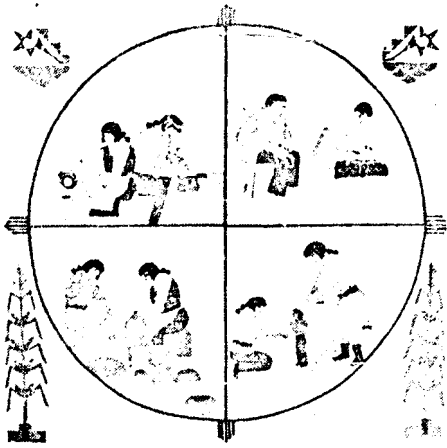


The original documents are located in Box 5, folder “Pueblos” of the Bradley H. Patterson Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.



INDIAN PUEBLO CULTURAL CENTER INC.

Post Office Box 6807 / Station B / Albuquerque, New Mexico 87107 / Telephone (505) 243-1374
Campaign Office 247-4241

A N N O U N C E M E N T

Effective July 1, 1976 the Indian Pueblo Cultural Center is under the direction of Mr. William F. Weahkee who has taken over as the Center Director.

The opening of the Center is scheduled for August 28. We hope you will visit with us.



Date: September 14

Time: 615pm

FOR ACTION: Dick Parsons
Brad Patterson
Max Friedersdorf
George Humphreys
Ken Lazarus

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 15

Time: 500pm

SUBJECT:

S. 217-Repeal of certain condemnation authority
concerning Indian lands

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

SEP 14 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 217 - Repeal of certain condemnation authority concerning Indian lands
Sponsors - Sen. Domenici (R) New Mexico and
Sen. Montoya (D) New Mexico

Last Day for Action

September 20, 1976 - Monday

Purpose

Repeals existing law under which tribal lands of the Pueblo Indians of New Mexico are subject to special condemnation actions in rights-of-way cases.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of Justice	Defers to Interior

Discussion

In 1924, the Secretary of the Interior approved an application of the Santa Fe Northwest Railway Company for a railroad right-of-way through tribal lands of the Zia, Santa Ana, and Jemez Pueblos. However, after completion of the railroad, it was determined that the legal basis for the Secretary's action was not valid. The railroad then attempted to validate the right-of-way by negotiating with the three affected Pueblos, but it could not reach an agreement with the Pueblo of Jemez.

In an attempt to resolve the issue, a bill was signed

into law on May 10, 1926, providing for the condemnation of lands of the Pueblo Indians of New Mexico for any purpose for which other lands of the State may be condemned. However, the 1926 Act placed jurisdiction for such condemnation proceedings in the Federal District Court, and the court found that the 1926 Act contained insufficient authority to decide the case.

Finally, in 1928, a law was enacted that allowed the Santa Fe Northwest Railway Company to perfect its title to the railroad right-of-way in question. The Act of April 21, 1928, made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing the acquisition of rights-of-way through Indian lands.

S. 217 would expressly repeal the Act of May 10, 1926, and it would terminate, on the date of enactment, all pending proceedings and actions that were initiated under the 1926 Act. However, any right of appeal from such proceeding or action entered before the date of enactment of S. 217 would be preserved.

Moreover, S. 217 would authorize the Secretary of the Interior to grant one renewal for a period not to exceed ten years of any right-of-way acquired, prior to January 1, 1975, through litigation allowed under the 1926 Act. Such action would be authorized only when the right-of-way holder and the Pueblo tribe cannot reach agreement on renewal, and the Secretary could grant the renewal without the consent of the affected Pueblo tribes. In such cases, the Secretary would require that the Pueblo involved receive fair market value compensation for such renewal.

Finally, the enrolled bill would also amend the Act of April 21, 1928, to make applicable to the Pueblo Indians of New Mexico certain general statutes which provide for rights-of-way across Indian lands.

In its enrolled bill letter, Interior explains the



need for this legislation as follows:


"The 1926 Act should be repealed for a number of reasons. The Pueblos are subject to a type of action from which other tribes in the United States are immune. The Act of 1926 was passed with the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973.

