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Ethnohistorical Background of the Chumash People, Including a Search for Legal Rights in Park Lands, for a General Management Plan of Channel Islands National Monument, California

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Note on the Gabrielino People

The Gabrielinos are referred to in the text (page 3) as having occupied the southern Channel Islands, including Santa Barbara Island, now part of the Channel Islands National Monument. Culturally, the Gabrielinos were similar to the Chumash in that they shared a fishing-hunting-gathering subsistence economy, possessed the plank canoe whose origin has been attributed to the Chumash, had shamans as religious specialists, and determined descent patrilineally (see page 5 of the text). Gabrielino political organization was close to that of the Chumash with hereditary patrilineal chiefs, but a chief-designate among the Gabrielinos was subject to community approval before assuming leadership (Bean and Smith 1978:538-549).

The Gabrielino people did not share a common language or related language family with the Chumash. Two different language stocks were involved: the Uto-Aztecan language stock, Takic family, Shoshonean subfamily for the Gabrielinos; and the Hokan stock, Chumashan family for the Chumash (Shipley 1978:89).

Two missions were established on the mainland in Gabrielino country, Mission San Gabriel (1771) and Mission San Fernando (1797). By 1900, according to Bean and Smith (1978:540), the Gabrielinos "had ceased to exist as a culturally identifiable group." Nevertheless, there are contemporary people who claim Gabrielino descent. Bean and Smith (1978:541) report that in 1973 there were some residents of San Gabriel, California who claimed Gabrielino heritage.

The Gabrielinos are the last on the list of the 46 bands of Mission Indians in Docket 80 before the Indian Claims Commission (page 39 of the text). Thus, the Gabrielinos are a party to the July 20, 1964, settlement of $29,100,000 (13 Ind. Cl. Comm. 369) for the Indians of California and the California Mission Indians (pages 14, 35, and 36 of the text). Reservations the Gabrielinos are

associated with presumably include the Pala Reservation of Mission Indians in San Diego County (Bean and Smith 1978:541) and the Torres Martinez Reservation of Mission Indians in Riverside County (Index to Decisions of the Indian Claims Commission 1977:18; page 40 of the text).

Table 1. History of the Gabrielinos (Bean and Smith 1978: 541)

1973	Some residents of San Gabriel claim Gabrielino heritage.
1925	Some remnants of Gabrielino songs and culture recorded by J.P. Harrington at Pala Indian Reservation.
1903	C. Hart Merriam, A.L. Kroeber, and others work with the few remaining Gabrielinos. A few years later J.P. Harrington begins Gabrielino research as does Constance Goddard DuBois.
0-1900	Smallpox epidemic further reduces Gabrielino population except for isolated families and Gabrielinos living in remote areas. Gabrielino culture is now only in the minds of a few people.
1852	Hugo Reid publishes *Indians of Los Angeles County*. His wife, Victoria (d. 1868), is a Gabrielino and a prominent person in the Los Angeles area. B.D. Wilson publishes report on Indians of southern California and recommends better treatment for Indians. This report is ignored.
1840-1850	Most Indians in Los Angeles area are other Mission groups, but a few Gabrielino still in the area. Some Gabrielino language, some rituals and games, traditional crafts and economic modes still maintained, but in very attenuated forms. Gabrielino is until this period the lingua franca for Whites and Indians. Clamshell beads still used as money; baskets and steatite artifacts still being used by Europeans and Indians. Smallpox epidemics decimate all tribes in the area.
1833	Missions secularized, become refuges for aged, infirm. Most Gabrielinos are laborers for gentry class or landowners themselves (very rarely). Gabrielinos are scattered as far north as Monterey and south to below San Diego, while many are living with groups in the remote interior.
0-1833	Missions grow, ranches expand, most Indians firmly in peasant class or fugitives. Diseases (among Indians) still killing many; armed raids conducted by Spanish against escaped neophytes and those Indians still not converted.
1800	Most Gabrielinos missionized, dead, or fled to other areas with scattered numbers in area. More non-Gabrielinos brought into Gabrielino missions (e.g., Serrano, Luiseño, Cahuilla, Ipai-Tipai).
1797	San Luis Rey active, growing, expanding.
1796	Because of poor economic conditions in missions and Spanish communities, neophytes arranged to use traditional Gabrielino subsistence methods to help feed the general populace. Gabrielinos also are major labor force in Pueblo of Los Angeles and outlying ranches and farms.
1786	Revolts in areas outside Gabrielino area. Spanish control firm only within a 20-mile radius of Los Angeles.
1785	Indian protests, revolts are frequent, culminating in a major revolt led by Toypurina, a chief's daughter. Increased segregation of Indians from *gente de razón* attempted by government. Most Gabrielinos become a peasant class working for missions or a landed gentry. Apartheidlike policy dominates Spanish-Indian relationships.
1779	Social organizations of missions crystallized as the positions of councilmen and alcaldes are established—elected by neophytes. Conflicts between military and church become acute as each vies for authority over Indian labor.
1778	Mass conversions of villages begins, as certain chiefs become converted, drawing many of their followers with them.
1771	Mission San Gabriel established, slowly integrates a few Gabrielinos into the mission. Many nonconverted Gabrielinos integrate into economic and social life of Spanish, but not religious life.
1769	Gaspar de Portolá expedition crosses Gabrielino territory and interacts with Gabrielinos. European disease probably deciminating populations already. Conflicts among Gabrielino begin almost immediately. Conversions slow.
1602	Spanish explorers visit Santa Catalina.
1520	Spanish explorers visit Santa Catalina.

Ethnohistory of the Chumash People

The Chumash were a Hokan-speaking people who inhabited the offshore islands and coastal area of southern California in what is now the Santa Barbara region. The name "Chumash" is derived from a coastal Chumash term, Mitcumac, which referred to the Chumash people who lived on Santa Cruz Island (Grant 1978a:507).

The prehistoric occupation of the mainland apparently took place some 1000 to 2000 years before that of the islands (Olson 1930:21; Glassow 1977:6). Two prehistoric cultures generally have been recognized for the Chumash area: the Oak Grove Culture, which has been dated approximately from 7000 B.P. to 5000 B.P. (Owen 1964; Glassow 1977:6), and the culture of the Hunting People, approximately 5000 B.P. to A.D. 1000 (Glassow 1977:6; Grant 1978b:519). The Oak Grove Culture is characterized by so-called crude points and hand-axes, settlements on high ground away from the sea with semi-subterranean huts, and prone burials. The Hunting People seemingly have left no evidence of their habitation structures, although flexed burials and well-shaped projectile points have been found (Grant 1978b:519). Island occupation occurred in the latter part of the period of the Hunting People (Glassow 1977:6). Grant (1978b:519) suggests that the Chumash occupation may be viewed in sequence with that of the Hunting People, but is uncertain whether the Chumash "supplanted, amalgamated with, or developed from the Hunting People." Nevertheless, by A.D. 1000 the area was Chumash.

For the time of European contact, six varieties of the Chumashan language family of the Hokan language stock have been identified (Shipley 1978:89-90) as being spoken by various Chumash groups of the Santa Barbara mainland and

Channel Islands (Heizer 1952:1). Unfortunately, these Chumash language varieties or dialects (King 1971:32) are now all extinct (Shipley 1978:86). Remnants of the Chumash language remain, however, in the form of California place names such as Cuyama, Lompoc, and Malibu (Grant 1965:60).

There appear to have been three groups of Chumash identifiable by habitat: island, coastal, and interior (Glassow 1977:8). Subsistence modes differed in proportion to the availability of marine versus terrestrial food sources.

As overall Chumash subsistence modes, Close (1960:15-20) reports hunting, fishing, and gathering. Sea and land mammals were hunted as well as birds. Shellfish and seeds, especially acorns, were gathered; berries were picked and probably roots dug. According to Close (1960:15), "The most important use of land foods came in the sphere of gathering seeds, roots, and fruits." The inference for root-digging may be made from the archeological evidence of whale ribs. Numerous stout whale ribs have been found "up to two feet in length, bluntly pointed at one or both ends, which would have been serviceable for digging roots" (Close 1960:17).

Whales, themselves, apparently were not hunted; the Chumash "seem to have lacked the organization and techniques of whale hunting" (Close 1960:2). Whales, however, were made good use of when they became stranded on shore. Whalebone was used for such artifacts as harpoon points, dishes, and digging-stick-like implements as mentioned above (Close 1960:21, 24).

Fishhooks, nets, harpoons, and canoes were part of the fishing equipment of the Chumash. "By far the most important implement in Chumash fishing was the seagoing canoe" (Close 1960:19). This was the Chumash plank canoe, made from planks split from driftwood logs, sewn together and then caulked with asphaltum (Heizer 1940:84). The Chumash canoe, described below, was an important item of

Chumash culture -- "one of the glories of the Chumash" as Kroeber puts it (1925:558). The plank canoe was important for fishing, for sea mammal hunting, for settlement of the islands, and for trade between the islands and the mainland (Heizer 1940:82; King 1971).

It should be noted that the northern group of Channel Islands includes Anacapa, Santa Cruz, Santa Rosa, and San Miguel Islands; the southern group comprises Santa Catalina, San Clemente, San Nicolas, and Santa Barbara Islands (Glassow 1977:1). Of these, the Channel Islands National Monument consists of Anacapa and Santa Barbara Islands with San Miguel Island owned by the Department of the Navy and jointly administered by the Navy and the National Park Service.

With the exception of Anacapa, at the time of European contact, all of the northern islands were occupied by Chumash-speaking populations. Anacapa Island presumably would have been used as a subsistence source by the Chumash, but not the southern Channel Islands. These, including Santa Barbara Island, were occupied by Shoshonean-speaking Gabrielino Indians whose main area of settlement was further south in the Los Angeles Basin region (Glassow 1977:3; see note page i).

King (1971) has shown that considerable exchange and trade of what might be termed natural and cultural resources took place between island and mainland communities, that is, different foodstuffs and certain raw materials would be exchanged through the medium of shell currency. This money apparently originated among the Chumash in the islands; at least the Channel Islands were a significant source of the shell currency widely used in what is now the southern half of California (Blackburn 1975:10).

The shell money consisted of "pieces of rounded shell, with a hole in the middle, made from the hardest part of the small, edible white mussel" (Hill 1859 in Woodward 1934:119). Hill, cited above, confirms the fact that the Channel

Islands were a source of aboriginal shell money employed along the coast, the use of which persisted into the Mission Period, 1772-1834, following Spanish exploration beginning in 1542 (Blackburn 1975:2).

The subsistence economy of the Chumash has been alluded to above. It was based upon hunting, gathering, and fishing with proximity to the sea the differential in the kind of food resources available to any given Chumash group (Glassow 1977:8).

The coastal climate of the Chumash was not conducive to unirrigated agriculture with little or no rain falling in the summer months (Landberg 1965:45). However, there may have been some horticulture as there is a reference to stick and stone religious figures being placed so as to protect "the seeds and crops" (Grant 1965:61). Hill (1859 in Woodward 1934:122) refers to the figurines, circa 1815, as surviving, secret religious artifacts of the Chumash "on which they hung bits of rags, cloth and other paraphernalia, depositing on the inside tobacco and other articles used by them as presents to the unseen spirits." Tobacco may have been grown aboriginally for ritual purposes, a practice which apparently continued into the Mission Period, although opposed by the missionaries when discovered (Hill 1859 in Woodward 1934:122).

The Chumash lived in relatively densely populated villages of a few hundred to a thousand people and had political and ceremonial leaders (Blackburn 1975:12). Each village had a leader we might call a chief whose duties included military command for the protection of village hunting and gathering areas, the initiation of ceremonies and intervillage dances, and the entertainment of visitors. This position was hereditary with both men and women being elegible for the office when inherited (Grant 1965:37). The chief had an assistant, a ceremonial leader who made announcements, gave orations, collected offerings and fines, and presided

over rituals and dances (Blackburn 1975:12).

Descent was patrilineal and residence patrilocal (Landberg 1965:29). That is, a person was related to men and women through men only as consanguineal or blood links between generations. And a couple at marriage resided in close proximity to where the husband's father lived. The basic kin group of the Chumash was the patrilineage. A given patrilineage would have been associated with a particular village with any one village comprising the patrilocally residing members of several patrilineages (Landberg 1965:29).

According to the division of labor by sex, hunting and fishing were men's spheres while gathering was done by women assisted by children and old men who hunted no more. Acorn gathering in the fall, however, constituted a communal effort with every able-bodied person taking a part.

The Chumash had religious specialists, i.e. shamans, who cured diseases by causing, in native belief, the offending foreign objects to be removed from the body (Grant 1965:64). In addition to these curing shamans, there were other specialists dealing with the supernatural which Landberg (1965:27) refers to as rattlesnake shamans, weather shamans, and grizzly bear shamans. Seemingly one would seek out a shaman whose speciality, however culturally defined, was congruent with one's concerns.

As part of the Chumash definition of the supernatural, the sun was important as a deity. Fages noted this circa 1775, and it was confirmed by Bowers circa 1897 having talked to a surviving Santa Rosa Islander who had been "taken to the mainland in 1816 with the remnants of his people" (Grant 1965:61).

The Chumash are known for their rock paintings, which have been described and analyzed by Grant (1965). In brief, the life forms represented are highly stylized and imaginative. These occur with the multiple outlining of geometric

figures such as concentric circles and a cogged-wheel motif (Grant 1978b:517). The rock art is invariably located in remote areas, which leads to the inference that Chumash rock paintings have a sacred significance. Grant (1978b:517) surmises that "most of the Chumash pictures were ceremonial and made by or under the direction of shamans."

Ocko (1979:47) has written that, "First impressions [by Europeans] of the native inhabitants of America were that they were kind, naive, and naked." This observation could be true of the Chumash. Their nakedness was noted by the early Spanish explorers. That is, at least the attire of the men in warm weather was total nakedness (Grant 1965:30). The other adjectives may be appropriate in that the Chumash were reportedly of good disposition and were receptive to the Spanish (Grant 1965:31), at least initially.

The Spanish Exploration Period begins with Juan Cabrillo's voyage in 1542 and ends 230 years later with the establishment of the first mission among the Chumash (Blackburn 1975:2). Grant (1978a:505) lists the accounts of Spanish exploration, which are sources of ethnographic information on the aboriginal Chumash. Included are the voyage of Cabrillo, 1542, as mentioned, as well as those of Cermeño, 1595, Vizcaino, 1602, Portola, 1769, and Anza, 1775. The accounts emphasize Chumash material culture as the cultural traits most readily perceived by casual observers (Blackburn 1975:2). The Spanish indeed were impressed as others have been with one outstanding item of Chumash material culture -- the seagoing plank canoe.

Since the Chumash plank canoe as an outstanding cultural item was a maritime adaptation "unique in the New World" (Grant 1965:51), it is appropriate to discuss it in detail. It could be said that the plank canoe or <u>tomol</u> was a product of a Chumash woodworking tradition plus the lack of suitable timber on

the Chumash coast (Robinson 1943:15; Heizer and Massey 1953:307). In a word, tomol means pine, and the canoes were constructed out of a number of pine or redwood planks fashioned from pieces of driftwood washed up on the beach (Heizer and Massey 1953:298). Whalebone wedges apparently were used in the splitting-out of planks from driftwood logs, and the planks were shaped, fitted, sewn together, and caulked with asphaltum (Heizer 1940:83-84).

"The craft was without ribs, the only transverse bracing being a plank thwart across the middle" (Robinson 1943:15). This center thwart plus a bottom plank comprised the only framing structure. The flexibility of the canoe was such that the weight of the paddlers "would tend to draw the gunwales together" and tighten the seams that had been sewn together (Heizer 1940:84).

A canoe would hold three or four persons or more, depending upon its size, and be propelled by double-bladed paddles. Heizer feels that the plank canoe was "eminently suited to the environmental conditions and seacoast economy" of the relatively still waters of the Santa Barbara Channel (1940:88). Its use was seemingly limited to a calm coast as, "The Northern Chumash, living on a rough, unprotected seacoast found it impossible to use the plank canoe, which they undoubtedly knew of and envied" (Heizer 1940:84-85).

The plank canoe had a sharp prow and reputedly could "go with surprising velocity" (Shaler 1804 in Robinson 1942:207). The fiber for sewing the joints together was maguey thread, and the fitting, sewing, and asphaltum-caulking took place after the planks had been smoothed down with shells and stones (Woodward 1934:120). One eighteenth-century observer goes so far as to say that the planks were so well joined, seamed, and caulked that they did not leak (Anza 1775 in Robinson 1942:204).

Another eighteenth-century observer describes the canoes of the Chumash

as follows:

> These canoes are from 12 to 18 feet in length and in the middle about four feet wide. They are large enough to carry about half a dozen of the Natives in smooth water, and are extremely serviceable to them for the purpose of fishing in the channel as we had the pleasure to experience during our stay by the plentiful supply of fish they daily brought us . . . (Menzies 1792: 325-326 in Robinson 1942:205).

This outstanding technological feature of Chumash culture, the frameless plank canoe (Landberg 1965:3), apparently was given a finishing touch of color. According to Costansó (1769 in Robinson 1942:203), the Chumash painted their canoes with bright colors.

Heizer (1955:151) says that in shaping and fitting the planks the Chumash did so without the use of fire. However, for circa 1815, Hill (1859 in Woodward 1934:120) reports just the opposite, that is, the planks "were bent and joined by the heat of the fire." Perhaps the practice of fire heating for shaping was acquired after European contact. On the other hand, it could be aboriginal. A careful search of the accounts of eighteenth century exploration could possibly reveal additional information on this question. Whether fire was used or not, Close (1960:43) makes the inference that Chumash canoe building required craft specialization, that of skilled workers.

As is well known, the Spanish brought a process of missionization to the Chumash. The five missions founded in Chumash country were: San Luis Obisipo (1772), San Buenaventura (1782), Santa Barbara (1786), La Purísima Concepción (1787), and Santa Inés (1804) (Landberg 1965:13). With missionization, Chumash subsistence and settlement patterns were disrupted, and the Chumash suffered severe depopulation and cultural loss (Landberg 1965:19). Blackburn (1975:4) refers to the missionization process as destructive acculturation. That is, the price for learning certain European agricultural methods, artisan crafts, and religious concepts was the loss of personal freedom and community social

organization as well as other categories of culture, eventually including the language.

Since the Chumash had hostile encounters or wars among themselves on an intervillage level, one might ask how the Chumash came to participate in the mission system? Again, an eighteenth century European on the scene has a comment about this:

> Although the [Chumash] Indians are warlike [referring to the cultural trait of armed combat], skillful with the bow, intrepid and of a proud nature, their fixed domicile makes them accept the yoke of obedience and religion with greater readiness and constancy than do other nations (Martinez 1792 in Grant 1965:16).

Perhaps the sedentary essentially non-nomadic nature of the Chumash with relatively populous villages somehow made them more available or susceptible to the proselytizing of the missionaries. Forbes (1969:29) states that "few came voluntarily for religious reasons." Means used were the offering of free meals and gifts as well as the unsolicited baptism of young children who would be subsequently forced into a mission with parents folowing. This practice is related by a modern ethnographer as follows:

> . . . a standard device was to baptize young children in home villages and then to require them as "converts" to enter the mission at ages five to seven. Normally, the child's mother followed to be with the child, and the father followed to be with his wife. By the 1790's, however, the reputation of the missions as places where Indians were unfree and as death-traps [because of European diseases] made it necessary for the missionaries to resort to outright force . . . Another common variant was to bribe or frighten a village leader into supplying quotas of converts. . . (Forbes 1969:29).

Cook (1976:79) refers to the life of the Chumash at the missions as a form of captivity: "Perhaps the best analogy is not that of slavery, which implies rigorous physical exactions, but captivity." Grant (1965:16) describes an aspect of the so-called captivity as a system of peonage in which "Indians trained at the mission were loaned out to soldiers and settlers, any return

for their labor going to the mission."

There have been three movements of protest of the Chumash against the missions: 1801, 1810, and 1824. These were attempts to revive aspects of Chumash culture as well as to gain release from the control of the missions. All the attempts, however, turned out to be of brief duration.

In 1801, the Chumash god Chupu, the traditional sun god (Heizer 1941:128) associated with the stick and stone figurines mentioned above (Kroeber 1925: 567), appeared to a Chumash woman at the Santa Barbara Mission. Chupu said for the Chumash to stop submitting to baptism and that those already baptized should honor Chupu by washing their "heads with a certain water" (Grant 1965:62). Death was the threatened consequence for not following these instructions. It is interesting to note that the medium of baptism, "a certain water" was used to counteract the mission ritual.

The details of the 1801 event are that at midnight, after the woman's trance, news of the revelation spread rapidly and was readily accepted. Among the Chumash at the Santa Barbara Mission "all the neophytes, the alcaldes included, went to the house of the visionary to present beads and seeds, and to go through the rite of renouncing Christianity" (Heizer 1941:128). The movement remained undiscovered by mission authorities for three days when "a neophyte, overcoming his fears, told . . . what was happening" (Tapis 1805 in Heizer 1941:129). The movement, despite its short life span, did spread to other missions. There was an occurrence of Chumas resistance at La Purísima Mission in 1810, but it soon was broken up (Kroeber 1925:567; Heizer 1941:128).

The idea of Chupu's revelation remained alive, though, and was a force in the 1824 revolt of the Santa Barbara, Santa Inés, and La Purísima Missions (Heizer 1941:128; Grant 1978a:507). In this revolt, there were brief hostilities,

and several Chumash and Spanish were killed. Spanish troops were involved in overcoming the movement which Cook (1976:67) characterizes as "a well-organized revolt."

Many Chumash fled to the San Joaquin Valley to take refuge with the Yokuts (Cooper 1969). The majority of the Chumash were subsequently persuaded to return to the missions. Yet, some stayed away and settled independently. In 1833, a party of American fur trappers came upon a village of Spanish-speaking Chumash near Walker Pass (Kern County, California) who possessed horses and were raising corn (Leonard 1839 in Grant 1978a:507).

The significance of the revolt in 1824 is that is is the "only instance where the converted Indians north of Los Angeles organized and carried out a really serious rebellion" (Cook 1976:67).

Thus, in spite of the loss of the old Chumash way of life, some aspects of Chumash religion were being maintained in secret during the Mission Period. These surfaced as the rational for resistance on at least three occasions in 1801, 1810, and 1824 in which action resulted from the persistent antagonism of the Chumash towards the Spanish (Heizer 1941:128).

It may be worth noting that the historical evidence for the 1801 revelation and movement, which pointed to the old religion, is in a letter of Father Estevan Tapis to Jose Joaquin Arrillaga, Gobernador de la Norte California, dated March 1, 1805 from the Santa Barbara Mission. The letter is in the Bancroft Library of the University of California under the collection for the Santa Barbara Mission and has been translated and reprinted by Heizer (1941:128-129).

The missions were secularized in 1834 by the Mexican Government, and "most Mission Indians were relegated to the status of peóns on ranchos"

(Landberg 1965:21). The Chumash suffered further cultural loss several years later in the American Period, and "their plight was not improved over the conditions that prevailed under the ranchos" (Landberg 1965:21).

Attention is now directed to modern times and a brief history of the Santa Ynez Reservation of the Chumash, the only Chumash group recognized by the United States Government. The Santa Ynez Reservation grew out of the Santa Ines Mission in the sense that the presence of the Chumash can be traced back from one to the other to the founding of the mission in 1804. Lloyd (1955: Appendix, enclosed) provides an outline history of the mission and the reservation, showing that the Chumash settlements adjoining the mission were removed in 1855 to the Zanja de Cota tract which became an official reservation in 1941. The mission survives today after restoration but has no direct association with the Chumash.

Under authority of the 1891 Act for Relief of Mission Indians (26 Stat. 712), the Zanja de Cota tract was recognized as a reservation in 1901 but the land was still privately owned. In 1906, the Church portion of the tract was deeded in trust to the Secretary of the Interior, "and the Indians came under the juristiction of the Bureau of Indian Affairs" (Lloyd 1955:135). Later, in 1933, John Dady, Superintendent of the Mission Indian Agency became "determined to make the land an official reservation, with the title to the entire tract in the name of the Department of the Interior" (Lloyd 1955:150). By 1938, quit claims had been obtained for all portions of the tract, including those from two ranchers and an oil company, and the reversionary clause of the Church had been given up (land would revert to the Church in lieu of direct Chumash decendants). The deeds were accepted by the Secretary of the Interior on October 18, 1941, conferring official status on the Santa Ynez Reservation.

