

BEFORE THE INDIAN CLAIMS COMMISSION

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| PUEBLO OF TAOS, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Docket No. 357 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

ORDER TO SHOW CAUSE WHY THE COMMISSION'S
FINDINGS, OPINION AND INTERLOCUTORY ORDER OF
SEPTEMBER 8, 1965 RELATING TO THE PLAINTIFF'S
TOWN OF TAOS CLAIM, SHOULD NOT BE VACATED

On September 8, 1965 the Commission issued its Findings of Fact No. 20 through 25, 15 Ind. Cl. Comm. 666, 682 et seq., and an Opinion and Interlocutory Order, 15 Ind. Cl. Comm. 688, 703 et seq., relating to plaintiff's second claim, designated: Town of Taos Claim. It now appears from a review of the record in conjunction with plaintiff's October 17, 1969 motion for summary judgment for interest (separated as Docket No. 357-A) that Findings 20 through 23 and 25 and the resultant Opinion and Order are erroneous in the following respects:

Finding 20, 15 Ind. Cl. Comm. 682, states that in 1864 the United States conveyed to the Pueblo of Taos, by way of patent, approximately 17,360 acres. The finding fails to state that the patent was not the usual land patent whereby the United States conveys a portion of public domain, but merely a quitclaim issued in confirmation of prior Spanish and Mexican land grants. A pertinent portion of the patent reads:

. . . this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands and shall not affect any adverse valid rights should such exist. 1/

The finding further fails to disclose that (1) the United States never had a proprietary interest in the 17,360 acres and in consequence the patent in fact was not a conveyance of title, 2/ and (2) as will be explained in greater detail herein, the Pueblo Lands Board found that adverse valid rights to much of the tract sufficient to preclude subsequent recovery by the United States for the tribe, did in fact exist.

Finding 21 states that over a period of time non-Indians settled on the land believing in good faith that they had good title, but that the decision in United States v. Sandoval, 231 U.S. 28 (1913) implied that they did not have good title. The Sandoval case made it clear that the Indian Trade and Intercourse Act 3/ had applied to pueblo Indians of New Mexico since 1851, making most efforts to alienate Indian lands thereafter,

1/ The identical proviso is contained in the confirming act of December 22, 1858 (11 Stat. 374) upon which the patent is based.

2/ Cf. Osage Nation of Indians v. United States, 119 Ct. Cl. 592 at 648, 661; 97 Fed. Supp. 265, cert. denied, 120 Ct. Cl. 826, 342 U.S. 896 (1951) (on appeal of Docket No. 9, 1 Ind. Cl. Comm. 43 (1948)), discussing the decisions of the Circuit Ct., and the Supreme Ct. in United States v. Leavenworth, Lawrence & Galveston R. Co., 26 Fed. Cases 901 (Cir. Ct., D. Kans. 1874), aff'd. 92 U.S. 733 (1875) and United States v. Missouri, Kansas & Texas Ry. Co., 26 Fed. Cases 1276 (Cir. Ct., D. Kans. 1874), aff'd. 92 U.S. 760 (1875), holding that patents issued by the United States to Kansas and in turn by Kansas to the railroads, were invalid because the United States hadn't owned the land when it purported to grant it to Kansas.

3/ Act of June 30, 1834, 4 Stat. 729. Although the act was extended to the Indian tribes of New Mexico in 1851, 9 Stat. 587, §7, for forty-four years following United States v. Lucero, 1 N. M. 422 (1869) until the Sandoval decision, it had been understood that the proscription against alienation of Indian lands did not apply to lands of pueblo Indians.

without the consent of the United States, invalid. However, Finding 21 fails to disclose that some of the non-Indian claims stemmed from bona fide purchases and from a conflicting Spanish land grant that predated the 1851 application of the Indian Intercourse Act.

Finding 21 further states that the Pueblo Lands Board's responsibility was to determine the status of land granted and confirmed to the pueblos, and that non-Indians were to be given title if they could prove either (a) continuous, exclusive and adverse possession under color of title since January 6, 1902, with taxes paid, or (b) continuous, exclusive and adverse possession since March 16, 1889, with taxes paid, but without color of title. This, especially when considered with Finding 22, invited the erroneous conclusion that determinations of title and awards under the act were made only by the Pueblo Lands Board and only on the basis of the adverse possession provisions of the act.

The final paragraph of Finding 21 states:

To compensate the Pueblos for the loss of land which was to be confirmed in non-Indian ownership, the United States undertook to pay the Pueblos for these lost lands on the basis of valuation reports prepared by the Pueblo Lands Board.

The statement is misleading in that it suggests that the United States assumed liability for all loss of pueblo lands reported by the board. In fact the liability of the United States was limited by Section 6 of the act to lands and appurtenant water rights lost to the Indians