"With regard to the one-time 10-year renewal provision under S. 217, only two rights-of-way would be involved. Both are for power lines on the Santa-Clara Pueblo and expire, respectively, in the years 2011 and 2023. The remaining 10 rights-of-way under the 1926 Act were granted in perpetuity, and would not be affected by S. 217. In all other respects, S. 217 will put the Pueblos on the same basis as other tribes in the United States with regard to the granting, renewal, or widening of rights-of-way through their lands. Accordingly, we recommend that the President approve the enrolled bill."

Kathleen R. Swinney

Acting Assistant Director
for Legislative Reference

Enclosure



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on enrolled bill S. 217, "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico."

We recommend that the President approve the enrolled bill.

Section 1 of the enrolled bill repeals the Act of May 10, 1926 (44 Stat. 498) which authorized, in Federal district court, the condemnation of Pueblo Indian lands in New Mexico for any public purpose for which lands may be condemned under New Mexico State law.

Section 2 of S. 217 provides that any action pending under the 1926 Act upon enactment of the bill shall be terminated, but the right of timely appeal from a final decree or order in any action under the 1926 Act is preserved.

Section 3 of the enrolled bill amends the Act of April 21, 1928 (45 Stat. 442; 25 U.S.C. 322), which contains certain general statutes relating to the administration of Indian trust lands, by extending the statutes contained therein to the Pueblo Indians and their lands. The result of this amendment would be to place the New Mexico Pueblo Indians in the same position relative to grants of rights-of-way across their lands as other federally-recognized Indian tribes.

S. 217 also adds a new section 2 to the 1928 Act, which provides that the Secretary of the Interior may without the consent of the affected Pueblo Tribe, grant a one-time 10 year renewal of any right-of-way across Pueblo lands acquired either through litigation pursuant to the Act of May 10, 1926, or by compromise and settlement in such litigation prior to January 1, 1975. However, the Secretary may only grant such a renewal if the owner of the right-of-way and the tribe cannot reach agreement within 90 days after such renewal value of the renewal as compensation for the tribe.



The Act of May 10, 1926 (44 Stat. 498), exposes New Mexico Pueblo Indian lands to a wider liability for condemnation than that of other Indian tribes in the United States. It was enacted specifically to resolve the controversy between the Santa Fe Northwestern Railway Company and the Pueblo of Jemez over a right-of-way for railroad purposes through tribal lands of the Zia, Santa Ana, and Jemez Pueblos. The 1926 Act took away the New Mexico Pueblos' right of consent in the consideration of applications for rights-of-way across their land. In contrast, those tribes that organized governments pursuant to the Act of June 18, 1934 (48 Stat. 987), were provided the right of consent in considering such applications, and the balance of federally recognized tribes have been granted such right through regulation (25 C.F.R. 161).

The Act of April 21, 1928 (45 Stat. 442; 25 U.S.C. 322), made applicable to the Pueblo Indians of New Mexico and their lands those statutes of the United States governing acquisition of rights-of-way through Indian lands. In addition, the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) providing for the granting of rights-of-way through Indian lands specifically included Pueblo lands in its provisions.

It has been argued that either the 1928 Act, or the 1948 Act, repealed the 1926 Act by implication. On this issue the District Court for the District of New Mexico (State of New Mexico v. United States, 148 F. Supp. 508, 1957), has held that the 1926 Act was not repealed because unless a later general statute repeals an earlier special statute expressly or an absolute incompatibility between the two exists, the presumption is that the special statute remains in force as an exception to the general.

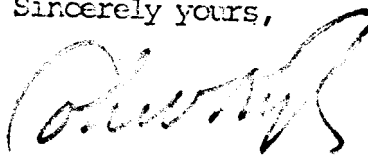
In the nearly 50 years that the 1926 Act has been in effect, it has been used twelve times to obtain rights-of-way on Pueblo lands in the U.S. District Court. The most frequent reason has been that of highway purposes. There is presently pending in the U.S. Circuit Court of Appeals for the 10th Circuit an appeal from a final decision of the U.S. District Court for the District of New Mexico granting a right-of-way for purposes of an electrical transmission system through lands of the Pueblo of Laguna. This suit, Plains Electric Generation and Transmission Cooperative, Inc., v. Pueblo of Laguna, was commenced in the District Court on January 3, 1975. The Pueblos of San Ildefonso and Santa Clara are fearful that similar action will be taken against them in cases involving their lands for other reasons.

The 1926 Act should be repealed for a number of reasons. The Pueblos are subject to a type of action from which other tribes in the United States are immune. The Act of 1926 was passed with

the intent of solving a unique problem at a precise time. The Act should have been repealed after serving its specific function. Should the need arise for the State to condemn Pueblo lands, it can request such authority from the Congress. The Pueblo Indians feel that use of the Act, however infrequent, imposes an inequitable situation upon them. They have expressed a desire for repeal of the Act in a resolution adopted by the All-Indian Pueblo Council on October 20, 1973.

With regard to the one-time 10 year renewal provision under S. 217, only two rights-of-way would be involved. Both are for power lines on the Santa Clara Pueblo and expire, respectively, in the years 2011 and 2023. The remaining 10 rights-of-way under the 1926 Act were granted in perpetuity, and would not be affected by S. 217. In all other respects, S. 217 will put the Pueblos on the same basis as other tribes in the United States with regard to the granting, renewal, or widening of rights-of-way through their lands. Accordingly, we recommend that the President approve the enrolled bill.

Sincerely yours,



Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C.

Department of Justice
Washington, D.C. 20530

September 10, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 217, "To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico".

S. 217 would repeal the Act of May 10, 1926, 44 Stat. 498, providing for the condemnation of the lands of Pueblo Indians in New Mexico for public purposes and making the laws of the State of New Mexico applicable in such proceedings.

S. 217 would also amend the Act of April 21, 1928, 45 Stat. 442, by striking all after the enacting clause and inserting, in lieu, the following:

"That the provisions of the following statutes:

"Sections 3 and 4 of the Act of
March 3, 1901 (31 Stat. 1083 and 1084);

"The Act of March 2, 1899 (30
Stat. 990), as amended;

"Sections 1 and 2 of the Act of
March 11, 1904 (33 Stat. 65), as amended;

and "The Act of February 5, 1948 (62
Stat. 17),

are extended over and made applicable to the Pueblo Indians of New Mexico and their lands, whether owned by the Pueblo Indians or held in trust or set aside for use and occupancy by Executive order or otherwise, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe." The essential feature of this portion of S. 217



is to provide for condemnation of the lands of Pueblo Indians in New Mexico as other Indian lands are condemned (see 25 U.S.C. 357), and to authorize the Secretary of the Interior to grant easements for rights-of-way over the lands of Pueblo Indians of New Mexico as he is authorized to grant rights-of-way over other Indian lands (see 25 U.S.C. 319).

S. 217 further authorizes the Secretary of the Interior, notwithstanding the provisions of 44 Stat. 498 and without the consent of the affected Pueblo Tribes, to grant one renewal for a period not to exceed 10 years of any right-of-way acquired through litigation initiated under the Act of May 10, 1926, or by compromise and settlement in such litigation prior to January 1, 1975, provided that he shall require as compensation for the Pueblos involved, the fair market value as determined by him, and provided that such right-of-way renewal be granted only in the event the owner of such existing right-of-way and the Pueblo Tribe involved cannot reach an agreement on renewal within 90 days after such renewal is requested.

The Department of Justice defers to the agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General

10
—
prio S217

The White House
Washington

1976 SEP 8 AM 11 33

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

JR-1

WHA005 (1030) (2-016573E252)PD 09/08/76 1030

ICS IPMBNGZ CSP

5052470486 TDBN ALBUQUERQUE NH 49 09-08 1030A EST

PMS PRESIDENT GERALD FORD

WHITE HOUSE DC

THE HOUSE AND SENATE HAVE UNANIMOUSLY ADOPTED THE CONFERENCE REPORT
ON S217 WHICH REPEALS THE 1926 PUEBLO LAND CONDEMNATION ACT. WE URGE
AND STRONGLY REQUEST YOU TAKE FAVORABLE ACTION AT THE EARLIEST
POSSIBLE DATE. THE 19 PUEBLO GOVERNORS AND THE 35,000 INDIANS THEY
REPRESENT WILL BE MOST APPRECIATIVE.

DELFIN LOVATO

CHAIRMAN ALL INDIAN PUEBLO COUNCIL

NNNN

FORM 0895 PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A.

