

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO OF SAN ILDEFONSO,)	Docket No. 354
PUEBLO OF SANTO DOMINGO,)	Docket No. 355
PUEBLO OF SANTA CLARA,)	Docket No. 356
Plaintiffs,)	
v.)	
THE UNITED STATES OF AMERICA,)	
Defendant.)	

Decided: May 9, 1973

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Stipulation of the Parties. On October 29, 1969, the United States and each of the three plaintiffs entered into a stipulation and filed the same with this Commission. The stipulation between the United States and the Pueblo of Santa Clara, filed in Docket No. 356, reads as follows (omitting heading and signatures):

STIPULATION AS TO STANDING TO SJE
LIABILITY AND AREA

The parties in the above-entitled claim hereby stipulate and agree as follows:

1. The Pueblo of Santa Clara is and has been since time immemorial a tribe of American Indians residing within the present territorial limits of the United States. It has been recognized by the Government of the United States as a Tribe represented by its Governor and Council. The Pueblo has a written constitution approved by the Secretary of the Interior on December 20, 1935, and amended as of December 29, 1939. This action was instituted within the time allowed by the Indian Claims Commission Act by and under the direction of the Petitioner, acting through its Governor and Council.

2. At the time of the Treaty of Guadalupe Hidalgo, which was concluded on February 2, 1848, 9 Stat. 922, The Pueblo of Santa Clara aboriginally and exclusively used and occupied the area delineated on the attached map, and the Defendant is liable for extinguishing the Petitioner's title to said area.

3. There shall be entered an interlocutory order that the Petitioner, the Pueblo of Santa Clara, has the right and capacity under the Indian Claims Commission Act to bring and maintain this claim for and on behalf of the Pueblo of Santa Clara, that the Petitioner has established Indian title to an area comprising approximately 31,940.86 acres and delineated on a map prepared by the Bureau of Land Management in August 1967, and that the Defendant is liable for having extinguished the Petitioner's Indian title to said area.

4. The parties agree to execute and file with the Commission a joint motion for entry of the interlocutory order provided for in this stipulation, submitting a proposed form of order for the approval of the Commission.

The stipulation between the United States and the Pueblos of San Ildefonso (Docket No. 354) and Santo Domingo (Docket No. 355), respectively, are identical to the above quoted stipulation except for names and acreages and for omission of the underlined sentence referring to a written constitution approved by the Secretary of the Interior.

The Commission adopts the recitals of fact in the foregoing stipulations as its findings, except that it does not find that plaintiff Pueblo of Santo Domingo had exclusive aboriginal use and occupancy of any land now within the San Felipe Indian Reservation.

2. Land Descriptions of Aboriginal Title Areas. The plaintiffs' respective areas of exclusive aboriginal occupancy shown on the maps attached to the stipulations referred to in Finding No. 1 are described as follows. Parcels within the exterior boundaries of these

areas which were the subject of grants of prior sovereigns or which have been established as Indian reservations by the United States are excluded from the following descriptions and from the acreage figures at the end of each description. In case of any variance between the descriptions herein and the maps, the latter shall prevail.

San Ildefonso (Docket No. 354)

Commencing at a mountain peak located about 500 feet due south of the southwest corner of the Santa Clara Reservation;

Thence southeasterly, northeasterly, southerly, southeasterly, northeasterly, southwesterly, southeasterly, northeasterly and southeasterly along the mountain north of Guaje Canyon to a point on said ridge lying northeast of the southwest corner of Section 26, T. 20 N., R. 6 E.,

Thence due north to a ridge immediately north of Chupaderos Canyon;

Thence northeasterly, easterly and southeasterly along said ridge to the point where it intersects the north boundary of the San Ildefonso Pueblo Grant;

Thence east along the north boundary of the San Ildefonso Pueblo Grant to the northeast corner of said Grant;

Thence southeasterly to a point on a line lying halfway between the east boundary of the San Ildefonso Pueblo Grant and the west boundary of the Pojoaque Pueblo Grant;

Thence south along said line to the Calabasa Arroyo;

Thence westerly along the Calabasa Arroyo to Canada Ancha;

Thence northwesterly along Canada Ancha to the Rio Grande;

Thence southwesterly along the Rio Grande to the ridge lying immediately north of the Rito de los Frijoles;

Thence northwesterly and northerly along said ridge to the source of the Rito de los Frijoles;

Thence northerly to the peak of Pajarito Mountain;

Thence northerly to the point of beginning.

Saving and excepting therefrom:

San Ildefonso Pueblo Grant

Jacona Grant

Caja Del Rio Grant

Ramon Vigil Grant

Baca Location No. 1

Santa Clara Reservation

San Ildefonso Reservation

inssofar as they lie within the perimeter described.

Containing 66,227.00 acres, more or less.

Santo Domingo (Docket No. 355)

The aboriginal title lands are divided into six separate tracts, designated "A" to "F" as follows:

A. Commencing at Cerro la Jara run due east to the Peralta Canyon;

Thence southeasterly along the Peralta Canyon to a point where the canyon intersects the northern boundary of the Canada de Cochiti Grant;

Thence due west along said boundary to the point of intersection with a line projected from Bear Springs Peak to Cerro la Jara;

Thence northeasterly along said line to the point of beginning.

B. From Bear Springs Peak in Section 30, T. 17 N., R. 4 E., along a line projected toward Cerro La Jara, northeasterly to the point of intersection with the southern boundary of the Canada de Cochiti Grant;

Thence due east along said boundary to the Peralta Canyon;

Thence southeasterly along the Peralta Canyon to the point of intersection with the western boundary of the Cochiti Pueblo Grant;

Thence due south along the western boundary of the Cochiti Pueblo Grant to the point of intersection with the northern boundary of the Santo Domingo Pueblo Grant;

Thence northwesterly, south, and southeasterly along the Santo Domingo Pueblo Grant boundary to the northwest corner of the San Felipe Pueblo Grant;

Thence due south along the west boundary of the San Felipe Pueblo Grant to the point of intersection with the township line between Ts. 14 and 15 N., R. 4 E.;

Thence northwesterly, on a line projected to strike Borrego Spring, to the point of intersection with the east boundary of the Ojo del Borrego Grant;

Thence north and westerly along the boundary of the Ojo del Borrego Grant to a point on the previously mentioned line projected to strike Borrego Spring;

Thence northwesterly along said line to Borrego Spring;

Thence northeasterly to Bear Springs Peak, the point of beginning.

C. From the southeast corner of the Santo Domingo Pueblo Grant south along the western boundary of the Mesita de Juana Lopez Grant to the point of intersection with the north boundary of the Ortiz Mine Grant;

Thence west and south along the boundary of the Ortiz Mine Grant to the point of intersection with a line projected from Tuerto Spring northwesterly to a point on the Arroyo Coyote lying near the northwest corner of Section 25, T. 13 N., R. 6 E.;

Thence northwesterly along said line to the Arroyo Coyote;

Thence southwesterly, westerly, and northwesterly along Arroyo Coyote to the point of intersection with the east boundary of the Town of Tejon Grant;

Thence north and west on the boundary of the Town of Tejon Grant to the Arroyo Coyote;

Thence northwesterly along Arroyo Coyote to its confluence with the Arroyo Tonque;

Thence down the Arroyo Tonque to its intersection with the eastern boundary of the San Felipe Executive Order Indian Reservation;

Thence north along the eastern boundary of said Indian reservation to its intersection with the south boundary of the Santo Domingo Pueblo Grant;

Thence southeasterly along the south boundary of the Santo Domingo Pueblo Grant to the place of beginning.

D. From the Turquoise Trading Post southeasterly, on a line projected to strike Mt. Chalchihuntl, to the point of intersection with the north boundary of the Sitio de los Cerrillos Grant;

Thence westerly along the north boundaries of the Sitio de los Cerrillos Grant, the Sitio de Juana Lopez Grant, and the Mesita de Juana Lopez Grant to the point of intersection with the east boundary of the La Majada Grant;

Thence north on the east boundary of the La Majada Grant to a point on the Santa Fe River;

Thence easterly along the Santa Fe River to the point of intersection with the east section line of Section 1, T. 15 N., R. 7 E.;

Thence southeasterly to the Turquoise Trading Post, the point of beginning.

