

BEFORE THE INDIAN CLAIMS COMMISSION

ERNEST RISLING, PETER MASTEN,
MARY G. DORNBAUGH, as the
representatives of, and on the
relation of the INDIANS OF
CALIFORNIA,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 37.

Reginald E. Foster, with whom was
Walter M. Gleason, A. Brocks Berlin,
Thurman Arnold, Paul A. Porter and
L. A. Mikoloric, Attorneys for
plaintiffs.

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

DEC 21 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.

2. The plaintiffs sue on behalf of the Indians of California,
alleging as follows:

-2-

(a) Plaintiffs are members of the identifiable group of Indians known as the Indians of California, which group does not have a tribal organization recognized by the Secretary of the Interior with authority to represent such identifiable group. Plaintiffs, Ernest Risling, Peter Masten, and Mary G. Dornbach, have been authorized by and on behalf of the Council of California Indians, Inc., a non-profit California corporation organized principally for the purpose of filing this action and consisting of approximately 6,000 or more individual members of the aforesaid Indians of California to represent the aforesaid Indians of California in such suit. Plaintiffs bring this suit as the representatives of, for, and on behalf of said Indians of California, all the members of which are entitled to share in any judgment recovered hereunder.

(b) The Indians of California constitute 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. This identifiable group includes the descendants of members of what have sometimes been loosely described as tribes, bands, rancherias, and villages of Indians of California, and other individual Indians, who resided in California at the time of the passage of the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922). Members of the group who were born prior to May 18, 1928 were enrolled as Indians of California by direction of the Act of Congress approved May 18, 1928 (45 Stat. 602). Members of the group who were born subsequent to May 18, 1928 are to be enrolled by direction of the Act of Congress approved June 30, 1948 (Public Law No. 852; 2nd Sess.; 80th Cong.).

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 appropriated by defendant for its own purposes without their consent and without compensation and (2) for a complete and accurate accounting therefor.

-3-

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 thousand 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.

- 5 -

These eighteen treaties were submitted to the Senate of the United States by the President for ratification on June 1, 1852, and 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, 1923, (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

-6-

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 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, 1926 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 enrolment. 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.

-7-

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 15, 1932, and gave the Secretary of the Interior until May 15, 1933, within which to alter or revise the roll of the Indians of California.

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. 1266) said section 7 was again amended, by which the names of all persons who had died since May 15, 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 15, 1928.

And said section, as amended as aforesaid, was further amended on May 24, 1950 (chap. 196), Public Law 594, 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

-6-

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 heretofore referred to, all proposed legislation authorizing suit on behalf of the California Indians was in behalf of tribes or bands in said state.

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 dispersed 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.

- 9 -

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 21, 1950.