05000

Union Calendar No. 394

94TH CONGRESS
2D SESSION

S. 217

[Report No. 94-800]

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1975

Referred to the Committee on Interior and Insular Affairs

JANUARY 29, 1976

Reported with an amendment, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

AN ACT

To repeal the Act of May 10, 1926 (44 Stat. 498), relating to
the condemnation of certain lands of the Pueblo Indians in
the State of New Mexico.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Act entitled "An Act to provide for the con-
4 demnation of the lands of the Pueblo Indians in New Mexico
5 for public purposes, and making the laws of the State of
6 New Mexico applicable in such proceedings", approved
7 May 10, 1926 (44 Stat. 498), is hereby repealed.

8 SEC. 2. Immediately upon enactment of this Act, all

1 proceedings and actions pursuant to the Act of May 10,
 2 1926 (44 Stat. 498), pending on or commenced on the
 3 date of enactment of this Act shall be held and considered
 4 to have terminated as of the date of enactment of this Act,
 5 and thereafter to be of no force and effect: *Provided, how-*
 6 *ever, That nothing herein shall be interpreted as terminating*
 7 *or otherwise affecting any right of timely appeal (other-*
 8 *wise available but for the enactment of this Act) from any*
 9 *such proceeding or action in which a final decree or order*
 10 *has been entered before the date of enactment of this Act.*

11 *SEC. 3. The Act of April 21, 1928 (45 Stat. 442), is*
 12 *hereby amended by striking all after the enacting clause and*
 13 *inserting, in lieu, the following:*

14 *"That the provisions of the following statutes:*

15 *"Sections 3 and 4 of the Act of March 3, 1901 (31*
 16 *Stat. 1083 and 1084);*

17 *"The Act of March 2, 1899 (30 Stat. 990), as*
 18 *amended;*

19 *"Sections 1 and 2 of the Act of March 11, 1904*
 20 *(33 Stat. 65), as amended; and*

21 *"The Act of February 5, 1948 (62 Stat. 17),*
 22 *are extended over and made applicable to the Pueblo Indians*
 23 *of New Mexico and their lands, whether owned by the Pueblo*
 24 *Indians or held in trust or set aside for their use and oc-*
 25 *cupancy by Executive order or otherwise, under such rules,*

1 *regulations, and conditions as the Secretary of the Interior*
 2 *may prescribe: Provided, That, notwithstanding such pro-*
 3 *visions, and in the event the owner of an existing right-of-*
 4 *way and the Pueblo officials involved cannot reach agreement*
 5 *within a sixty-day period after renewal or widening has been*
 6 *requested or have not entered into a binding submission to*
 7 *arbitration concerning the terms of a requested renewal or*
 8 *widening, then and in that event, consent of the Pueblo In-*
 9 *dians to renewal or widening of existing rights-of-way shall*
 10 *not be required so long as the compensation paid to the Pueblo*
 11 *involved is determined in such manner as the Secretary may*
 12 *direct and shall be subject to his final approval."*

Union Calendar No. 394

94TH CONGRESS
2D SESSION

S. 217

[Report No. 94-800]

AN ACT

To repeal the Act of May 10, 1926 (44 Stat. 498), relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico.

MAY 22, 1975

Referred to the Committee on Interior and Insular
Affairs

JANUARY 29, 1976

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the
Union, and ordered to be printed

THE WHITE HOUSE
WASHINGTON

Date

9/15

TO:

Brad Patterson.

FROM:

BOBBIE GREENE KILBERG

 For Your Information

 For Your Comments/Recommendations

 Per Your Request

 Per Our Conversation

REMARKS:





UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

14 1976 SEP

Ms. Bobbie Kilberg
Executive Office Building
Room 106
Washington, D.C. 20500

Dear Ms. Kilberg: *Bobbie* —

For your information, I am forwarding a copy of the Solicitor's opinion of September 10, 1976, relating to an erroneous survey in 1893 which misplaced the easterly boundary of a certain parcel of land held in trust for Taos Pueblo. The Deputy Solicitor has requested the Cadastral Survey to resurvey the erroneous boundary without delay. A copy of that request is also enclosed.

Should any further questions arise, please feel free to contact Sharon Thompson, on my staff, since she is familiar with the particulars involved.