By 1906, the Chumash of the Santa Ynez Reservation (please note spelling difference between the reservation name and that of the Santa Inés Mission), may well have "represented the last surviving cluster of Chumash, although [by this time] they were already considerably mixed with Mexicans" (Lloyd 1955: 135). Lloyd cites the considerable cultural changes, that is, the ever increasing acculturation of the Chumash in terms of American culture which took place from 1906 to 1955, the time of her work (1955:156). She refers to the acceptance of innumerable aspects of American culture, especially music and dancing. Industrial and service-type jobs increased, although "agricultural and stock work . . . dominant in the preceding period. . . [was] still very important" (Lloyd 1955:153). The occupational categories listed are barber, blacksmith, miner, bandleader, janitor, tailor's helper, waiter, gardener, and fruit and vegetable harvester (Lloyd 1955:153-154). Also women of the reservation took in washing using the tub-and-washboard method.

We are talking about relatively small numbers in terms of the Santa Ynez Band of Mission Indians (Chumash). The population was 60 in 1906 (Lloyd 1955: 136) and 42 in 1971 (U.S. Department of Commerce 1974:147).

Lloyd (1955:159) cites a continuing factor in Chumash ethnicity, namely, the United States Government payment of $150 on a one-time per capita basis, as an indicator of Chumash Indian status. This money, started in 1950, is issued "to all persons in California having a minimum of 1/8 Indian blood" (Lloyd 1955: 159). According to Lloyd, Chumash "individuals go to considerable effort to prove that they have some Indian blood" (1955:159).

The $150 payment stems from a settlement of the U.S. Court of Claims, number K-344, December 4, 1944 (102 C.Cls. 837) for the Indians of California (Stewart 1978:706). As Indians of California, the Santa Ynez Chumash have par-

ticipated in these payments as mentioned above (Lloyd 1955:159). I assume from the literature (Stewart 1978:708, 712) that the Santa Ynez Chumash are similarly participating in an out-of-court settlement, July 20, 1964, before the Indian Claims Commission for $29,100,000 involving the Indians of California and 46 bands of Mission Indians (13 Ind. Cl. Comm. 369). If the Santa Ynez Chumash are so participating, they would be receiving combined per capita payments from the 1950 authorization (64 Stat. 189) and from the 1964 settlement (13 Ind. Cl. Comm. 369) as Indians of California and not as Mission Indians (Stewart 1978:708). This is so because the Santa Ynez Band of Mission Indians (Chumash) is not listed as one of the 46 bands of Mission Indians named in Docket 80 (Before the Indian Claims Commission, Number 80; Index to Decisions of the Indian Claims Commission, Docket 80). Stewart's article on California Indian litigation is enclosed for further reference (1978:705-712).

As mentioned above, the Santa Ynez Reservation is the only federally recognized one having to do with the Chumash. Six other Chumash groups have been identified by Dwight Dutschke, Native American Heritage Coordinator, Department of Parks and Recreation, State of California as follows: the Santa Barbara Indian Center, the Southern Chumash Group, the Redwinds Foundation, the Candelaria American Indian Council, the Central Coast Chumash Group, and the Brotherhood of the Tomol (after the Chumash plank canoe). These groups appear to be exercising a revival of Chumash identity based upon modern Native American ethnicity rather than on any Chumash cultural or legal continuity. With the loss of Chumash culture and the language, the Santa Ynez Band lacks cultural continuity also, but does have legal continuity with the outgrowth of the reservation from the mission.

The legal search through JURIS, the computer reference system of the Law

Library of the U.S. Department of the Interior, has revealed no court cases which name the Chumash or the Santa Ynez Reservation per se. The JURIS search did reveal the U.S. Supreme Court case of the United States versus the State of California, May 15, 1978 (U.S. Supreme Court Reports 56 L Ed 2d 94) which found that dominion over the waters and submerged lands within the Channel Islands National Monument lies with California and not the United States. Three supplemental decrees are also included with the enclosed legal documents. These decrees define the boundaries of the Channel Islands National Monument in terms of high- and low-water lines.

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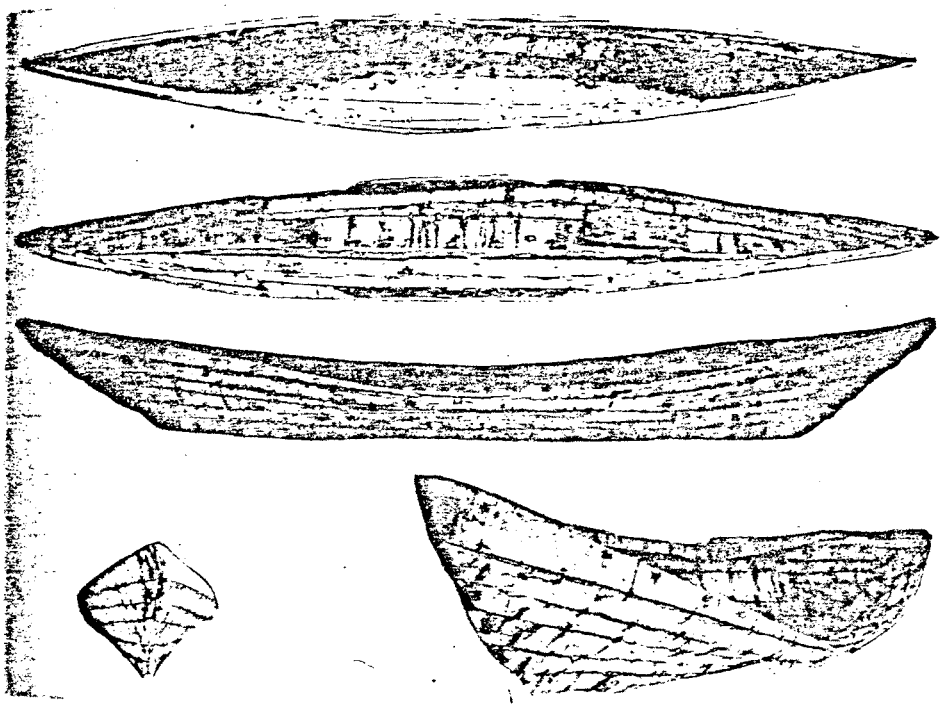
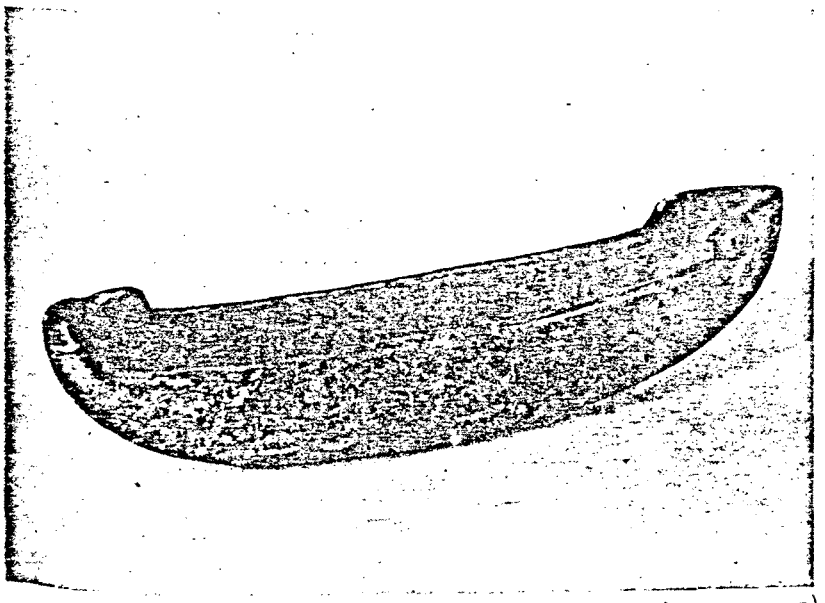


Above: Full-size model of a plank canoe made many years ago for J. P. Harrington by a Chumash Indian. Photograph courtesy of San Diego Museum. *Below:* Small steatite model of Canaliño canoe from one of the Channel Islands.



(Landberg 1965: 15)

APPENDIX

Outline History of Mission Santa Ines

1804 - founded by Fr. Tapis, 19th of the California missions

1824 - Indian revolt

1836 - Secularization; wealth is lost although the Franciscans remain until 1850

1850 - abandoned by the Franciscans

1861 - lands returned to the Catholic Church by President Lincoln; secular priests take over until 1924

1904 - Father Buckler begins restoration of the buildings

1924 - Capuchin Franciscan Friars of the Irish Province take over

Outline History of Indian settlement in the Santa Ynez valley from the Mission Period

1804-1855 - neophytes inhabit the village adjoining the Mission

1855 - Indians are moved to Zanja de Cota tract

1906 - portion of Zanja de Cota tract given to the U.S. Government by the Catholic Church, becoming the Santa Ynez Indian Reservation (unofficial)

1941 - title to the land finally cleared; becomes an official Indian Reservation

(Lloyd 1955: Appendix)

SANTA YNEZ RESERVATION

Santa Barbara County, CALIFORNIA
Santa Ynez Band of Mission Indians
Tribal Headquarters: Santa Ynez, California 93460

Federal Reservation

Population: 42 (BIA 3/71)

Vital Statistics

Population:	
Indians residing on or adjacent to reservation:	42
Labor Force:	
Total:	22
Unemployed:	8
Unemployment rate:	36%
Education: (tribal estimates)	
Average grade level achieved:	10th

LAND STATUS Total Area: 99.28 acres

The Santa Ynez Reservation is situated in Santa Barbara County, approximately 32 miles north of Santa Barbara, California. The reservation was established on December 27, 1901, under authority of the act of 1891.

CULTURE

Religion, language, foods, kinship, and other tribal traditions still exist among the Santa Ynez Band.

GOVERNMENT

The tribe is organized under the Indian Reorganization Act Articles of Organization, approved February 7, 1964. The governing bodies are a general council, composed of all members 21 years of age or older, and a five-member business council elected for a term of 2 years.

CLIMATE

The topography of the reservation includes rolling hills, trees, and a running stream, all of which help to moderate the climate. Temperatures average a high of 97° and a low of 47°. The yearly rainfall is about 8 inches.

TRANSPORTATION

Commercial transportation facilities are available in Santa Barbara. The nearest private airport is located in Santa Ynez, 6 miles from the reservation. U.S. Highway 101 is 6 miles from the reservation.

COMMUNITY FACILITIES

Water comes from a well which is provided by the city. Bottled gas is purchased. Electricity is provided by the Santa Barbara Gas and Electric Company. The sewer system consists of three septic tanks and eleven outhouses. Hospital, clinic, dental, and U.S. Public Health Service facilities are available at Santa Barbara.

(U. S. Department of Commerce 1974 : 147)

the administration of the criminal laws of said State and the service of civil process therein.

Open space.

The building shall be unexposed to danger from fire by an open space of at least forty feet on each side, including streets and alleys.

Approved, January 12, 1891.

January 12, 1891.

CHAP. 65.—An act for the relief of the Mission Indians in the State of California.

Mission Indians, Cal. Settlement upon reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That immediately after the passage of this act the Secretary of the Interior shall appoint three disinterested persons as commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided.

Appointment of commission.

Duties of commissioners. Selection of reservations.

SEC. 2. That it shall be the duty of said commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the President and Secretary of the Interior. They shall also appraise the value of the improvements belonging to any person to whom valid existing rights have attached under the public-land laws of the United States, or to the assignee of such person, where such improvements are situated within the limits of any reservation selected and defined by said commissioners subject in each case to the approval of the Secretary of the Interior. In cases where the Indians are in occupation of lands within the limits of confirmed private grants, the commissioners shall determine and define the boundaries of such lands, and shall ascertain whether there are vacant public lands in the vicinity to which they may be removed. And the said commission is hereby authorized to employ a competent surveyor and the necessary assistants.

Appraisal of improvements.

Removals from confirmed private grants.

Surveyor and assistants.

Report.

Issue of reservation trust-patents in common.

SEC. 3. That the commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of this act, for the period of twenty-five years, in trust, for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever: *Provided*, That no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain, unless such person shall acquiesce in and accept the appraisal provided for in the preceding section in all respects and shall thereafter, upon demand and payment of said appraised value, execute a release of all title and claim thereto; and a separate patent, in similar form, may be issued for any such tract or tracts, at any time thereafter. Any such person shall be permitted to exercise the same right to take land under the public-land laws of the United States as though he had not made settlement on the lands embraced in said reservation; and a separate patent, in similar form, may be issued for

Terms of trust.

Post, p. 713.

Provisos.

Existing valid rights.

Lieu-lands to accepting settlers.

Settlers' rights.

any tract or tracts at any time after the appraised value of the improvements thereon shall have been paid: *And provided further*, That in case any land shall be selected under this act to which any railroad company is or shall hereafter be entitled to receive a patent, such railroad company shall, upon releasing all claim and title thereto, and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land of like value in lieu thereof, at such place as the Secretary of the Interior shall determine: *And provided further*, That said patents declaring such lands to be held in trust as aforesaid shall be retained and kept in the Interior Department, and certified copies of the same shall be forwarded to and kept at the agency by the agent having charge of the Indians for whom such lands are to be held in trust, and said copies shall be open to inspection at such agency.

Lieu-lands to accepting railroads.

Custody of trust-patents. Copies.

SEC. 4. That whenever any of the Indians residing upon any reservation patented under the provisions of this act shall, in the opinion of the Secretary of the Interior, be so advanced in civilization as to be capable of owning and managing land in severalty, the Secretary of the Interior may cause allotments to be made to such Indians, out of the land of such reservation, in quantity as follows: To each head of a family not more than six hundred and forty acres nor less than one hundred and sixty acres of pasture or grazing land, and in addition thereto not exceeding twenty acres, as he shall deem for the best interest of the allottee, of arable land in some suitable locality; to each single person over twenty-one years of age not less than eighty nor more than six hundred and forty acres of pasture or grazing land and not exceeding ten acres of such arable land.

Allotments in severalty.

Head of family.

Single person.

SEC. 5. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State of California, and that at the expiration of said period the United States will convey the same by patent to the said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That these patents, when issued, shall override the patent authorized to be issued to the band or village as aforesaid, and shall separate the individual allotment from the lands held in common, which proviso shall be incorporated in each of the village patents.

Patents to allottees.

In trust.

In fee.

Prior conveyances, etc., void.

Proviso.

Power of severalty patents.

SEC. 6. That in cases where the lands occupied by any band or village of Indians are wholly or in part within the limits of any confirmed private grant or grants, it shall be the duty of the Attorney-General of the United States, upon request of the Secretary of the Interior, through special counsel or otherwise, to defend such Indians in the rights secured to them in the original grants from the Mexican Government, and in an act for the government and protection of Indians passed by the legislature of the State of California April twenty-second, eighteen hundred and fifty, or to bring any suit, in the name of the United States, in the Circuit Court of the United States for California, that may be found necessary to the full protection of the legal or equitable rights of any Indian or tribe of Indians in any of such lands.

Rights of Indians on Mexican land grants.

Attorney-General to defend, etc.

SEC. 7. That each of the commissioners authorized to be appointed by the first section of this act shall be paid at the rate of eight dollars per day for the time he is actually and necessarily employed in

Compensation of commissioners.

the discharge of his duties, and necessary traveling expenses; and for the payment of the same, and of the expenses of surveying, the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

Appropriation.

Rights of way across reservations, prior to patent.

Secretary of Interior may grant.

For water pipes, etc.

Conditions.

For railroads, etc.

Provisos.

Conditional bond, etc.

Limit of distance.

Rights of way, after issue of patents.

Subject to approval of Secretary of Interior.

SEC. 8. That previous to the issuance of a patent for any reservation as provided in section three of this act the Secretary of the Interior may authorize any citizen of the United States, firm, or corporation to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such reservation for agricultural, manufacturing, or other purposes, upon condition that the Indians owning or occupying such reservation or reservations shall, at all times during such ownership or occupation, be supplied with sufficient quantity of water for irrigating and domestic purposes upon such terms as shall be prescribed in writing by the Secretary of the Interior, and upon such other terms as he may prescribe, and may grant a right of way for rail or other roads through such reservation: *Provided*, That any individual, firm, or corporation desiring such privilege shall first give bond to the United States, in such sum as may be required by the Secretary of the Interior, with good and sufficient sureties, for the performance of such conditions and stipulations as said Secretary may require as a condition precedent to the granting of such authority: *And provided further*, That this act shall not authorize the Secretary of the Interior to grant a right of way to any railroad company through any reservation for a longer distance than ten miles. And any patent issued for any reservation upon which such privilege has been granted, or for any allotment therein, shall be subject to such privilege, right of way, or easement. Subsequent to the issuance of any tribal patent, or of any individual trust patent as provided in section five of this act, any citizen of the United States, firm, or corporation may contract with the tribe, band, or individual for whose use and benefit any lands are held in trust by the United States, for the right to construct a flume, ditch, canal, pipe, or other appliances for the conveyance of water over, across, or through such lands, which contract shall not be valid unless approved by the Secretary of the Interior under such conditions as he may see fit to impose.

Approved, January 12, 1891.

January 12, 1891.

CHAP. 66.—An act for the erection of a public building at Newburgh, New York.

Newburgh, N. Y. Public building, etc.

Site.

Building.

Cost.

Proposals to be advertised for.

Responses.

Examination, etc., by Treasury agent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a site and cause to be erected thereon a suitable building, including fire-proof vaults, heating and ventilating apparatus, elevators, and approaches, for the use and accommodation of the United States post-office and other Government offices, in the city of Newburgh and State of New York, the cost of said site and building, including said vaults, heating and ventilating apparatus, elevators, and approaches, complete, not to exceed the sum of one hundred thousand dollars.

Proposals for the sale of land suitable for said site shall be invited by public advertisement in one or more of the newspapers of said city of largest circulation for at least twenty days prior to the date specified in said advertisement for the opening of said proposals.

