary for such purpose may at any time thereafter be restored to the account on books of the Treasury without appropriation by Congress.

SEC. 4. The interest accruing on Indian tribal funds under this Act shall be subject to the same disposition as prescribed by existing law for the respective principal funds.

Interest credited on the fund "Proceeds of Southern Ute Reservation" was reflected in the noninterest-bearing fund "Interest on Proceeds of Southern Ute Reservation."

13. The defendant has paid interest, under the Act of April 1, 1880 (21 Stat. 70), on the money of other Indians deposited in the Treasury after their lands were opened and sold by defendant under statutory terms and conditions substantially the same as those contained in the Act of February 20, 1895 (28 Stat. 677).

14. From time to time, beginning on May 13, 1892, and ending on June 29, 1940, the defendant also received and deposited money belonging to petitioner in the Treasury to petitioner's account in the fund "Indian Moneys, Proceeds of Labor, Southern Ute Indians."

The total sum deposited was \$19,124.22 derived from the following sources:

Advertising fees	Sale of farm and dairy products
Coal royalties	Sale of iron
Grazing fees	Sale of livestock
Interest on official accounts	
Lease of tribal lands	Sale of rifles, separator, and typewriter
Payment for damages to telephone line	Sale of subsistence
Payments for railroad right of way	Sale of timber
Payment for threshing services	Sale of water
Rental of livestock	Trespass fees
Rental of school building	
Sale of agricultural implements	

No interest was paid on any part of the money deposited in the fund until January 9, 1931, when interest began to be credited at 4% per annum and was recorded in the fund "Interest on Proceeds of Labor, Southern Ute Indians."

16. Petitioner has challenged the defendant's use of petitioner's money for the following purposes, as listed in defendant's accounting:

Agency buildings and repairs	Miscellaneous building material
Agricultural aid	Pay of carpenters
Agricultural implements and equipment	Pay of clerks
Automobiles, vehicles, maintenance and repairs	Pay of farmers
Clothing	Pay of teamsters
Development of Oxford tract	Pay of truck drivers
Fuel, light, water and sewage	Pay of herders and stockmen
Exhibit hall	Pay of interpreters
Hardware, glass, oils and paints	Pay of laborers
Household equipment and supplies	Pay of mechancis
Livestock	Pay of sawmill employees
Maintaining law and order	Provisions
Medical expenses	Roads and bridges
Mills and shops	Transportation, etc., of supplies
Miscellaneous agency expenses	

Inasmuch as the propriety of the above expenditures by defendant remains to be determined, it will be necessary to have further hearings and evidence with regard thereto.

17. When the defendant expended moneys from petitioner's interest-bearing and noninterest-bearing funds, the balances in noninterest-bearing funds were not exhausted before expenditures were made from interest-bearing funds, when both types of funds were equally available for such expenditures.

If defendant had credited petitioner's two interest-bearing funds with interest when the money came into defendant's possession beginning in 1892 and 1900, allowing a reasonable period for delay in deposit, substantial sums of noninterest-bearing funds would have been available to free interest-bearing funds from the charges which defendant made against those funds both before and after interest began to be credited on those funds.

By reason of the expenditure of interest-bearing funds before the expenditure of moneys from the noninterest-bearing funds and by reason of the failure of defendant to credit the interest-bearing funds with interest prior to 1930, the plaintiff has lost interest upon its interest-bearing funds. Since the interest so lost would have been deposited in noninterest-bearing funds it has not been available further to reduce expenditures from the interest-bearing funds.

18. Defendant has acknowledged an erroneous credit of \$7.74 to the Confederated Bands of Ute Indians and erroneous transfers of \$193.25 from the "Proceeds of Southern Ute Reservation" fund and \$800 from the "Interest on Proceeds of Southern Ute Reservation" fund.

19. Petitioner is entitled to recover just compensation for 230,547.44 acres of land taken by defendant and disposed of as free homesteads or soldiers' additional homesteads, based upon the value of such lands as of the date of taking together with interest sufficient to contribute the present full equivalent of that value paid contemporaneously with the taking. The value of the land and the date of taking will be determined at a subsequent proceeding.

20. Petitioner is entitled to recover the total amount by which its funds would have been increased (1) through the payment of interest at 5% per annum, beginning not later than 30 days after the money came into defendant's possession, on moneys received by defendant from sales of petitioner's lands; (2) through the payment of interest at 4% after July 1, 1930, on any other interest-bearing moneys until actually expended by the defendant for valid purposes; (3) if the erroneous transfers acknowledged by defendant had not been made; and (4) through expenditures from noninterest-bearing moneys before expenditures from moneys which earned or should have earned interest.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner