

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, WILLIAM FULLER,)
 HERBERT A. BELLAS, HENRY MULLER,)
 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 re-)
 lation of the Indians of California,)

Petitioners,)

v.)

Docket No. 31

THE UNITED STATES OF AMERICA,)

Defendant.)

and)

ERNEST RISLING, PETER MASTEN,)
 MARY G. DORNBACH, as the repre-)
 sentatives of, and on the relation)
 of the Indians of California,)

Plaintiffs,)

v.)

Docket No. 37

THE UNITED STATES OF AMERICA,)

Defendant.)

ORDER CLARIFYING AND SUPPLEMENTING
FINDINGS OF FACT AND AMENDING INTER-
LOCUTORY ORDER OF JULY 31, 1959

On September 1, 1959, the petitioners in Docket Nos. 31 and 37 filed their request for the modification and clarification of certain findings of fact made by the Commission and filed as a part of the Interlocutory Order entered on July 31, 1959, and on September 17, 1959, the defendant filed its objections thereto. By agreement of all parties the matter was submitted to the Commission for determination without oral argument.

And now the Commission, after considering the request of petitioners, and the defendant's objections thereto, ORDERS that the findings of fact filed herein on July 31, 1959, be amended and supplemented as follows:

(1) That Finding No. 3 is amended by adding thereto the following:

The individual petitioners named in the petitions filed in Docket 31 and in Docket 37 are members of this identifiable group known as the "Indians of California."

(2) That Finding 8 is amended by deleting all that part thereof following the subtitle "UNCOMPENSATED TAKING OF INDIAN LANDS" and there shall be set forth in lieu thereof Finding 9 and Finding 11 as follows:

UNCOMPENSATED TAKING OF INDIAN LANDS:

9. The entire area here involved lies within the territory acquired of Mexico in the Treaty of Guadalupe Hidalgo during 1848. The State of California was admitted to the Union on September 9, 1850 (9 Stat. 452). On March 3, 1851, Congress passed the Private Land Claims Act (9 Stat. 631) requiring registration of all land claims within a two-year period thereafter. On March 3, 1853, Congress passed an 'Act to Provide for the survey of the Public Lands of California and the Granting of Preemption Rights to Settlers' (10 Stat. 244). It has been previously held that by this latter Act the defendant took such action toward the vesting in others of the fee title to Indian land within California as was possible only by it becoming a part of the public domain and by extinguishment of Indian title. That date is, therefore, the date upon which Indian title to the land here involved may be said to have been taken by defendant. Pitt River Indians v. United States, 7 Ind. Cl. Com. 815, 848. Mohave Tribe v. United States, 7 Ind. Cl. Com. 219, Dkt. 295, and Washo Indians v. United States, 7 Ind. Cl. Com. 266, 280, Dkt. 288.

The Act of March 3, 1851, supra, contains the following provisions:

'That for the purpose of ascertaining and settling private land claims in the State of California, a commission . . . is hereby constituted . . . ' (Sec. 1).

' . . . and it shall be the duty of the commissioners . . . to decide the validity of said claim . . . ' (Sec. 8).

'That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme

Court, and all lands the claims to which shall not be presented to said commissioners within two years after the date of this Act, shall be deemed, held and considered as part of the public domain of the United States . . .' (Sec. 13).

The Commission finds that nothing in said Act required the Indian inhabitants of California to present their claims for their original Indian title to California lands; that no such claims were presented, or presented by the California Indians and rejected by the Commissioners, or finally decided to be invalid by the District or Supreme Court of the United States.

11. The Commission finds that the ancestors of the members of the group known as the Indians of California held original Indian title to the lands in Area B, except the Spanish and Mexican grants made therein prior to May 13, 1846, and never voluntarily abandoned any lands therein prior to the taking thereof by the United States; that such Indian title was extinguished by the United States under the provisions of Section 13 of the Act of March 3, 1851, and by the Act of March 3, 1853, the latter being the date of the taking by the United States; and no compensation was paid to the Indians of California for their original rights therein. As mentioned in Finding No. 8, the acreages of reservations found to be in Area B are to be excluded from the lands for which the Indians are to be compensated.