E. From the southwest corner of the Sitio de Juana Lopez Grant easterly along the south boundaries of the Sitio de Juana Lopez Grant and the Sitio de los Cerrillos Grant to a point on a line projected from Turquoise Trading Post southeasterly to Mt. Chalchihuntl;

Thence southeasterly along said line to Mt. Chalchihuntl;

Thence southwesterly to Devils' Throne;

Thence northwesterly and westerly along the boundary of the Alamitos or Juan Salas Grants to the point of intersection with the boundary of the Mesita de Juana Lopez Grant;

Thence north on the east boundary of the Mesita de Juana Lopez Grant to the point at which it intersects the west boundary of the Sitio de Juana Lopez Grant;

Thence south on the west boundary of the Sitio de Juana Lopez Grant to the point of beginning.

F. From Cerrillos southwesterly on a line projected to Madrid, to the point of intersection with the east boundary of the Mesita de Juana Lopez Grant;

Thence north along said boundary to the southwest corner of the Alamitos or Juan Salas Grants;

Thence southeasterly and north along the boundary of the Alamitos or Juan Salas Grants to the point of intersection with a line projected from Devils' Throne to Cerrillos;

Thence southeasterly along said line to Cerrillos, the point of beginning.

Containing 77,237.24 acres, more or less.

Santa Clara (Docket No. 356)

The aboriginal title lands are divided into three separate tracts, designated "A," "B," and "C," as follows:

A. Commencing at the intersection of the north boundary of the San Ildefonso Grant and the west boundary of the Santa Clara Pueblo Grant, in Section 30, T. 20 N., R. 8 E.;

Thence west along the north boundary of the San Ildefonso Grant to the point where said boundary intersects the ridge between Garcia Canyon and Chupaderos Canyon;

Thence northwesterly, westerly, and southwesterly along said ridge to a point near the northwest corner of Section 26, T. 20 N., R. 6 E.;

Thence south to the mountain ridge immediately north of Guaje Canyon;

Thence westerly and northwesterly along said ridge to a point on Caballo Mountain at which said ridge line intersects the south boundary of the Santa Clara Indian Reservation;

Thence easterly along the boundary of the Santa Clara Indian Reservation, to the point of intersection of the south boundary of the Santa Clara Indian Reservation with the west boundary of the Santa Clara Pueblo Grant;

Thence south on the west boundary of the Santa Clara Pueblo Grant to the point of beginning.

B. Commencing at the point at which the south boundary of the Santa Cruz Grant intersects the east boundary of the Santa Clara Pueblo Grant;

Thence northeasterly along the south boundary of the Santa Cruz Grant to a point on said boundary due south of Quarteles;

Thence south along a line extending due south from Quarteles to the point of intersection of said line with the north boundary of the Pojoaque Pueblo Grant;

Thence west along the north boundary of the Pojoaque Pueblo Grant to its point of intersection with the east boundary of the Santa Clara Pueblo Grant;

Thence north along the east boundary of Santa Clara Pueblo Grant to the point of beginning.

C. From a point in section 31, T. 21 N., R. 5 E., lying at the center of the divide between the source of the Santa Clara Creek and the source of the Rito de los Indios due north to the southern boundary of the Polvadera Grant;

Thence east along the southern boundary of the Polvadera Grant to its point of intersection with the west boundary of the Juan Jose Lobato Grant;

Thence south-southeasterly and east-northeasterly along the west and south boundaries, respectively, of the Juan Jose Lobato Grant to a point due north of Clara Peak,

Thence due east to the west boundary of the Bartolome Sanchez Grant;

Thence south on the west boundary of the Bartolome Sanchez Grant to the north boundary of the Santa Clara Pueblo Grant, or, if the west boundary of the Bartolome Sanchez Grant does not intersect the north boundary of the Santa Clara Pueblo Grant, then to said north boundary projected so as to intersect said west boundary (also projected if necessary to make the closure);

Thence easterly or westerly along the north boundary of the Santa Clara Pueblo Grant (projected as necessary) to the northwest corner thereof;

Thence south along the west boundary of the Santa Clara Pueblo Grant to the northeast corner of the Santa Clara Indian Reservation;

Thence westerly along the north boundary of the Santa Clara Indian Reservation to the east boundary of the Baca Location No. 1;

Thence north and west along the boundary of the Baca Location No. 1 to a point due south of the point of beginning;

Thence due north to the point of beginning.

