

Denver Law Review

Volume 66
Issue 4 *Tenth Circuit Surveys*

Article 29

February 2021

Public Lands

Denver University Law Review

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Denver University Law Review, Public Lands, 66 Denv. U. L. Rev. 781 (1989).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

PUBLIC LANDS

Absentee Shawnee Tribe of Indians of Oklahoma v. Kansas, 862 F.2d 1415

The Shawnee Tribe of Indians (Indians) in Oklahoma sought possession and title to land located in Kansas which previously belonged to the Indians, but was granted to a charitable society in an 1854 treaty with the United States government. Eleven years later, the United States patented the land to a deceased individual and the Indians challenged in district court the validity of this patent, since under common law, patents to deceased individuals are void. The lower court found the patent valid under a statute effective at the time of the patent that made patents to deceased persons valid and vesting in the deceased's heirs, devisees, and assigns, so long as the patent was for "public land." The Indians appealed to the Tenth Circuit, asserting that the statute was inapplicable because the land was Indian land and not public land.

The Tenth Circuit affirmed, finding the land public. The court began by looking to the treaty between the tribe and the U.S. government and held that it must be treated like a contract. In the treaty, the court first found the subject property was sold in consideration for \$10,000. Since the Supreme Court of the United States had held previously that "public lands" are those "subject to sale . . . under general laws," this land qualifies as public land and substantiates the patent under the statute. Second, the court found that in the treaty the Indians agreed to recede to the United States to hold title to all property which may be sold. Because the government held title to this land, it was deemed "public." Third, the court held that "unclaimed lands," not taken by the Indians among the land made available to them is public, since such land is subject to sale. Since the subject property was never claimed by any members of the tribe, it is unclaimed. Consequently, it is subject to sale, which makes it qualify as "public land."

United States v. Lawrence, 848 F.2d 1502

Defendant appeals from a final order of the district court ordering him to modify or remove from his lands a fence which enclosed some 9,600 acres of public lands. Portions of this land provide winter range for Wyoming pronghorn antelope. The fence, although on private land, denied the antelope access to their winter range. Defendant argued that the antelope have been granted an easement across his land or that a servitude has been imposed upon his land. He further argued that the imposition of this public servitude on his private property without payment of compensation is a "taking" within the fifth amendment, for which he should be compensated. The Tenth Circuit rejected all of the defendant's arguments and upheld the district court. The court held that the Unlawful Inclosure of Public Lands Act, 43 U.S.C. §§ 1061 to 1066, was intended to prevent the obstruction of free passage or transit

for any and all lawful purposes over public lands. One of the lawful purposes of public lands is to provide food and habitat for fish and wildlife.

United States v. Trujillo, 853 F.2d 800

Henry Trujillo and Magdalena Duran, the appellants, requested title to property, the ownership of which was being contested between Taos Pueblo and the United States. The Trujillos asserted that their predecessors in title had made a claim to the land before the Pueblo Lands Board, which granted most of their claim but denied these particular parcels. Because their predecessors met the rest of the requirements for a patent under the Pueblo Lands Act, appellants believed they were the rightful owners of the property.

The district court denied these claims because there was insufficient evidence to show that the claims were made to the land by appellants' predecessors, and the property was ordered to be restored to the Pueblo. The Tenth Circuit affirmed the decision that a patent under the Pueblo Lands Act must fail if there is a lack of sufficient evidence to show the Pueblo Lands Board ruled on the contested properties. The court quieted title to the property in the Taos Pueblo and held the Trujillos to be innocent trespassers.

United States v. 10,031.98 Acres of Land, 850 F.2d 634

Appeal from an order granting the first new trial and denying a request for a second new trial. The Tenth Circuit affirmed the order granting the first new trial and reversed the order denying the second new trial.

The federal government condemned appellant's property. At the first trial, the appellant testified as to the value of his property based on offering prices that he had received on potential replacement ranches in the general area. Evidence of a mere offer to buy or sell property cannot be used to show the fair market value of condemned land. The trial court, therefore, did not abuse its discretion in granting the government a new trial.

At the second trial the court refused to allow the appellant to testify regarding his opinion of the value of his property based on actual selling prices of comparable ranch properties. The trial court would not allow the appellant's opinion testimony without giving details of the individual sales that he had used for his comparisons. It was improper for the district court to prevent the appellant from offering his opinion because the opinion testimony of a landowner about the value of his or her land is admissible without further qualification. Denial of appellant's motion for a new trial after the second trial was, therefore, an abuse of discretion.