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
	)	
PUEBLO OF NAMBE,	)	Docket No. 358
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: September 16, 1976

Appearances:

Darwin P. Kingsley, Jr., Attorney for Plaintiff. Fried, Frank, Harris, Shriver, & Kampelman, Arthur Lazarus, Jr., Richard Schifter, and Jay R. Kramer were on the briefs.

Roberta Swartzendruber, with whom was Assistant Attorney General Peter R. Taft, Attorneys for Defendant.

OPINION ON PLAINTIFFS' MOTIONS FOR REHEARING

Yarborough, Commissioner, delivered the opinion of the Commission.

The plaintiffs have filed motions for rehearing on our order of February 10, 1971, which denied the plaintiffs' motions for summary judgment claiming interest on money paid under the Pueblo Lands Act of June 7, 1924, c. 331, 43 Stat. 636. See 24 Ind. Cl. Comm. 425.

On March 31, 1971, we granted plaintiffs until 30 days after our decision in Docket 357-A, Pueblo of Taos v. United States, to file these

motions for rehearing. In Taos, we held that the Government's action in regard to land outside the townsite was a good faith effort to transmute land to money, and, consequently that the Indians were not entitled to interest. Pueblo of Taos v. United States, Docket 357-A, 33 Ind. Cl. Comm. 82, 113 (1974); cf. Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 182 Ct. Cl. 543, 557 (1968). After defendant appealed in the Taos case, we granted the plaintiffs a further extension, until 30 days after the decision of the Court of Claims, in which to file these motions for rehearing.

The Court of Claims affirmed our Taos decision on May 14, 1975, 207 Ct. Cl. 53, 515 F.2d 1404. Rehearing was denied on October 10, 1975.

Plaintiffs maintained in their motion for summary judgment that the Government was liable for interest from 1924 to the time that Congress appropriated money to pay the actual market value of the lands they lost to non-Indians under the Pueblo Lands Act. That contention rested on the theory that the enactment of the statute was itself an act of eminent domain and entitled plaintiffs to interest as a part of just compensation. Now plaintiffs claim interest only from the date of the Pueblo Lands Board decisions until payment of the final installment of additional compensation awarded by Congress in the Acts of June 22, 1936, 49 Stat. 1757, 1764; August 9, 1937, 50 Stat. 564, 572; May 9, 1938, 52 Stat. 291, 299. Their present theory is that, granting the enactment of the law was a good faith attempt

to exchange land for money, misconduct of the Pueblo Lands Board in making awards at arbitrary figures much lower than the only values shown by the evidence amounted to takings. Plaintiffs substantiate their allegations of misconduct by reference to Congressional hearings and Senate Comm. on Indian Affairs, Survey of Conditions of the Indians in the United States, S. Rep. No. 25, Parts 2 and 3, 72d Cong., 1st Sess. (1932).

This new theory has never before been presented to us, but was presented to the Court of Claims, and rejected, in the Pueblo of Taos motion for rehearing.

Plaintiff claims the rejection was not on the merits, stating that the denial of a motion for rehearing has no more precedential effect than the denial by the Supreme Court of a petition for certiorari. We believe it has some precedential weight here, in the context of the Court of Claims' seeming reluctance to find circumstances justifying awarding interest to Indian tribes. See United States v. Mescalero Apache Tribe, 207 Ct. Cl. 369, 518 F.2d 1309 (1975), cert. denied 47 L. Ed. 2d 761 (1976), and United States v. Sioux Nation, 207 Ct. Cl. 234, 518 F.2d 1298, cert. denied 46 L. Ed. 387 (1975).

In any event, our view remains the same as in Taos, supra. The whole transaction by which plaintiff was awarded compensation under the Pueblo Lands Act, as distinguished from the questionable aspects of it plaintiff now attempts to spotlight, show that Congress made, though by measured

pace, a conscientious effort to transmute plaintiff's land to money at full market value, and, after short delay, in fact did so. In the totality of circumstances, we apply the test announced by the Court of Claims, and find that Congress was acting as trustee, there was no Fifth Amendment taking, and no interest is due. Three Affiliated Tribes of Fort Berthold Reservation v. United States, 182 Ct. Cl. 543, 390 F.2d 686 (1968).

The motions for rehearing will be denied.

Richard W. Yarborough, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner