

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO OF TAOS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 357-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 4, 1974

FINDINGS OF FACT

By accompanying order the Commission has today vacated its Findings of Fact Nos. 20 through 25, entered in Docket 357 on September 8, 1965, at 15 Ind. Cl. Comm. 666, 632-87. Pursuant to said order, the Commission now makes the following findings of fact in Docket 357-A, in lieu of said vacated findings of fact.

1. Identity of Plaintiff and Capacity to Bring Claim. The Pueblo of Taos is a tribe of American Indians residing within the present territorial limits of the United States. The plaintiff has been recognized by the Government of the United States as a tribe, represented by its Governor and Council. The plaintiff has the capacity to bring this claim under section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

2. History of Claim. This claim, based upon the proceedings under the Pueblo Lands Act, 43 Stat. 636 (1924), was originally brought as a second claim under Docket 357. On August 13, 1969, at 21 Ind. Cl. Comm. 342, the Commission ordered that this claim be included thereafter under a separate docket, denominated as Docket 357-A.

3. Pueblo de Taos Grant. In 1689, the Spanish issued the Pueblo de Taos Grant to plaintiff in recognition of the plaintiff's title to a square tract of land stretching one league in each cardinal direction from the church in the town of Taos.

4. Town of Taos; Fernando de Taos Grant. The present town of Taos was apparently first settled in 1796. In that year the Spanish Governor of New Mexico issued the Fernando de Taos Grant to 73 Spanish families who began the settlement of the town of Taos. The Fernando de Taos grant lay along the southern edge of the Pueblo de Taos Grant, without overlapping it. The Fernando de Taos Grant document states that the grant is bordered on the north by the "*** boundaries of the Indians of Taos."

Soon thereafter, Spanish settlers began to encroach on the plaintiff's land and the town of Taos extended onto 926 acres of the southwest corner of the plaintiff's 1689 grant. When, in 1815, the Indians complained of this encroachment, the Spanish Governor issued a series of decrees upholding the 1689 grant as inalienable. Under Mexican rule from 1821 to 1848 title to the lands remained in the pueblo but laxity on the part of local officials enabled many non-Indians to obtain illegal holdings on Indian lands.

5. United States Sovereignty. The United States acquired sovereignty over the area at issue here under the Treaty of Guadalupe Hidalgo, which was signed on February 2, 1848, ratified on May 30, 1848, and proclaimed on July 4, 1848, 9 Stat. 922. The Pueblo Indians, including the plaintiff

tribe, were protected in their property by Article IX of the treaty wherein the United States promised them, eventually, "*** all the rights of citizens of the United States ***" and, in the meantime, that they would be "*** maintained and protected in the free enjoyment of their liberty and property ***."

By Section 7 of the Act of July 27, 1851, 9 Stat. 587, the Indian Trade and Intercourse Act of 1834, 4 Stat. 729, was made applicable to New Mexico. The 1834 act provided that no conveyance of Indian lands would be valid unless made by treaty or convention pursuant to the Constitution.

6. Issuance of Patent to Pueblo of Taos. On December 22, 1858, 11 Stat. 374, Congress confirmed the plaintiff's land claims as set out in a report of September 30, 1854, prepared by the Surveyor General of New Mexico. The statute called for a survey of the confirmed lands which was completed on September 25, 1860. The survey notes and map show the town of Taos lying within the four square leagues of the grant.

On November 1, 1864, the United States issued a quit claim patent to the plaintiff for approximately 17,360 acres, including the 926 acres occupied by the town of Taos. The patent was in confirmation of the prior Spanish land grant.

7. Confirmation of Fernando de Taos Grant. Under the Act of March 3, 1891, 26 Stat. 854, the Court of Private Land Claims was created to hear and dispose of claims of holders of Spanish land grants. On February 28, 1893, the claimants under the Fernando de Taos Grant filed a petition with this court to confirm their grant. An amended

petition of April 6, 1897, included the Pueblo of Taos and the United States as defendants. On August 16, 1900, the Court of Private Land Claims found that the Fernando de Taos Grant did not overlap the 1689 Pueblo de Taos Grant. At the direction of the Court of Private Land Claims a survey was made of the Fernando de Taos Grant in 1901. The survey plat shows the town of Taos to be in the Pueblo de Taos Grant.

A patent was issued for the Fernando de Taos Grant on February 25, 1909, on the basis of the 1901 survey. The patent specified that it was without prejudice to the rights of the Pueblo of Taos under the grant confirmed to it and the patent issued to it by the United States.

8. The New Mexico Enabling Act. The New Mexico Enabling Act of June 20, 1910, 36 Stat. 557, under which New Mexico gained statehood in 1912, provided:

[T]he people inhabiting said proposed State do agree and declare that they forever disclaim all right and title *** to all lands lying within [its] boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States***.

9. The Pueblo Lands Act. In 1913, the decision of the United States Supreme Court in the case of United States v. Sandoval, 231 U.S. 28, had the effect of placing a cloud over any non-Indian title to lands acquired from pueblo Indians without congressional consent. In order to safeguard

the rights of settlers who had in good faith acquired land within pueblo Indian land grants, and to do justice to the pueblo Indians at the same time, Congress enacted the Pueblo Lands Act, 43 Stat. 636 (1924).

This Act provided for the establishment of a Pueblo Lands Board to adduce evidence and report on lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States or of any sovereign, or acquired by said Indians as a community by purchase or otherwise, title to which the board should find not to have been extinguished in accordance with the Act. A separate report was to be filed for each pueblo.

Section 3 provided that the Attorney General would file suits to quiet title to all lands so reported.

Section 4 provided that all persons claiming title or ownership to lands in such suits (adversely to the pueblo claims) could plead as a defense, adverse possession under color of title and payment of taxes thereon from January 6, 1902, until passage of the Act, or adverse possession with claim of ownership but without color of title from March 16, 1889, and payment of taxes thereon from March 16, 1899, to the passage of the Act.

Section 5 provided that such pleas successfully maintained would entitle the claimants to a decree in their favor with the effect of a " * * * quitclaim as against the United States and said Indians * * *".

Section 6 provided that the board would also report for each pueblo: (a) the extent of land and appurtenant water rights within the exterior boundaries of lands granted or confirmed to the pueblo but

in possession of non-Indian claimants at the time of such report and which were not claimed for the Indians by any report of the board; (b) whether or not the United States could have recovered same for the pueblo by seasonable prosecution under the New Mexico statutes of limitation; and (c) the value of said lands and water rights and the loss, if any, suffered by the Indians through failure of the United States to seasonably prosecute their rights. The section further provided that the United States would be liable and that the board would award compensation to the pueblo for such loss.

10. Decision of Pueblo Lands Board with respect to Town of Taos Lands. On March 17, 1927, the Pueblo Lands Board determined that no award was due the Pueblo of Taos under section 6 of the Pueblo Lands Act for the town of Taos lands because it appeared to the board that the town of Taos had been established under a conflicting Spanish land grant (the Fernando de Taos Grant) and that the defendant could not have recovered the town of Taos lands for the plaintiff by seasonable prosecution under the New Mexico statutes of limitation.

11. Decision of Pueblo Lands Board with respect to Lands outside Town of Taos. The Pueblo Lands Board in its decision of March 17, 1927, awarded the plaintiff \$48,497.00 under section 6 of the Pueblo Lands Act for lands located outside the town of Taos. In 1930, the board awarded the plaintiff the additional amount of \$27,631.85, representing the board's determination of the loss to the pueblos from successful presentation of claims by non-Indians in suits authorized by section 3 of the Act.

Under the Act of May 31, 1933, 48 Stat. 108, Congress awarded the Pueblo of Taos \$84,707.09, to fulfill what Congress determined was the United States' liability under the Pueblo Lands Act for the loss by the plaintiff of its pueblo grant lands outside the Town of Taos. This amount, together with the \$76,128.85 awarded the Pueblo of Taos by the Pueblo Lands Board constituted \$160,035.94, the value which had been placed on the lands outside the town of Taos by the Pueblo Lands Board. The acts under which Congress subsequently appropriated these funds specified that such sums were compensation in settlement of damages, or in settlement of the liability of the United States as declared by Congress under the Pueblo Lands Act.

12. Value of the Town of Taos Lands. In 1932, the Senate Committee on Indian Affairs valued the 926 acres of the town of Taos at \$297,684.67, based upon appraisals prepared by the Pueblo Lands Board.

13. The Blue Lake Lands. Under the Act of May 31, 1933, 48 Stat. 108, the plaintiff was granted a renewable 50-year permit to use approximately 30,000 acres of the Blue Lake area. The area permitted to be used was enlarged to 37,000 acres on May 5, 1936. The area remained a part of the national forest system of the United States.


The Blue Lake area was included in the plaintiff's aboriginal land claim before this Commission in Docket 357. By our decision of September 8, 1965, at 15 Ind. Cl. Comm. 666, we found that the plaintiff had aboriginal title to approximately 130,000 acres, including

the Blue Lake area, and that the defendant took those lands without the payment of any compensation on November 7, 1906, by making them a part of the national forests.

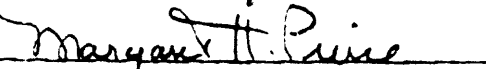
On December 15, 1970, Congress enacted Public Law 91-550, 91st Cong., 2d Sess. (84 Stat. 1437), which amended the Act of May 31, 1933, supra, by providing that the 48,000 acres of the Blue Lake area would be held by the United States in trust for the Pueblo of Taos. The Act, however, contained several conditions limiting the use of the area. The Act also directed this Commission to determine the extent to which the value of the interest in land conveyed by the Act should be credited to the United States or should be set off against any claim of the Taos Pueblo against the United States.



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner