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Native American Law Watch

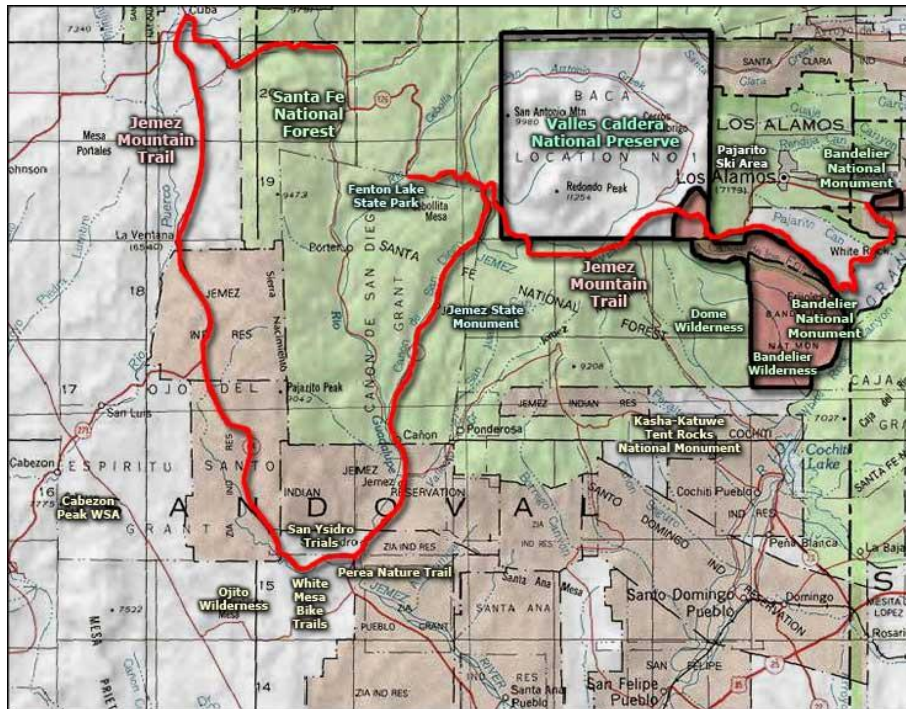


Jemez Pueblo's Aboriginal Title Claims to the Valles Caldera Dismissed; Pueblo Appeals

Background: The Valles Caldera, was, along with surrounding areas in the Jemez Mountains, the ancestral home of the people of the Jemez Pueblo. The Caldera was made a National Preserve in 2000 by the Valles Caldera Preservation Act, 16 U.S.C. §§ 698v-609v, and is currently the subject of a Senate Bill to designate it as a National Park (S. 285, introduced Feb. 12, 2013). The crater of a volcano that last erupted between 50,000 and 60,000 years ago,ⁱ the rim has a diameter of approximately twenty miles, and the Caldera contains four high mountain valleys and eleven resurgent volcanic domes.ⁱⁱ The Jemez settled in the region near and around the Valles Caldera in approximately 1300, with at least sixty pueblos disbursed throughout the region.ⁱⁱⁱ The present-day Jemez Pueblo is located south of the Caldera, and, although within the historical area of the Jemez, was founded as a mission by the Spanish in approximately 1621.^{iv} The diverse populations of the multiple Jemez pueblos began settling in the current Pueblo in increasing numbers in the early eighteenth century, and the pueblos in the area immediately surrounding the Caldera were no longer inhabited.^v The Jemez people, however, continued to use the Caldera for hunting and cultural purposes.

In 1860, the United States granted the Valles Caldera, as part of a large grant of over 99,000 acres, to the heirs of Luis Maria Cabeza de Baca ("Baca heirs").^{vi} The Valles Caldera became known as the Baca Ranch. The Jemez people were permitted by the Baca heirs to use the Valles Caldera.^{vii} To create the Valles Caldera National Preserve, the United States purchased the Baca Ranch from the Baca heirs.^{viii}

The Litigation: In 2012, the Pueblo of Jemez filed suit against the United States under the Quiet Title Act, 28 U.S.C. § 2409A, asserting aboriginal title to over 1,100 square miles the drainage of the Rio Jemez, incorporating the Valles Caldera.^{ix} Central to the Pueblo's claim was that the Baca heirs obtained title subject to the Jemez' aboriginal title.^x The Federal District Court for the District of New Mexico denied the Pueblo's claims, ruling that the suit was barred because the United States had not waived its sovereign immunity.^{xi}



The court's ruling "[was] determined by binding Tenth Circuit precedent": *Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455 (10th Cir. 1987), in which the court ruled that claims asserted by the Navajo Nation against the United States, New Mexico, and individual grantees were barred because they were within the exclusive jurisdiction of the Indian Claims Commission, and thus were barred by the statute of limitations of the Indian Claims Commission Act, 25 U.S.C. §§ 70 – 70n-2 ("ICCA").^{xii} The ICCA, enacted in 1946, provided Tribes five years to file claims against the United States; the statute of limitations for the claims permitted by the ICCA was August 13, 1951.^{xiii}

The court explained that the ICCA provides the exclusive remedy for pre-1946 Indian tribal claims against the United States.^{xiv} The court rejected the Pueblo's claim that the Pueblo did not have a claim against the United States as of 1946 because, either the United States' grant to the Baca family in 1860 extinguished aboriginal title and the Pueblo could not now claim aboriginal title, or it did not extinguish that title, in which case, the Pueblo's claim existed prior to 1946 and was barred by the ICCA.^{xv} The court also relied on the fact that the Pueblo had brought an ICCA claim in 1951—and received a final judgment against the United States—but did not include in that claim title to lands that now comprise the Valles Caldera National Preserve.^{xvi} Because the Pueblo did not comply with the requirements of the ICCA, the court concluded that the United States' sovereign immunity was not waived and dismissed the case.^{xvii}

Stay tuned: This ruling demonstrates that, although the aboriginal title doctrine continues to exist in the United States, the ability of Native American tribes and pueblos to assert aboriginal title is curtailed by Congressional action establishing limitations periods for claims of aboriginal title. The Jemez Pueblo has appealed the district court's decision to the Tenth Circuit Court of Appeals. A decision is not expected until 2014.

For more information, please contact [Sarah M. Stevenson](#).

- ⁱ [Smithsonian Institution Global Volcanism Program](#), Valles Caldera, Background.
- ⁱⁱ Memorandum Opinion and Order, *Pueblo of Jemez v. United States of America*, No CIV 12-0800 BB/RHS, slip op. at 1 (Sept. 24, 2013).
- ⁱⁱⁱ Joe A. Sando, 9 Handbook of North American Indians , Southwest 418 (William C. Sturtevant, gen. ed., Alfonso Ortiz, vol. ed., Smithsonian Institution 1979); *Pueblo of Jemez v. United States*, No. Civ-12-0800 ID.N.M., Sept. 24, 2013)
- ^{iv} Sando, *supra* n. iii 418.
- ^v Sando, *supra* n. iii 422; Joe S. Sando, Nee Hemish: A History of Jemez Pueblo 12 (Clear Light Publishing 2008).
- ^{vi} *Pueblo of Jemez v. United States of America*, No. CIV-12-0800 RB/RHS (Sept. 24, 2013), Memorandum Opinion and Order, slip op. at 3.
- ^{vii} *Id.* at 3.
- ^{viii} 16 U.S.C. § 698v (2000).
- ^{ix} Memorandum Opinion and Order, slip op. at 2.
- ^x *Id.* at 3.
- ^{xi} *Id.* at 5.
- ^{xii} *Id.* at 5-6 (Modrall Sperling was involved in the *Navajo Tribe* case).
- ^{xiii} *Id.* at 6-7.
- ^{xiv} *Id.* at 8.
- ^{xv} *Id.* at 8-9.
- ^{xvi} *Id.* at 9.
- ^{xvii} *Id.* at 9-10.