

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, WILLIAM FULLER,)
 HERBERT A. ELLIAS, HENRY MILLER,)
 MANUEL CORDOVA, ARCHIE McWHINNEY,)
 LLOYD BARRINGTON, SATURNINO E. CALAC,)
 W. G. WALKER, LAWRENCE BURCELL,)
 FRANKIE MOOREHEAD and ARTHUR TREPPA,)
 members, and as the representatives)
 of, and on the relation of the)
 INDIANS OF CALIFORNIA,)

Petitioners,)

vs.)

Docket No. 31)

THE UNITED STATES OF AMERICA,)

Defendant.)

Ernest L. Wilkinson and John W. Preston,
 with whom were Francis M. Goodwin,
 Frederic A. Baker, Sam Clammer, Paul M.
 Niebell and John W. Preston, Jr.,
 Attorneys for petitioners.

Ralph A. Barney, with whom was A. Devitt
 Vanech, Assistant Attorney General,
 Attorneys for defendant.

DEC 15 1950
FINDINGS OF FACT

The Commission makes the following findings of fact in the above-entitled cause:

1. Jurisdiction is claimed for the cause of action asserted under the provisions of section 2 of the Indian Claims Commission Act, which said section reads as follows:

- 2 -

Sec. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after the date of the approval of this Act shall be considered by the Commission.

2. The claim is filed by individuals "as members of, and as representatives of, and on relation of the Indians of California, Petitioners." The Indians of California are alleged to be an identifiable group of Indians composed of all Indians who were residing in the State of California on June 1, 1852, and their descendants now living, as set forth by the act of May 16, 1928 (45 Stat. 602), and as thereafter amended.

3. The claim asserted is based on the alleged ownership of lands owned, used, occupied and possessed, in the accustomed Indian manner, by the Indians of California and (1) taken and sold for

- 3 -

defendant's own account and (2) taken and appropriated for defendant's own use without compensation to petitioners therefor.

4. Unless otherwise indicated, the term "California Indians," as used in these findings of fact, shall mean those Indians, and their descendants, who have inhabited the territory now known as the State of California from time immemorial.

5. Prior to the treaty of Guadalupe Hidalgo, proclaimed on the 4th day of July, 1848, 9 Stat. 922, the California Indians inhabited the principal part of the State of California, and during the time that said area was under the dominion of the Kingdom of Spain and the Republic of Mexico.

6. That the California Indians during that period and for many years after July 4, 1848, comprised a number of tribes, nations, bands, and rancherias or villages. Each group occupied a definite part of the area of the state.

7. After the cession of California to the United States by the treaty of July 4, 1848, tens of thousands of white people entered the State, and as a result of this great influx of white people, the Indian communities were disrupted, many of their members killed, and those remaining, scattered throughout the State. As a result of this treatment of the California Indians, and the policies of the United States, group life among them was largely destroyed, and in some cases, few, if any, members of the original groups survived. The greatest disruption and

- 4 -

destruction of group life occurred in the northern area of the State. However, the influx of white people and governmental policy was felt throughout the State and had the same effect upon all of the Indian groups that it had in the northern section.

8. On September 30, 1850, 9 Stat. 544, 558, the Congress appropriated the sum of \$25,000 "to enable the President to hold treaties with the various Indian tribes in the State of California." Pursuant to this Act the President named three commissioners to negotiate treaties with said tribes, and as a result of the efforts of the commissioners, between the 19th day of March, 1851 and the 7th day of January, 1852, eighteen treaties were consummated between 139 tribes, nations, and bands of California Indians, according to the number of groups indicated in the treaties. It is probable, however, that in spite of the 139 signatories to these treaties they were not made with more than about 56 actual tribes, nations, or bands.

By these treaties those Indian groups relinquished and quit-claimed to the United States all their right, title, claim or interest they may have had to any lands within the limits of the State of California, but there was set aside or reserved an area of land described in each treaty, to be held for the permanent occupancy of the tribes, nations and bands signing the treaty.

These eighteen treaties were submitted to the Senate of the United States by the President for ratification on June 1, 1852, and

- 5 -

after the submission, the Senate, on the 28th day of June, 1852, refused to advise and consent to the ratification of each and all of said treaties. (See IV Kappler 1081-1128). Said treaties have never been ratified.