Sincerely,

Reid Peyton Chambers

Enclosures





UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Memorandum

SEP 13 1976

To: Director, Bureau of Land Management
From: Deputy Solicitor *W. H. Garner*
Subject: Taos Pueblo Tract C Boundary Survey

Attached is a copy of the Solicitor's opinion of September 10, 1976, which concludes that an erroneous survey in 1893 misplaced the easterly boundary of a portion of the Antonio Martinez Grant (designated "Tract C"), which was acquired by the United States in trust for Taos Pueblo in 1941. Based on this opinion, a new survey must be made to establish the correct boundary. The surveyors will be required to cross a 13,000 foot range which is snowbound most of the year. Thus it is imperative that a survey team be sent immediately before the first snow falls. You are hereby requested to order the Cadastral Survey to survey the correct boundary of Tract C without delay, in accordance with the attached opinion.

Attachment





UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Memorandum

To: Under Secretary

From: **ACTING** Solicitor

M. C. Garner SEP 10 1976

Subject: Taos Pueblo Tract C

In response to your inquiry of July 19, 1976, I have concluded that an erroneous survey in 1893 misplaced the easterly boundary of a portion of the Antonio Martinez Grant (designated "Tract C"), which was acquired by the United States in trust for Taos Pueblo in 1941. The pertinent facts are:

1. The Antonio Martinez or Lucero de Godol Grant was confirmed by the U. S. Court of Private Land Claims on March 3, 1891. The decree specified the Grant's boundaries, and the easterly boundary was fixed as "in a northerly direction, the current of said Rio Lucero to its source; thence in a western direction to the current of the Rio del Norte."



2. On December 21, 1893, the Surveyor General instructed a deputy surveyor, John H. Walker, to survey the Martinez Grant according to the Court of Private Land Claims decree, ordering that the easterly boundary follow "the meander of the Rio Lucero to its source; that the north boundary should be an easterly and westerly line from the source of the Rio Lucero to the Rio del Norte" Subsequently, the surveyor's field notes, plat, and the affidavits of two witnesses confirmed that these instructions had been followed.

3. The United States acquired portions of the Martinez Grant, designated as Tracts A, B, and C, in trust for Taos Pueblo in a condemnation proceeding against the Watson Land Company (Cause No. 129 Civil in the U.S. District Court for the District of New



Mexico) in 1941. The Judgment on Amended Declaration of Taking entered in that action on August 29, 1941, described the easterly boundary of Tract C as "the meander line along the east boundary of said Antonio Martinez Grant as surveyed by John H. Walker (the true East boundary of said Grant being the middle of the stream known as Rio Lucero)", and fixing "The NE corner of said Antonio Martinez Grant [as] at the head of Rio Lucero."

4. The United States Forest Service subsequently acquired land adjacent to the easterly boundary of Tract C. The boundary between the two tracts was never fenced, and no artificial monuments exist on the ground to mark that portion of the line.

5. Taos Pueblo objected to administration by the Forest Service of Bear Lake, which lies below the source of the Rio Lucero. In 1974, its objections combined with an impending survey of adjacent Pueblo lands led to an investigation of the boundary by the BIA. Forestry personnel of the Albuquerque Area Office of the BIA discovered that the distances and bearings of the Walker Survey contained errors in the segment around the northeast corner of 110 chains and that Walker's attempt to correct such errors had resulted in a gross misrepresentation of the boundary line in that vicinity. The BIA report summarized Walker's errors as follows:

The combined error of distance and bearing from the west, and distance from the east, amounted to 110 chains. Again, for whatever reason, Walker did not choose to correct the bearing between MC 4 and MC 5. Instead he added 80 chains east of where two lines intersected. The remaining 30 chains were corrected by simply moving a whole section of line (NE corner to 1 mile corner) westerly on a S-83° 15' W bearing probably using MC 3 or the 1 mile location as the key. The latter adjustment was compensated by shortening the distance from

supposed MC 80 to the NE corner (removing page 65-66 [of his field notes] and erasure) which both necessitated and permitted a straight line bearing. The survey notes show evidence of several attempts to obtain an acceptable correction.

The overall correction in distance appears 10 chains more than required. However, the survey closed satisfactorily so it could have also compensated for a shortage elsewhere on the north boundary.

The easterly boundary as depicted by the distances and bearings thus altered departs from the Rio Lucero well below its source, erroneously placing Bear Lake and approximately 300 acres outside the line.

6. The proper configuration of the Tract C boundary was shown on a 1945 USGS map of Taos and Vicinity, but the 1963 USGS Wheeler Peak Quadrangle displayed as an "Indefinite boundary" the erroneous Walker survey line.

7. A portion of adjacent Forest Service lands were incorporated in 1964 in the Wheeler Peak Wilderness Area. The erroneous Walker survey line was used to describe the south boundary of the Wilderness Area in a description reported to Congress pursuant to § 3(a)(1) of the Wilderness Act, P.L. 88-577.

The title of the United States and Taos Pueblo to Tract C was established by the judgment in the 1941 condemnation action. The description in that judgment fixed the east boundary of Tract C at the middle of the Rio Lucero and the northeast corner of the Tract at the head of the Rio Lucero. Both the Rio Lucero and its source are natural objects; therefore, the location of the stream and its source prevail over the

erroneous courses and distances in the Walker survey. The courts have long recognized that "calls for natural objects and fixed monuments control those for distances." U.S. v. State Investment Co., 264 U.S. 206, 211 (1924); see U.S. v. Redondo Development Co., 254 F. 656, 659 (8th Cir. 1918).

In order to conform to the natural objects which define the boundary of the land acquired under the condemnation judgment, it is necessary to correct the erroneous courses and distances of the Walker Survey. The Secretary has authority to correct an erroneous government survey under 43 U.S.C. § 2, and that authority has been confirmed by the courts and by the Attorney General. Russel v. Maxwell Land Grant Co., 158 U.S. 253, 256 (1895); Cragin v. Powell, 128 U.S. 691, 698 (1888); 19 Ops. Atty. Gen. 126 (1888). The fact that the portion of Tract C north of the erroneous Walker line has been administered by the Forest Service as a part of the Wheeler Peak Wilderness Area is not an impediment to correction of the survey nor to restoration of possession to Taos Pueblo, its beneficial owner. In the Attorney General's Opinion to the President of January 18, 1972, 42 Ops. Atty. Gen. ____ (1972), the Attorney General recognized that where title to land was acquired by an Indian tribe under a treaty, an erroneous survey of a boundary, which had become the boundary of an adjacent Wilderness Area, could be administratively corrected and that control of the land could be restored to the tribe by executive order under 16 U.S.C. § 473. The opinion stated:

The fact that a portion of the land is now treated as a wilderness area does not affect the question of restoration. Although validly designated wilderness areas can only be changed with Congressional consent (16 U.S.C. § 1131), the foregoing principles preclude application of that limitation



here, where the land should never have been designated a wilderness area in the first place.

The judgment in the Government's condemnation action vested title in the United States and Taos Pueblo to the land west of the Rio Lucero to its source as fully and effectively as the treaty involved in that Opinion.

On the basis of the foregoing, it is my opinion that the United States and Taos Pueblo acquired ownership of Tract C under the condemnation judgment which fixed its easterly boundary as the Rio Lucero and the northeast corner as the source of that stream, and that the Secretary has the authority to order immediate correction of the erroneous Walker Survey to conform to those natural objects. I recommend that the Secretary order such correction without delay and request the President to restore to Taos Pueblo by executive order control of that portion of Tract C which has erroneously been administered as part of the Wheeler Peak Wilderness Area.





Taos Pueblo Council

GOVERNOR'S OFFICE
Box 252 — Taos, New Mexico
1846

The Honorable Kent Frizzell
Undersecretary of the Interior
Department of the Interior
Washington, D. C. 20240

Dear Mr. Frizzell:

I am enclosing herewith a resolution formally requesting a meeting with you concerning an error in the description of our Tract C. We have heard that you will be leaving office at the end of this month, and we therefore request as early a meeting as possible so that you may give this matter your attention before leaving office. We are planning to send a delegation to Washington at your convenience, but should your schedule bring you west in the next week or so, we would be most gratified to invite you to a Council meeting at the Pueblo whenever your schedule would permit.