(3) That Finding 10 be added, as follows:

LAND USE AND OCCUPANCY:

10. That Indians occupied and used California lands from time immemorial and as the aboriginal inhabitants thereof is unquestioned. The native population cannot be definitely determined but has been estimated by Drs. Merriam and Kroeber, who are recognized as the best informed of all students of the early Indians of California, as being from 130,000 to 700,000. It is undisputed that these Indians were not a homogeneous group but were made up of many groups or tribelets which composed many linguistic divisions or nationalities in California. It has been estimated by Dr. Kroeber that there were 500 or more Indian groups in California at the time we acquired this territory from Mexico in 1848. These tribelets occupied and used fairly well defined areas dependent in sizes upon the economic resources of the particular area of and the population requirements of those living in it. Differences in degree of use varied with conditions of climate, topography, elevation, soil, vegetation, etc., which in turn

are related to the degree of economic resources in the various sections of the state.

Dr. C. Hart Merriam, who devoted 35 years to research and study of the Indians in California testified before the House Committee on Indian Affairs on May 5, 1926, referring to a map he had prepared with reference to use and occupancy:

'The map is for the purpose of showing that the whole area of the State was occupied by a large number of Indian tribes speaking different languages; that there were no unoccupied lands; they were either occupied as residence lands or as hunting grounds. For instance, along the high crest of the Sierra the Mewuk Indians hunted from the west up to the crest, and the Mono Lake Piutes hunted on the other side. The tribes had well-defined areas with definite boundaries.' (Pet. Ex. 2, pp. 206-207)

Dr. Alfred L. Kroeber, sometimes called the Dean of American Anthropologists, who has devoted more than fifty years to the study of the Indians of California, testified that Indians of California occupied the whole of the State, prior to the coming of the white man. (Record 772).

Because of the great influx of white people entering California and occupying lands formerly possessed and used by the Indian groups and the killing of many of the Indians and the driving of many others from their place of abode and the scattering of them throughout the state, as found in Finding No. 4, proof of actual use or occupation of specific tribelet areas is now difficult. However, based upon years of study of Indian culture, habits and ways of providing subsistence and other evidence in the record, noted and qualified anthropologists, whose testimony and writings are in the record, have concluded that the Indian groups used and occupied the lands in Area B in accordance with the Indian way of life, to the exclusion of other Indian tribes. In aboriginal times these Indians obtained their subsistence from the natural products of the soil and waters of the areas they occupied. Such an economy did not require an intensive cultivation of the soil for the Indians of necessity exploited the places which provided the necessaries of life. The resources the Indians relied upon for subsistence were not uniformly distributed; they were largely seasonal and in scattered places, requiring travel of considerable distances in their gathering, fishing and hunting activities. Game animals moved from place to place in search of food and had to be followed. The importance of flora and fauna in all regions of the state cannot be gainsaid, and the search for such resources was continuous and covered

areas that were unproductive as well as those that were, because of the variations in the production of the natural resources from year to year or even from season to season in many years.

Because of the uneven and rather sparse distribution of the available natural resources in the state, large areas of land were needed to provide subsistence. The Indians' permanent and main habitats were, in general, in locations which provided the greatest abundance of natural resources, but they were required, and generally did, extend their searches over large areas beyond their places of permanent settlement. The record is replete with proof of temporary camps occupied by the Indians in their seasonal gathering, fishing and hunting operations which covered large areas in the mountains, plains and deserts. It is no doubt true, as the Government contends, the higher elevations in the mountains and some large desert areas produced little of economic importance to the Indians, but such places had limited uses and were a part of the areas claimed and defended when necessary by the tribelet occupying it. The testimony and the ethnographic literature, of which there are volumes in evidence, show that the Indian groups ranged throughout their respective territories in their gathering, hunting and fishing exertions. While these Indians were never considered nomads, their exploitation of the available resources in a given territory required frequent and extended traveling within the territories claimed.

IT IS FURTHER ORDERED that the Interlocutory Order of July 31, 1959, is amended by adding at the end of Paragraph 3 the words "and of the Act of March 3, 1853, 10 Stat. 244, the latter being the date of the taking by the United States."

Dated at Washington, D. C., this 7th day of December, 1959.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner