

DRAFT

BIA.IA.0719

Memorandum

To: Solicitor

From: Associate Solicitor, Indian Affairs

Subject: Pueblo of Sandia Boundary

This responds to your request for a legal opinion on the captioned matter involving a claim by the Pueblo of Sandia that they are entitled to an additional 9,000-10,000 acres of land by reason of an error in an 1864 survey of the Pueblo's eastern boundary. The land at issue is on the outskirts of Albuquerque, New Mexico, and is within the Sandia Mountain Wilderness.<sup>1</sup> The major portion is owned by the United States Forest Service, with approximately 1151.2 acres in private holdings, and the Juan Tabo Recreation Area. See Attachment 1. The Pueblo has indicated willingness to waive any claim to the existing private inholdings.

After thorough review of the matter, we have concluded that the survey appears to accurately depict the description of the boundary as set forth in the patent. However, we have further concluded that the patent does not correctly reflect the boundary

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<sup>1</sup>Section 2(g) of the Endangered American Wilderness Act of 1978, provides:

"certain lands in Cibola National Forest, New Mexico, which comprise about {30,930} acres . . . shall be known as the Sandia Mountain Wilderness."

92 Stat. 40 at 42.

provided for by the 1748 Spanish grant, nor by the report of the Surveyor-General of New Mexico which was confirmed by Congress on December 22, 1858. Thus, it is our opinion that the Pueblo has presented a valid claim.<sup>2</sup>

### BRIEF HISTORY OF THE PUEBLO<sup>3</sup>

Archaeological evidence indicates that the Pueblo of Sandia was established in approximately 1300 A.D. By the time the Spanish under Coronado arrived in the winter of 1540-41, the Pueblo was a well-established agricultural society.

The often brutal methods used by the Spaniards in their attempts to convert the Indians to Christianity led to a revolt by the residents of the various Pueblos. Consequently, the Spanish were driven out of the Pueblo of Sandia on August 10, 1680. A detachment attempted to return some two weeks later, but were again attacked by the residents. Before withdrawing, the Spaniards burned the Pueblo. The following December, the Spaniards again returned, finding that the Pueblo had been partially rebuilt. After unsuccessfully attempting to persuade the Indians to come down from the mountains and surrender, the Spaniards destroyed the Pueblo on December 17, 1681. The

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<sup>2</sup>This memorandum does not address the question of whether the Pueblo could succeed in a civil action against the United States or any private party.

<sup>3</sup>Information on the history of the Pueblo was obtained from The Pueblo of Sandia and its Land, a report prepared by Dr. Myra Ellen Jenkins. It has no direct bearing on the legal merits, and is included for general background purposes.

residents fled, some moving into neighboring Pueblos, some hiding in the mountains, and many moving into Hopi villages in what is now Arizona. The Pueblo thereafter remained uninhabited for over 50 years..

#### HISTORY OF THE CLAIM

In the 1740's, Spanish priests found former residents of the Pueblo living with the Hopi, and in November 1742, brought 441 "reduced Moqui Indians" back to New Mexico. Friar Juan de Menchero petitioned the Spanish governor, Don Joachin Codallos y Rabal, ". . . to give and to declare to me the site known as the Sandia Mission, abandoned since the uprising, with all its pastures, water, watering places and woods which it had and held at that time. . ." for the Moqui Indians brought back to New Mexico by the missionaries. The governor granted the request and directed that boundaries be established and a grant of the land executed. The original grant documents were completed on May 16, 1748, and a duplicate copy given to the leaders of the Pueblo on May 20, 1748.

On August 18, 1846, during the war between the United States and Mexico, troops under the command of General Kearny occupied Santa Fe, claiming it for the United States. On August 20, delegations from the Pueblos arrived in Santa Fe, expressed satisfaction that the Mexicans had been driven out of New Mexico and pledged their allegiance to the United States. The war ended with the Treaty of Guadalupe Hidalgo on February 2, 1848. While the Pueblos were

not specifically mentioned in the treaty, Articles VIII and IX generally guaranteed the liberty and property of those residing in the newly acquired territory. See 9 Stat. 922, at 929-930.

By act of July 22, 1854, Congress established the Office of Surveyor-General of New Mexico, 10 Stat. 308, one duty of which was to prepare and submit to Congress reports on all claims to land acquired by the United States pursuant to the Treaty of Guadalupe Hidalgo. The Pueblo of Sandia's claim was reviewed by the Surveyor-General and the report sent to the Secretary of the Interior. On January 16, 1857, the Secretary submitted to the Congress the Surveyor-General's reports on the claims of four Pueblos, including the Pueblo of Sandia. House Executive Document No. 36, 34th Congress, 3rd Sess., Serial Vol. 899.

The report pertaining to the Pueblo of Sandia contained a translation of the grant of May 16, 1748, in which the eastern boundary of the Pueblo was described as ". . . the main ridge called Sandia. . . ." See Attachment 2, p. 11. This report was confirmed by Congress on December 22, 1858. "An Act to Confirm the Land Claims of Certain Pueblos and Towns in the Territory of New Mexico," 11 Stat. 374. Congress directed that ". . . the Commissioner of the Land-Office shall issue the necessary instructions for the survey of all said claims, as recommended for confirmation by the said Surveyor-General, and shall cause a patent to issue therefor as in ordinary cases to private individuals." Id.

Pursuant to this Congressional directive, the required survey was made and a patent issued on November 1, 1864. The patent identifies the parcel as "Survey No. 14 containing 24,187.29 Acres in Township 11 and 12 North of Ranges 3 and 4 East of the New Mexico Meridian. . . ." See Attachment 3. A detailed metes and bounds description is set forth in the patent document. Id.

The surveyor's field notes reflect the eastern boundary of the Pueblo to be a "meander" of the Sandia Mountains. Thus, the patent document states: ". . . Thence meander the Sandia Mountains for the East boundary of the Grant. . . ." Attachment 3, p. 5. From the plat developed as a result of the survey, it appears that the meander line followed the foot of the mountains, rather than ". . . the main ridge. . ." <sup>4</sup> as stated in the grant documents. See, Plat of the Pueblo de Sandia, at Attachment 3. The 9,000 acres at issue here are those lying between the foot and the crest of the Sandia Mountains for the entire length of the eastern boundary.

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<sup>4</sup>However, the Eastern States Office of the Division of Cadastral Survey, Bureau of Land Management, after reviewing the patent, believes that the fact that the meander is represented by a broken, rather than a solid line, evidences that the intended boundary must have been the summit. Oral opinion from Lane Bowman, Chief, Eastern States Office, Division of Cadastral Survey, to Wayne Nordwall, Attorney, Office of the Solicitor. The intent of the original surveyor may never be known.

## LEGAL DISCUSSION

There are two principal issues critical to legal analysis of this matter. The first is whether the Pueblo of Sandia is correct in asserting that it is entitled to ownership of the land between the current eastern boundary and the summit of the Sandia Mountains. If that is resolved in the affirmative, then the second issue is the scope of the Secretary's authority to effect a satisfactory administrative remedy.

### Merits of the Claim

The operative instrument conferring title to the Pueblo of Sandia was the grant of 1749. The translation of the grant reveals that it was the intention of the Spanish government, as represented by the then governor, to confer title to a described parcel of land, with its eastern boundary to be ". . . the main ridge called Sandia." Supra, at 4. This was the boundary presented in the Surveyor-General's 1853 report which was confirmed by Congress. Id. This confirmation was not a grant of land by the Congress, but was rather a recognition of the legitimacy of a pre-existing right. See United States v. Joseph, 94 U.S. 614 (1877), wherein the Court said:

"The pueblo Indians . . . hold their lands by a right superior to that of the United States. Their title dates back to grants made by the government of Spain before the

Mexican revolution,--a title which was fully recognized by the Mexican government, and protected by it in the treaty of Guadalupe Hidalgo. . . ."

" . . . [T]his was a recognition of the title previously held by these people, and a disclaimer by the government of any right of present or future interference, except such as would be exercised in the case of a person holding a competent and perfect title in his individual right."

Id. at 618-19. See also, Tameling v. United States Freehold, Etc. Co., 93 U.S. 644, 661 (1877). (" . . . [I]ndividual rights of property in the territory acquired by the United States from Mexico, were not affected by the change of sovereignty and jurisdiction.") Thus, the confirmation by Congress constituted an absolute and unconditional recognition of the Pueblo's title to all of the land described in the grant. Id. at 663.

The actions taken subsequent to the confirmation, i.e., the survey and issuance of the patent, were merely ministerial, and could not legally alter the boundaries of the Pueblo as established by the grant. Therefore, the meander line shown on

the plat map and reflected in the patent, see Attachment 3, does not constitute the operative legal description of the eastern boundary of the Pueblo.<sup>5</sup>

Thus, we must conclude that the eastern boundary of the Pueblo of Sandia extends not to the base, but to the summit of the Sandia Mountains. This conclusion is consistent with prior judicial and administrative determinations with regard to similar claims. On December 1, 1893, the Court of Private Land Claims<sup>6</sup> issued a decision in a case involving the Elena Gallegos Grant, which is contiguous to and immediately south of the Pueblo of Sandia, and which grant described its boundary as "on the east the Sandia Mountains." (English translation). The Court determined that, based on the physical and climatic characteristics of the land, the grant could only have meant that the claimants were entitled to all the land to the crest of the Sandia Mountains. National Archives File NA, LM 45, See Attachment 4. In 1918, the

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<sup>5</sup>While meander lines have been generally used in the survey of land adjacent to bodies of water, see Manual of Survey Instructions for the Survey of the Public Lands of the United States, Section 3-115, 1973 edition, such lines have occasionally been used to describe boundaries following mountain ranges. See, e.g., North Carolina v. Tennessee, 240 U.S. 652 (1916). At all events, meander lines are not boundaries, but are primarily for the purpose of aiding in determining acreage for lands with irregular boundaries. Jeems Bayou Fishing & Hunting Club v. United States, 260 U.S. 551 (1923); Producers Oil v. Hanzen, 238 U.S. 325 (1915); St. P. & P.R.R. Co. v. Schiermeier, 7 Wall. 272 (1869).

