

New Mexico v. Abbott  
Pueblo Claim Subproceeding II

**Exhibit EE**  
to  
**OHKAY OWINGEH's REPLY IN SUPPORT OF ITS  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
THAT IT POSSESSED ABORIGINAL TITLE  
TO THE RIO DE TRUCHAS BASIN IN 1598**

**Pueblo de Acoma v. United States, 18 ICC 154-159**

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ACOMA	)	Docket No. 266
	)	
PUEBLO OF LAGUNA, ET AL.,	)	Docket No. 227
	)	
THE NAVAJO TRIBE OF INDIANS	)	Docket No. 229
	)	
Petitioners,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 31, 1967

FINDINGS OF FACT

1. Petitioner, the Pueblo de Acoma is a duly recognized Pueblo of American Indians residing within the territorial limits of the United States, with a tribal organization recognized by the United States as having authority to represent the tribe and authorized to maintain this action under Section 2 of the Indian Claims Commission Act of August 13, 1946. (60 Stat. 1049) Petitioner as a tribe is entitled to maintain this action by reason of said Indian Claims Commission Act of August 13, 1946, conferring jurisdiction on this Commission to hear and determine claims of tribes, bands, or identifiable groups of American Indians against the United States.

2. The Pueblo de Acoma timely filed its claim for recovery of compensation for a large tract of land in western New Mexico which it claims to have exclusively used and occupied from time immemorial and of which it claims ownership in 1848 when the United States acquired sovereignty over New Mexico under the Treaty of Guadalupe Hidalgo.

The area claimed by petitioner is as follows:

From the northernmost point of the boundary line between the Acoma and Laguna pueblos as determined by Judgment of July 6, 1857 and established by stipulation of the Acoma and Laguna Pueblos; and from this point north to the north end of Laguna Largo (Point 24), west to Cerrito Zorilla (Point 25), and along the north side of Red Hills close to San Mateo (Point 26) to Pertocito (Point 28), on to Laguna Monte (Point 29) and Mesa Blanca, northwest of Prewitt (Point 30), and finally to Seja Colorado (Point 1); and from this location, south between Thoreau and Chavez to Breece (Point 2), on south to Valle Largo between Points 1 and 2, and then along Canon Muerto (Point 3) near Sawyer, and on south to Pablano and Mesa Aguila (Point 6), and on south to Cerro Cabra (Point 7) and to Cerro Mujer (Point 8) and Cerro Veteado (Point 9), and south to Cerro Techado (Point 10); from here south and east to Grande Pablano, half way between Cerro Techado and Tres Lagunas at some old Acoma ruins (Point 11); from this point east along Loma Casado Venados (east of Point 11) and Canada Alamosa or Alamocita Creek, following along the Sawtooth Mountains to Arroyo Soguetoso near McPhaul Ranch (Point 12); from here east to Cerrito Gallina or to meet the extension of the boundary line between Acoma and Laguna Pueblos known as Tres Hermanos (Point 13); thence north along the boundary line as established by Judgment of July 6, 1857 and established by stipulation of the Acoma and Laguna Pueblos. (Pueblo de Acoma Brief, pp. 9-10)

The points in the above description refer to those on petitioner's Exhibit No. 1, a map outlining the claimed area.

Included in the above description is the Acoma Purchase Area consisting of 80,720.55 acres. This includes 48,880.74 acres of Resettlement Administration purchased land, administered by the Indian Service by Executive Order of January 18, 1938; 31,199.81 acres of public domain land administered by the Indian Service under secretarial order of December 23, 1938, and 640 acres of public domain acquired in exchange with the State of New Mexico, to be held in trust for the Pueblo de Acoma. (Def. Ex. 67, pp. 5-6)

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Because part of the area claimed by the petitioner herein was also claimed by the Pueblo of Laguna, petitioner in Docket 227, and the Navajo Tribe of Indians, petitioner in Docket 229, the Commission consolidated these three dockets for purposes of trial insofar as the overlap areas were concerned. Dockets 227 and 266 were consolidated for this purpose by order of the Commission dated 18 January 1955. The Commission consolidated Dockets 227, 266, and 229 for this purpose by an order dated 3 February 1961. The evidence and testimony relating to any overlapping areas in the above three dockets thereby became a part of the record in each individual docket.

Petitioner herein claims that defendant is responsible for petitioner's loss of the use of much of these lands by failing to protect petitioner's rights in them and in selling and patenting some of them to others.

Petitioner also claims compensation for the loss of irrigation waters occasioned by the enlargement of the dam at Bluewater on the upper San Jose river in 1927. Petitioner alleges that the loss of these irrigation waters resulted in the loss of the use of some of its lands; that the United States was warned of possible damage to the petitioner when such construction was proposed, but allowed the enlargement of the dam in spite of petitioner's protests. Defendant denies liability for any of the above claims.

3. Boundary disputes between Acoma and Laguna existed as far back as the middle of the 18th century. Finally, a suit to settle the dispute was filed by the Pueblo de Acoma in the District Court of the Territory

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of New Mexico for the Third Judicial District, including Valencia County, in which the two pueblos were located.

On July 6, 1857 the court entered a decree fixing the boundary between them. The decree reads in part as follows:

\*\*\* first, that the Pueblo of Acoma and its inhabitants shall have free and undisturbed possession and enjoyment of all the lands in complaintant's bill mentioned, upon or irrigated by the Rio del Gallo /San Jose/ from its source to the lower part or side of the Canada de la Cruz, including said Canada. Second: The dividing line between said Pueblos and the inhabitants thereof shall be a line drawn north and south from the eastern or lower edge or side of the Canada de la Cruz, where the Gallo /San Jose/ crosses the said Canada leaving the said Canada for the Pueblo of Acoma and its inhabitants. \*\*\*  
(Def. Ex. 41)

The precise location of the Canada de la Cruz was the subject of almost constant disagreement for many years. In the Sawyer and McElroy plats of an 1877 survey, however, the junction of the Canada de la Cruz with the San Jose Valley is shown in the region of Pueblito (Seama), a mile or so east of the Pueblo of Acoma Grant as confirmed and patented to that pueblo by the United States. This geographic location was finally agreed upon by the two pueblos in 1877 as the true boundary described in the 1857 decree.

On May 11, 1959 the representatives of Acoma and Laguna and their attorney's entered into a "Memorandum Agreement" which reads in part as follows:

1. That the boundaries as set forth in said decree /July 6, 1957/ and as determined by the representatives of the Pueblo de Acoma and the Pueblo of Laguna, is the common boundary between Ranges 6 West and 7 West, N. M. P. M., commencing on the south common boundary line in Township 2 North and Township 3 North, and Range 6 West and Range 7 West, N. M. P. M., and proceeding in a northerly direction along said line to the southern boundary of Cubero Grant located within Township 10 North, and what would be the common boundary to Range 6 West and Range 7 West N. M. P. M.;

Thence following said Cubero Grant along the southerly boundary to the southwest corner thereof;

thence proceeding northwardly along said Cubero Grant to a point where the Cebolleta Grant and the Cubero Grant meet;

thence following said westerly boundary of the said Cebolleta Grant to a point known as Seco Springs, which is a point in Section 21, Township 11 North, Range 7 West, N. M. P. M.;

thence following along the easterly boundary of said section 21, northerly along said section line to the northerly corners of Sections 3 and 4, Township 12 North, Range 7 West, N. M. P. M., and which point is on the Township line between townships 12 North and 13 North, N. M. P. M.

\* \* \* \* \*

4. That the Pueblo of Acoma claims no right, title or interest to the property east of the line above described and to be so surveyed; and that the Pueblo of Laguna claims no right, title or interest to the property west of the said line.

5. That by reason of the determination of the line established by judgment and decree of 1858 /1857/ the Laguna Pueblo releases and relinquishes any and all claims which it has had for any land lying westerly of said line, and Pueblo de Acoma releases and relinquishes any and all claims which it has had for any land lying easterly of said line. (Acoma Brief, pp. 113-116)

This agreement was signed by Timothy P. Analla, Governor, Walter Sarracino, Chairman of Land Committee, Wallace E. Leeds and Peter A. Sarracino of the Pueblo of Laguna and Joe C. Rey, Land Claim Committee, Joe A. Chino, and Syme R. Sanshez of the Pueblo de Acoma. It was approved by Sam Dazzo, Attorney for Pueblo de Acoma and Jay H. Hoag, Attorney for the Pueblo of Laguna. Said agreement between the Acomas and Lagunas eliminates any overlap insofar as their respective claims are concerned.

4. Pueblo Indians who have received valid Spanish grants have the same rights to aboriginal title under the Indian Claims Commission Act as those given to other Indian tribes. Pueblo de Zia et al., v. United States, 11 Ind. Cl. Comm. 147, 164. Therefore, as in other aboriginal title claims, the Commission must determine the boundaries of the lands exclusively used and occupied by the Pueblo de Acoma. In line with the recent opinion of the Court of Claims, the Commission should consider all evidence determinative of the boundaries of the lands exclusively used and occupied by the Acomas up to the date they lost these lands ". . . through treaty or otherwise." Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, Court of Claims Appeal No. 9-65, pp. 13-14, decided March 17, 1967. The Commission must also determine whether or not the Acomas lost the use of any of its aboriginal lands involuntarily and if the defendant was the cause of such involuntary loss.

It has been previously determined by this Commission that all valid Spanish or Mexican land grants which came under American sovereignty by virtue of the Treaty of Guadalupe Hidalgo were private property at the time said sovereignty attached. Since the title to such lands had vested in the grantees of such tracts at the time the grants were made, these lands never became a part of the public domain of the United States. Therefore, the United States is not liable to any Indian tribe for such lands even though the particular tribe may have used and occupied parts of them from aboriginal times. Pueblo de Cochiti v. United States,