Sincerely yours,

Jose de la Cruz Romero
Governor

RESOLUTION

WHEREAS Taos Pueblo acquired a portion of the Martinez Grant (designated as Tract C) under a condemnation judgment in Cause No. 129-Civil in the U. S. District Court on August 29, 1941, which described "the true East boundary of said Grant being the middle of the stream known as Rio Lucero" and placed the northeast corner of the Grant at "the head of the Rio Lucero";

WHEREAS in 1974 an investigation by the Area Forester disclosed that courses and distances used to describe the easterly boundary and northeast corner of Tract C in said judgment did not follow the middle of the Rio Lucero but instead departed on an erroneous heading to the west and placed the northeast corner of the Tract in Martinez Canyon, west of Lucero Canyon;

WHEREAS the erroneous courses and distances should immediately be corrected to conform to the Pueblo's ownership under such judgment;

WHEREAS an area within the Martinez Grant extending to the erroneous easterly boundary has been included in the Wheeler Peak Wilderness Area under administration of the U.S. Forest Service; and

WHEREAS the Pueblo wishes to correct the erroneous survey description of its Tract C and to obtain full administrative control of its property;

NOW, THEREFORE, BE IT RESOLVED that Taos Pueblo hereby requests the Department of the Interior to take such action as may be necessary:

- (a) to validate Taos Pueblo's title to all lands west of the Rio Lucero to its source,
- (b) to obtain an accurate survey description of the easterly and northerly boundary of the Martinez Grant (Tract C),
- (c) to correct the erroneous courses and distances in the 1941 judgment to conform to such accurate survey description, and
- (d) to place administrative control of Tract C under the Pueblo and the Bureau of Indian Affairs,



and the Pueblo further requests a meeting at the earliest possible date with Undersecretary Kent Frizzell to discuss these issues and initiate a plan of action to achieve those results.


Governor Jose La Cruz Romero

Dated: July 13, 1976

September 17, 1976

MEMORANDUM FOR: JACK FORD
FROM: BRAD PATTERSON
SUBJECT: Visit to the Laguna Pueblo

A couple of notes of your visit to the Laguna Pueblo:

1. General Indian Policy

Best briefing pieces are (a) the basic Republican (Nixon) Indian Message of July 8, 1970. The real turn-around point in Indian policy and well-known in the Indian Community. (copy attached)
(b) 1000-word write-up just done on where we are now. (copy attached)

2. BIA Reorganization

The American Indian Policy Review Commission (entirely a creature of the Congress, composed of Congressmen, Senators and Indians --no Executive Branch participation) has just put out a special report on BIA organization. I attach my copy but I don't think it is an issue which will arise at all in Laguna. The Commission may bring it to Kloppe's attention formally soon; the overall Report of the Commission is due in January or February. Our general posture on BIA organization is that, internally, it's up to Kloppe and the Commission on Indian Affairs, consulting with the Indians; externally (i. e. BIA's place in the whole Executive Branch) we would keep an open mind about such ideas as creating a new overall Agency for Indian Affairs as long as (a) the Indian Community speaks for the change in a clear voice (b) the new Agency is not put in the Executive Office of the President and (c) it is controlled as any other part of the Executive Branch by a Head



reporting to the President (not as has been proposed, by an Indian-elected Board)

But this is a side issue for now.

3. Specifically at Laguna

The Governor is a bright young man named Roland Johnson. I am sure you will be locking him up.

The Economic Development Administration of Commerce in FY 1976 has put in \$112,000 to renovate Laguna's Arts and Crafts building, and another \$237,000 to drill a new well and expand Laguna's Community Center Building.

The Office of Indian Education in HEW in FY 1975 targeted \$105,000 to a Special Education project at Laguna and in FY 1976 upped it to \$121,000. This project is for infant stimulation and the training of parents of infants. Office of I. E. also sends \$200,000 to the All-Indian Pueblo Council for teacher aides, of which Laguna gets some.

Dovetailing with this, HEW's office of Native American Programs (ONAP) has two grants at Laguna, one of \$75,000 to put Indians to work on the renovation of the community center, and another of \$89,000 for general tribal administration and an on-the-job training program.

The Labor Department under the CETA act in FY 1976 gave \$3,349,674 to the All-Indian Pueblo Council as the Prime Sponsor for manpower training programs. Laguna gets a share of this, but here in Washington we don't know how much.