<sup>6</sup>The Court of Private Land Claims was established by Act of March 3, 1891, 26 Stat. 354, and was given jurisdiction to adjudicate all claims to lands ceded from Mexico which had not been confirmed by Congress prior to passage of the Act. Since Congress had confirmed the Pueblo of Sandia claim prior to passage of the Act, any subsequent claim by the Pueblo based on the erroneous language of the patent would not have been within the jurisdiction of this special court.



Secretary made a like determination in acting administratively on a petition by the Pueblo of Isleta. See discussion, infra, at 10.

Scope of the Secretary's  
Authority to Effect An  
Administrative Remedy

The courts have long held that the Secretary has broad authority to make determinations concerning the disposition of public lands.

"But even if there was any doubt of the existence of such power in the Secretary of the Interior, as an original proposition, still the exercise of it for so long a period--going back to the organization of that department--without question, ought to be considered as conclusive as to the existence of the power. [citing *Hastings v. Dakota Railroad v. Whitney*, 132 U.S. 357 and authorities cited therein]."

Knight v. United Land Association, 142 U.S. 161, 182 (1891).

The Court in Knight affirmed the Secretary's authority to "review, reverse, amend, annul, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands. . . ." Id., at 178.

Such Secretarial authority was exercised in 1918 in response to a petition by the Pueblo of Isleta, whose claim was markedly similar to the one now presented by the Pueblo of Sandia. The Isleta claim involved an allegation that an area four to six miles wide had been omitted from the patent. The grant to the Pueblo of Isleta, which was also confirmed by the Act of December 22, 1858, 11 Stat. 374, described the eastern boundary as the "backbone" of the Sandia Mountains.<sup>7</sup> The patent, however, as in Sandia, described the boundary as a meander of the Sandia Mountains. As is the case here, the disputed land was controlled by the United States Forest Service. In resolving the dispute, the Secretary determined that the grant did include all of the land to the summit of the Sandia Mountains, and that the patent was incorrect. A new survey and issuance of a supplemental patent for the excluded lands were ordered. The Pueblo agreed to waive any claims to existing inholdings of non-Indians. Interior Document D-29675, July 12, 1913. Attachment 5.

<sup>7</sup>The Pueblo of Isleta lies to the south of the Elena Gallegos grant, discussed supra, at p. 3.

Moreover, specific statutory authority to act in such matters has also been conferred by section 316 of the Federal Land Policy Management Act. Section 1746 of title 43, United States Code, provides:

"The Secretary may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands."

The implementing regulations define "error" to mean:

" . . . the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law."

43 C.F.R. §1865.0-5(b)

There is no statutory limitation on when a petition for correction of an error must be presented for administrative action.

The fact that the disputed parcel is part of a designated wilderness area would not appear to bar action by the Secretary to correct the patent. In 1972, the Attorney General determined that land erroneously excluded from the Yakima Reservation and included in a national forest since 1907, and ultimately made part of a wilderness area, could be restored to the Yakima Tribe by administrative action. The opinion held that the Congressional consent requirement of 16 U.S.C. §1131 did not apply because the Yakima land "should never have been designated a wilderness area in the first place." 42 Op. A.G. 441. See also, Pueblo of Taos v. Andrus, 475 F. Supp. 359 (D.D.C. 1979), wherein the court held that correction of a boundary does not add or subtract any lands from a wilderness, but ". . . simply establishes conclusively what has always been the actual boundary." Id. at 376.

Moreover, section 5 of the Endangered American Wilderness Act of 1978, provides that the Secretary is to administer each wilderness area designated by the Act "(s)ubject to valid existing rights. . . ." 92 Stat. 40, at 46.

Since we have concluded that the Pueblo of Sandia had a valid existing right, it appears the disputed land should not have been included in the Sandia Mountain Wilderness, and such inclusion is not a bar to administrative action. The Wilderness designation does not adjust property rights and does not foreclose the application of Section 316 of the Federal Land Policy Management Act. Rather, the Wilderness Act imposes a vigorous management regime on the Federal agency for managing federally owned lands.

CONCLUSION

The Pueblo of Sandia has presented a meritorious claim and the matter is within the scope of the Secretary's authority to effect an administrative remedy, namely to revise erroneous language of the 1864 patent and to effect a new survey in accordance with the revised language.

Tim Vollmann

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