9. On March 3, 1851, 9 Stat. 631-634, the Congress passed an Act entitled "An Act to ascertain and settle land claims in the State of California." By the provisions of this Act every person (and this included Indians) claiming lands in California was required to submit evidence, before a Commission appointed for that purpose, to sustain his claim, and it was further provided that all lands, the claims to which shall not have been presented to the commissioners within two years after the date of the Act, shall be deemed, held and considered as a part of the public domain of the United States. That none of the individual California Indians and none of the tribes, nations, bands or rancherias of California Indians presented or made claims to lands under the provisions of said Act and whatever lands the California Indians were entitled to became part of the public domain.

10. On May 18, 1928, 45 Stat. 602, the Congress passed an Act permitting the "Indians of California" to sue the United States for all claims of whatsoever nature the "Indians of California" may have against the United States by reason of lands taken from them by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State, which the

- 6 -

United States appropriated to its own purposes without the consent of said Indians.

Said Act further provided that "for the purposes of this Act the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State." A suit was brought as provided by said Act and resulted in a judgment on December 4, 1944, in favor of the "Indians of California." (102 C. Cls. 837-8).

11. Said Act of May 18, 1928 contained this provision:

"Sec. 7. For the purpose of determining who are entitled to be enrolled as Indians of California, as provided in section 1 hereof, the Secretary of the Interior, under such rules and regulations as he may prescribe, shall cause a roll to be made of persons entitled to enrollment. Any person claiming to be entitled to enrollment may within two years after the approval of this Act, make an application in writing to the Secretary of the Interior for enrollment. At any time within three years of the approval of this Act the Secretary shall have the right to alter and revise the roll, at the expiration of which time said roll shall be closed for all purposes and thereafter no additional names shall be added thereto: Provided, That the Secretary of the Interior, under such rules and regulations as he may prescribe, shall also cause to be made, within the specified time herein, a roll of all Indians in California other than Indians that come within the provisions of section 1 of this Act."

Said Section 7 was amended by the Act of April 29, 1930, 46 Stat. 259, which merely extended the time for making applications for enrollment to May 18, 1932, and gave the Secretary of the Interior until May 18, 1933, within which to alter or revise the roll of the Indians of California.

- 7 -

Pursuant to the aforesaid provisions of section 7, as amended, a roll of the Indians of California was prepared containing some 20,000 enrollees and the Secretary of the Interior approved said roll on May 16, 1933. It was these enrolled Indians for whom the judgment was obtained on December 4, 1944. Pursuant to the rules and regulations of the Secretary of the Interior, the tribal or band origin of each enrollee was shown on such roll.

After said judgment was rendered, and on June 30, 1948, 62 Stat. 1166, said section 7 was again amended, by which the names of all persons who had died since May 18, 1928, were removed from said roll and there was added thereto the names of children of enrollees, and the descendants of such children, living on June 30, 1948, born since May 18, 1928.

And said section, as amended as aforesaid, was further amended on May 24, 1950 (chap. 196, Public Law 524, 81st Cong. 2nd session) by which the Secretary of the Interior was directed to revise the roll approved by him on May 16, 1933, by adding thereto names of Indians not eligible for enrollment under the former acts, and who were living on May 24, 1950, all of whom must be descendants of Indians residing in California on June 1, 1852.

12. Until passage of the said jurisdictional act of 1928 hereinabove referred to, all proposed legislation authorizing suit on behalf of the California Indians was in behalf of tribes or bands in said state.

- 8 -

13. At the time of the passage of said jurisdictional act of May 18, 1928, there was not, and there is not now, and never has been, a nation, tribe or band of Indians known or identified as the "Indians of California."

14. At the time of the treaty of Guadalupe Hidalgo, July 4, 1848, and for many years thereafter, there were upwards of 200 separate tribes, bands, nations and rancherias of California Indians located in said State, who used, possessed and occupied definite areas of land therein until disbursed by or through the advent of the white man. The "Indians of California" as defined in and named as petitioners in the amended petition herein, were never, and are not now, a single group but consist of members, or descendants of members, of former separate and independent groups, known as tribes, nations, bands or rancherias, of California Indians, and have no common claim.

Petitioners have never as a single group or entity owned, used and occupied any definable area of land in said state.

15. The legislative history of the passage of the Indian Claims Commission Act does not support the contention that it was knowingly intended to authorize the assertion of a claim by the Indians of California as an identifiable group having a common or group claim.

December 15, 1950.