

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ZIA, PUEBLO DE JEMEZ,)
AND PUEBLO DE SANTA ANA,)
Plaintiffs,)

v.)

Docket No. 137

THE UNITED STATES OF AMERICA,)
Defendant.)

Decided: December 17, 1970

Appearances:

Claud S. Mann and M. J. Clayburgh, Attorneys
for Plaintiffs.

Bernard M. Newburg and Rembert A. Gaddy, with
whom was Mr. Assistant Attorney General
Shiro Kashiwa, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Commissioner Yarborough delivered the opinion of the Commission.

The claims of the three Pueblos of Zia, Jemez, and Santa Ana were brought under Clause (4), Section 2, of the Indian Claims Commission Act (60 Stat. 1049, 1050), seeking to recover for the uncompensated taking by the United States of some 520,000 acres of land to which the Indians claimed title. The Indians' ownership was asserted in part by aboriginal title and in part by virtue of a Spanish grant in 1766.

The issues of title having been adjudicated,^{1/} this matter is now before the Commission for determination of the fair market value of some 282,000 acres of land which the Commission found had once been held jointly by these three pueblos in Sandoval County in north-central New Mexico north of the city of Albuquerque and between the Rio Grande and the Rio Puerco.

On August 27, 1968, the parties jointly filed a stipulation with the Commission whereby they agreed:

- (a) That of plaintiffs' 298,634 acres of Indian title lands certain tracts were never taken from the plaintiffs, and that the remaining total acreage to be valued is 282,415.73 acres;
- (b) That 34,900.27 acres of national forest lands within plaintiffs' Indian title lands were taken on October 12, 1905 (hereafter referred to as Tract A) and that the fair market value should be determined as of that date;
- (c) That 16,811.74 acres in homestead or preemption entries were taken at various dates between 1887 and 1934, (hereafter referred to as Tract B) and that 1920 is a fair average date for determining the fair market value of such lands; and
- (d) That the remaining 230,703.72 acres of plaintiffs' Indian title lands were taken on April 4, 1936, (hereafter referred to as Tract C), and that the fair market value should be determined as of that date.

^{1/} The Commission dismissed plaintiffs' petition in this case (11 Ind. Cl. Comm. 131 (1962)). The Court of Claims partially reversed (Pueblo de Zia v. United States, 165 Ct. Cl. 501 (1964)), and the Commission then determined that certain lands were taken from plaintiffs at varying dates between the late 1800's and 1936 (19 Ind. Cl. Comm. 56 (1968)). An order was later issued concerning the appraisal of offsets of real property (21 Ind. Cl. Comm. 316 (1969)).

We accept these facts stated in the stipulation.

The hearing before the Commission to determine the fair market value of the three tracts, as well as permissible offsets, was held on August 19 and 20, 1969, in Albuquerque, New Mexico.^{2/}

The plaintiffs relied on reports and testimony from four expert witnesses to establish the value of the lands in question. Mr. Dewey Dismuke summed up for the others and relied on their expert specialized knowledge in appraising the three tracts. The most important single factor considered was grazing capacity, but other factors were also analyzed. By an arithmetic process, which is set out in detail in Finding No. 48 attached hereto, Mr. Dismuke concluded that the value of this land for grazing is \$326.00 for each cow it can support for one year. This unit he utilized as the primary value criterion.

The defendant relied on two expert witnesses, Mr. Ernest Oberbillig, a geologist, and Mr. R. Howard Sears, a real estate appraiser. Mr. Oberbillig analyzed the mineral deposits, and Mr. Sears appraised the land at issue, primarily on the basis of market data.

Tract A

This section of the subject area consists of 34,900.27 acres of generally mountainous timbered land and was taken in 1905.

^{2/} The Report of the Commissioner on his preliminary determination of value was issued September 3, 1969.