Containing 31,940.86 acres, more or less.

3. Indian Title Lands Patented to Third Parties Under the Public Land Laws. Various parcels of the plaintiffs' Indian title lands described in Finding No. 2 have been patented by the defendant to third parties, at dates ranging from 1872 or before to 1962 or later.

4. Indian Title Lands Included in Jemez Forest Reserve. The defendant included various parcels of the plaintiffs' Indian title lands described in Finding No. 2 in the Jemez Forest Reserve created by Proclamation of President Theodore Roosevelt dated October 12, 1905. Said parcels are described as follows:

San Ildefonso

Commencing at a mountain peak located about 500 feet due south of the southwest corner of the Santa Clara Reservation;

Thence southeasterly, northeasterly, southerly, southeasterly, northeasterly, southwesterly, southeasterly, northeasterly and southeasterly along the mountain north of Guaje Canyon to a point on said ridge lying northeast of the southwest corner of Section 26, T. 20 N., R. 6 E.;

Thence due north to a ridge immediately north of Chupaderos Canyon;

Thence northeasterly, easterly, and southeasterly along said ridge to the point where it intersects the section line between section 21 and section 22, T. 20 N., R. 7 E.;

Thence due south to the northern boundary of the San Ildefonso Indian Reservation;

Thence due west to the northwest corner of the San Ildefonso Indian Reservation;

Thence due south along the western boundary of the San Ildefonso Indian Reservation to the northern boundary of the Ramon Vigil Grant;

Thence due west along the northern boundary of the Ramon Vigil Grant to the northwest corner of the Ramon Vigil Grant;

Thence southerly along the western boundary of the Ramon Vigil Grant to the township line between Township 19 North and Township 18 North;

Thence west along said Township line to the eastern boundary of Baca Location No. 1;

Thence north along the eastern boundary of Baca Location No. 1 to the point of beginning.

Santo Domingo

From a point in Section 34, Township 16 North, Range 5 East, where the western boundary of the Pueblo of Cochiti Grant intersects the northern boundary of the Santo Domingo Pueblo Grant north along the western boundary of the Pueblo of Cochiti Grant to the Peralta Canyon;

Thence northwesterly along the Peralta Canyon to the southern boundary of the Canada de Cochiti Grant;

Thence west along the southern boundary of the Canada de Cochiti Grant to the point where said boundary intersects a straight line projected between Cerro La Jara and Bear Springs Peak;

Thence southwesterly along said line to Bear Springs Peak;

Thence southwesterly on a straight line to Borrego Spring;

Thence southeasterly along a line projected between Borrego Spring and the point where the west boundary of the San Felipe Pueblo Grant intersects the township line between T. 14 N. and T. 15 N. to the northern boundary of the Ojo del Borrego Grant;

Thence southeasterly, easterly and northeasterly along the northern boundary of the Ojo del Borrego Grant to the northeast corner of the Ojo del Borrego Grant;

Thence northeasterly to the northwest corner of the Santo Domingo Pueblo Grant;

Thence southeasterly along the northern boundary of the Santo Domingo Pueblo Grant to the point of beginning.

Also Tract A described in Finding No. 2, above.

Santa Clara

Northern Area:

From a point in section 31, T. 21 N., R. 5 E., lying at the center of the divide between the source of the Santa Clara Creek and the source of the Rito de los Indios due north to the southern boundary of the Polvadera Grant;

Thence east along the southern boundary of the Polvadera Grant to its point of intersection with the west boundary of the Juan Jose Lobato Grant;

Thence south-southeasterly and east-northeasterly along the west and south boundaries, respectively, of the Juan Jose Lobato Grant to a point due north of Clara Peak;

Thence due east to the section line between sections 20 and 21, T. 21 N., R. 7 E.;

Thence south along the section lines between sections 20 and 21, 28 and 29, and 32 and 33, T. 21 N., R. 7 E., to the north boundary of the Santa Clara Indian Reservation;

Thence east, north, east, north, east, south, east, south, east, south, and east along the boundary of the Santa Clara Indian Reservation to the eastern boundary of Baca Location No. 1;

Thence north and west along the eastern and northern boundaries respectively, of Baca Location No. 1 to a point in section 31, T. 21 N., R. 5 E., lying due south of the point of beginning;

Thence due north to the point of beginning.

Southern Area:

From a point on the section line between sections 21 and 22, T. 20 N., R. 7 E., at which said line intersects the ridge between Garcia Canyon and Chupaderos Canyon;

Thence northwesterly, westerly and southwesterly along said ridge to a point near the northwest corner of section 26, T. 20 N., R. 6 E.;

Thence due south to the mountain ridge immediately north of Guaje Canyon;

Thence westerly and northwesterly along said ridge to a point on Caballo Mountain at which said ridge line intersects the south boundary of the Santa Clara Indian Reservation;

Thence east, north, east, north, east, south, easterly, south, and easterly along the boundary of the Santa Clara Reservation to the northeast corner of section 21, T. 20 N., R. 7 E.;

Thence south along the section line between sections 21 and 22; T. 20 N., R. 7 E., to the point of beginning.

5. Indian Title Lands Included in Taylor Grazing District. Pursuant to section 1 of the Taylor Grazing Act, 43 U.S.C. §315, the acting Secretary of the Interior on June 12, 1941, issued an order establishing Grazing District No. 1 in the State of New Mexico. The

order was published on June 21, 1941, in volume 6 of the Federal Register starting at page 3040, and according to its terms became effective on that date. The following portions of the aboriginal title lands of the plaintiffs, described above in Finding No. 2, were by said order placed in such grazing district:

San Ildefonso

All those lands of said plaintiff lying east of the Rio Grande, except those parcels, if any, previously patented to others or subsequently patented to others on the basis of entries or other claims initiated prior to June 21, 1941.

Santo Domingo

All those lands of said plaintiff lying east of the Rio Grande, except those parcels, if any, previously patented to others or subsequently patented to others on the basis of entries or other claims initiated prior to June 21, 1941.

Santa Clara

All those lands of said plaintiff in T. 20 N., Rs. 8 and 9 E., lying east of the west boundary of the Santa Clara Pueblo Grant, and all those in T. 21 N., R. 8 E., except, in the case of each of said townships, those parcels, if any, previously patented to others or subsequently patented to others on the basis of entries or other claims initiated prior to June 21, 1941.

6. Enlargement of Grazing District No. 1 to Include Additional Lands of Santa Clara Pueblo. Pursuant to section 1 of the Taylor

Grazing Act, the Secretary of the Interior on December 4, 1944, issued an order which enlarged Grazing District No. 1 of New Mexico. Said order was filed with the Federal Register on December 14, 1944, and became effective immediately. It was published on December 15, 1944, at 9 Fed. Reg. 14,650. Said order placed in the grazing district all the aboriginal title lands of plaintiff Pueblo of Santa Clara (except those previously patented, or subsequently patented on the basis of previously initiated entries or other claims) in the following described areas:

T. 20 N., R. 7 E.:

sec. 1: N 1/2
 sec. 22
 sec. 23: S 1/2
 sec. 24: S 1/2
 sec. 25: lots 1, 2, 3, 4, N 1/2, and N 1/2 S 1/2
 sec. 26: lots 1, 2, N 1/2, SW 1/4, and N 1/2 SE 1/4
 sec. 27

T. 20 N., R. 8 E.:

sec. 6: lots 4, 5, 6, and 7
 sec. 19: lots 8, 9, 10, and 11
 sec. 30: lots 2, 3, 4, 5, 8, 9, 10, and 11

T. 21 N., R. 7 E.:

secs. 21 to 28 inclusive
 secs. 33 to 36 inclusive

7. No Payment of Compensation. The defendant has not paid any compensation for or on account of any of the dispositions of the plaintiffs' lands described in Findings 3, 4, 5, and 6 above.

8. Conclusion -- Applicability of Clause 4 of Section 2 of Indian Claims Commission Act. The transactions described in Findings 3, 4,

5, and 6 above, constituted "takings by the United States...of lands owned or occupied by" these plaintiffs "without the payment for such lands of compensation agreed to by the claimant," all within the meaning of Clause (4) of Section 2 of the Indian Claims Commission Act (25 U.S.C. §70a (4)).

9. Conclusion -- Liability. The defendant is liable to each plaintiff for the taking of so much of that plaintiff's aboriginal title land, described above in Finding No. 2, as was disposed of in the transactions described in Findings 3, 4, 5 and 6. Each plaintiff is entitled to recover from the defendant the fair market value of its respective lands so taken as of the appropriate valuation date given hereinbelow in Finding 10, less such offsets, if any, to which the defendant may be entitled under the Indian Claims Commission Act.

10. Conclusion -- Taking Dates.

(a) The plaintiffs' lands taken by the defendant's action in conveying them to third parties are to be valued as of the dates of entry, or, for mineral claims, patent dates; but since many dates are involved, the parties, to avoid the burden of valuing each separate tract as of a different date, may agree on an average valuation date or dates for various groups of entries.

(b) The plaintiffs' lands taken by being placed in the Jemez Forest Reserve are to be valued as of October 12, 1905.

(c) The plaintiffs' lands taken by being placed in Grazing District No. 1 by the order of June 12, 1941, are to be valued as of June 21, 1941.

(d) The plaintiff Santa Clara's lands taken by being placed in Grazing District No. 1 by the order of December 4, 1944, are to be valued as of December 14, 1944.

San Felipe Reservation

The following findings are applicable only to Docket 355, Pueblo of Santo Domingo:

11. Santo Domingo - San Felipe Spanish Grant. On September 10, 1770, representatives of the Pueblo of Santo Domingo and of its neighboring pueblo, San Felipe, presented a petition to the Spanish Governor and Captain General of New Mexico. The most pertinent part of the petition reads as follows:

. . . That whereas we have some horned cattle, sheep and goats, and also herds of horses for the service of the King our Master (whom may God preserve) and not having sufficient lands on which to pasture the same; therefore we humbly request that your Excellency be pleased to cede to us in grant, in the name of the King our Master, whom may God preserve, a piece of land situate on the East side of the Rio del Norte [Rio Grande], surplusage of each Pueblo, and bounded on the North by Lo de Vasques, on the South by the small spring of water called the bear spring, on the East, an ancient Pueblo called the Tunque Pueblo, and the West, the Rio del Norte, which piece of land comprises from North to South and from East to West, three quarters of a league.

On the same day the Spanish Governor and Captain General executed a document stating in pertinent part:

. . . in view of the lands they ask in grant lying between the two Pueblos and that it would be very prejudicial to them should they be granted to any other individual; and the natives of the two Pueblos having been and are at all times ready to render to the King any service required of them, I, the said Governor and Captain General said, that I would grant in the name of his Majesty (whom may God preserve) the piece of land they apply for, equally between one and the other Pueblo, so that a league being measured to the South from the Pueblo of Santo Domingo, and another to the North of San Felipe, in the middle of the cultivable lands remaining, permanent landmarks shall be placed, in order that each Pueblo may observe its limits; and as respects the remaining pasture and wood lands, they shall be common to both of the aforesaid Pueblos, equally and without any preference. . .

By the same document the Spanish Governor and Captain General commissioned and empowered one Bartolome Fernandez, "chief alcalde and war captain of Santo Domingo and San Felipe," to "place the natives of the aforesaid two Pueblos in Royal and personal possession thereof."

On September 20, 1770, Don Bartolome Fernandez went out on the land in question with the "principal Indians and authorities of the said Pueblos of Santo Domingo and San Felipe," read the grant, measured the ground, designated it to the Indians, and took them by the hand and conducted them over it, whereupon they "pulled up grass, threw stones to the four cardinal points and we all shouted in a loud voice three times, long live our King and master, whom may God preserve. . ."

12. Extent of Pueblo Claim Under the Joint Grant. While the 1770 grant was never surveyed, so that in 1898 the Santo Domingo and San Felipe Indians were not aware of the exact amount of land included therein, both Pueblos considered that the grant included at least the lands lying between the eastern boundary of the San Felipe Pueblo Grant of 1689 and the Tonque Pueblo ruins north of the Arroyo Tonque, and both Pueblos used these lands in common for pasture and for other purposes from 1770 until they were reserved by Executive order for the San Felipe Indians in 1902. This 8,600 acre area is delineated on the map prepared by the Bureau of Land Management which accompanies the stipulation of the Pueblo of Santo Domingo referred to in Finding 1 above. It is more fully described as follows:

From a point in Section 27, T. 14 N., R. 5 E., where the eastern boundary of the San Felipe Pueblo Grant intersects the Arroyo Tonque due north along the east boundary of the San Felipe Pueblo Grant to the southern boundary of the Santo Domingo and San Felipe Grant:

Thence due east along the southern boundary of the Santo Domingo and San Felipe Pueblo Grant to the south boundary of the Santo Domingo Pueblo Grant;

Thence southeasterly along the south boundary of the Santo Domingo Pueblo Grant to the range line between Range 5 East and Range 6 East;

Thence due south along the range line between Range 5 East and Range 6 East to the Arroyo Tonque;

Thence northwesterly along the Arroyo Tonque to the point of beginning.

13. Use and Occupancy of Joint Grant Lands to 1902. Within the memory of Santo Domingo Indians alive in 1954, the area set aside in

1902 by Executive order exclusively for the San Felipe Indians was used by the Santo Domingo Indians jointly and amicably with the San Felipe Indians. The Santo Domingos used the entire area to pasture their communal horse herd, watering the horses at Tonque Spring. This spring is also a sacred shrine of Santo Domingo, heavily visited by the pueblo people. Near the Arroyo Tonque, the Santo Domingos gathered red coloring clay and shell-like rock for use in making and decorating pottery.

14. Proceedings in the Court of Private Land Claims. In March 1893 the Pueblos of Santo Domingo and San Felipe filed a joint petition in the Court of Private Land Claims for confirmation of the 1770 grant. The case proceeded to a hearing on June 23, 1898. The court held that the grant was genuine, but by a three to two decision construed the description to include only about 1,100 acres. On January 6, 1899, the Special Pueblo Attorney requested that the appeal be taken at the expense of the United States "as the said Pueblos can ill afford the same and should be protected in their rights especially in a case such as this." The appeal to the Supreme Court was docketed on July 25, 1899. However, the Indian Department appropriation act for the fiscal year beginning July 1, 1900, failed to contain an item for the salary of a Special Pueblo Attorney. On November 14, 1900, the case came on to be heard in the Supreme Court, and the Indians "having been three times solemnly called by the Marshall to come into Court and prosecute their appeal . . ." failed to appear. Upon the motion of the United States of America, the defendant herein, the appeal was dismissed.

15. Background of the Establishment of the San Felipe Indian Reservation. On April 8, 1901, one Julio Garduno filed under the Homestead Act with respect to 147.90 acres of land in Section 10, Township 14 North, Range 5 East, lying largely within the 8,600 acre area described in Finding No. 12. Almost immediately, W. H. Pope recognized the threat presented to the Indians' use of the lands which they had claimed, used and occupied for many years. Pope had previously defended the United States against the Pueblos in the proceedings before the Court of Private Land Claims. Pope wrote on May 13, 1901, to the Commissioner of Indian Affairs, noting that the land taken up by Garduno had actually been occupied and cultivated by the Indians and that because of evidence of coal in the vicinity the lands claimed by the two Pueblos, but not confirmed by the Court of Private Land Claims, would soon be entered, thus leading to controversies between "the entry men claiming under the United States and the Indians claiming under their ancient possession." Pope urged that the unconfirmed portion of the lands claimed under the 1770 grant, including the 8,600 acres described in Finding No. 12 be withdrawn from entry. By so doing, Pope added, it would make possible an additional reservation covering "the ancient Indian possession" of the Indians "who are, I may add, among the most populous and prosperous of the Pueblos of New Mexico."

16. Withdrawal of Claimed Area. As suggested by Pope, these lands were withdrawn from entry and on April 25, 1902, the Secretary of the Interior directed the Commissioner of Indian Affairs to determine the need for the proposed permanent additional reservation for the use and occupancy of the Santo Domingo and the San Felipe Pueblos.

17. Investigation of Need for Reservation. On April 17 and 18, 1902, Ralph Collins, Superintendent of the Albuquerque Indian School, and Mr. Pope visited the land in question. In a report, dated May 2, 1902, to the Commissioner of Indian Affairs Pope stated that "the land in question has been of great use to the Pueblos named" (Santo Domingo and San Felipe) and noted that the Indians had maintained their claims to the area by notifying Garduno that he had settled on their land and that Garduno had departed after their visit and made no further effort to occupy the premises. Garduno had ". . . no equities which commend him to the Government, certainly none as against the Indians who have had possession of these lands for a very long time." Similarly, Collins reported on May 9, 1902, that by his homestead entry Garduno ". . . is clearly trying to usurp some of the farming land and water rights which the Indians have claimed, used and occupied for a long time. . . The Indians make their living entirely from their farming and stock raising, using the land next to the river which is under irrigation for farming and that adjoining the river bottom which is high and rolling and broken for stock grazing."

18. Exclusion of Santo Domingo Indians. Following their April visit both Collins and Pope recommended a reservation for the San Felipe Indians alone. Pope explained the reason for this recommendation in his May 2, 1902 report: "The Santo Domingos have already a very large holding and an amount of land entirely adequate for their purposes." He also wrote, ". . . if the Land Department prefers to make the reservation in favor of the pueblos jointly, I am of opinion that it will not lead to any serious complication as the two pueblos live in comparative amity."

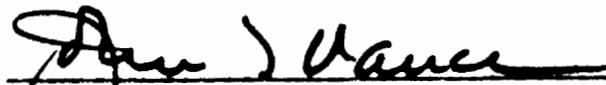
19. Establishment of San Felipe Reservation. Acting on the recommendation of Collins and Pope, the Acting Commissioner of Indian Affairs on May 28, 1902, recommended that the reservation he made for the Pueblo of San Felipe, alone, "as the Santo Domingo Pueblo has already sufficient lands for its requirements." On June 13, 1902, President Theodore Roosevelt by Executive order set apart a tract of land including the lands described in Finding No. 12 "as a reservation for the use and occupancy of the Pueblo Indians of New Mexico belonging to the Pueblo of San Felipe. . ."

20. Joint Aboriginal Occupancy by Santo Domingo and San Felipe Indians. From at least 1770 down to June 13, 1902, the Santo Domingo Indians and the San Felipe Indians had used and occupied the 8,600 acres of lands involved herein in common. The Santo Domingo Indians and San Felipe Indians speak the same language. Santo Domingo traditionally maintained close and friendly ties with the Pueblo of San Felipe, the

closest ties which it maintained with any Pueblo. Santo Domingo Indians and San Felipe Indians intermarried. Santo Domingo medicine men traditionally visited San Felipe and participated in initiations and other ceremonies. Indians from these two Pueblos frequently participated in each other's dances and borrowed paraphernalia. This friendly relationship extended to the mutual use and occupancy of these lands.

21. Conclusion -- Extinguishment of Indian Title. As of June 13, 1902, the Pueblo of Santo Domingo held an undivided one-half Indian title interest in 8,600 acres set aside on that date as a reservation for the San Felipe Indians without compensation to Santo Domingo. By this reservation the United States extinguished the interest of the Santo Domingo Indians in these lands.

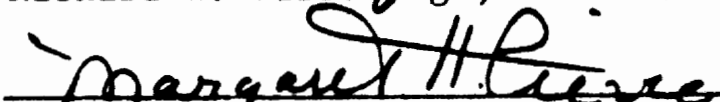
22. Conclusion -- Liability. The Pueblo of Santo Domingo is entitled to recover from the defendant one-half of the fair market value of the 8,600 acres described in finding No. 12 as of June 13, 1902, less such offsets, if any, to which the defendant may be entitled under the Indian Claims Commission Act, 60 Stat. 1049.



 John T. Vance, Commissioner



 Richard W. Yarborough, Commissioner



 Margaret H. Pierce, Commissioner



 Brantley Blue, Commissioner