Proposals made in response to said advertisements shall be addressed and mailed to the Secretary of the Treasury, who shall then cause the said proposed sites, and such others as he may think proper to designate, to be examined in person by an agent of the Treasury

45 Stat. 602

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May 18, 1928.
[H. R. 491.]
[Public, No. 425.]

CHAP. 624.—An Act Authorizing the attorney general of the State of California to bring suit in the Court of Claims on behalf of the Indians of California.

Indians in California. Definition of.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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.

Suit for compensation for lands, etc., taken from, by United States to be brought in Court of Claims, by attorney general of California for the Indians in.

Sec. 2. All claims of whatsoever nature the Indians of California as defined in section 1 of this Act may have against the United States by reason of lands taken from them in the State of California 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, may be submitted to the Court of Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is hereby conferred upon the Court of Claims of the United States, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

Appeal to Supreme Court.

Declaration of ground for equitable relief.

It is hereby declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief.

Settlement notwithstanding lapse of time, etc.

Sec. 3. If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided*, That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at $1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off.

Vol. 9, p. 631.

Proviso.
Decree to equal compensation as provided by unratified treaties.

Prior payments as set-offs.

Time for filing claims, etc.

Sec. 4. The claims of the Indians of California under the provisions of this Act shall be presented by petition, which shall be filed within three years after the passage of this Act. Said petition shall be subject to amendment. The petition shall be signed and verified by the attorney general of the State of California. Verification may be upon information and belief as to the facts alleged. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give the said attorney access to such papers, correspondence, or furnish such certified copies of record as may be necessary in the premises free of cost.

Evidence admitted.

Allowance to reimburse the State for court costs, etc.

Sec. 5. In the event that the court renders judgment against the United States under the provisions of this Act, it shall decree such amount as it finds reasonable to be paid to the State of California

Page 26

to reimburse the State for all necessary costs and expenses incurred by said State, other than attorney fees: *Provided*, That no reimbursement shall be made to the State of California for the services rendered by its attorney general.

Proviso. No reimbursement for attorney general's services.

SEC. 6. The amount of any judgment shall be placed in the Treasury of the United States to the credit of the Indians of California and shall draw interest at the rate of 4 per centum per annum and shall be thereafter subject to appropriation by Congress for educational, health, industrial, and other purposes for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians: *Provided*, That the Secretary of the Treasury is authorized and directed to pay to the State of California, out of the proceeds of the judgment when appropriated, the amount decreed by the court to be due said State, as provided in section 5 of this Act.

Judgment to be placed to credit of the Indians.

Use of fund.

No per capita payment.

Proviso. Payment to California for costs.

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 time specified herein, a roll of all Indians in California other than Indians that come within the provisions of section 1 of this Act.

Roll to be prepared. *Post*, p. 1640.

Applications for enrollment.

Revision within three years.

Proviso. Rules, etc., to be prescribed.

Approved, May 18, 1928.

CHAP. 625.—An Act To extend medical and hospital relief to retired officers and retired enlisted men of the United States Coast Guard.

May 18, 1928. [H. R. 11022.] [Public, No. 424.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter retired officers and retired enlisted men of the United States Coast Guard shall be entitled to medical treatment at Marine hospitals and out-patient offices of the Public Health Service.

Coast Guard. Retired officers and enlisted men of, to have medical treatment at Public Health hospitals, etc.

Approved, May 18, 1928.

CHAP. 626.—An Act Authorizing an appropriation to enable the Secretary of the Interior to carry out the provisions of the Act of May 26, 1926 (Forty-fourth Statutes at Large, page 655), to make additions to the Absaroka and Gallatin National Forests, and to improve and extend the winter-feed facilities of the elk, antelope, and other game animals of Yellowstone National Park and adjacent land.

May 18, 1928. [H. R. 15.] [Public, No. 425.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby authorized to be appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $150,000, which sum shall continue available until expended, to enable the Secretary of the Interior to carry out the provisions of the Act of May 26, 1926 (Forty-fourth Statutes at Large, page 655), entitled "An Act to make additions to the Absaroka and Gallatin

Absaroka and Gallatin Forests, and Yellowstone Park. Sum authorized for additions to.

Vol. 44, p. 655. *Post*, p. 1601.

46 Stat. 259

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CHAP. 222.—An Act To amend the Act authorizing the attorney general of the State of California to bring suit in the Court of Claims on behalf of the Indians of California.

April 29, 1930.
[H. R. 10081.]
[Public, No. 177.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act of May 18, 1928 (Forty-fifth Statutes at Large, page 602), is hereby amended to read as follows:

Indians in California.
Vol. 45, p. 603, amended.

"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 four years after the approval of this Act make an application in writing to the Secretary of the Interior for enrollment. At any time within five 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 time specified herein, a roll of all Indians in California other than Indians that come within the provisions of section 1 of this Act."

Enrollment of.

Time limit for applications.

Revision in five years.

Proviso.
Rules, etc., to be prescribed.

Approved, April 29, 1930.

CHAP. 223.—An Act To amend the Air Mail Act of February 2, 1925, as amended by the Acts of June 3, 1926, and May 17, 1928, further to encourage commercial aviation.

April 29, 1930.
[H. R. 11704.]
[Public, No. 178.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Air Mail Act of February 2, 1925, as amended by the Act of June 3, 1926 (44 Stat. 692; U. S. C., Supp. III, title 39, sec. 464), be amended to read as follows:

Air Mail Act.
Vol. 43, p. 805; Vol. 44, p. 692, amended.
U. S. C., Supp. IV, p. 550.

"SEC. 4. The Postmaster General is authorized to award contracts for the transportation of air mail by aircraft between such points as he may designate to the lowest responsible bidder at fixed rates per mile for definite weight spaces, one cubic foot of space being computed as the equivalent of nine pounds of air mail, such rates not to exceed $1.25 per mile: *Provided*, That where the air mail moving between the designated points does not exceed twenty-five cubic feet, or two hundred and twenty-five pounds, per trip the Postmaster General may award to the lowest responsible bidder, who has owned and operated an air transportation service on a fixed daily schedule over a distance of not less than two hundred and fifty miles and for a period of not less than six months prior to the advertisement for bids, a contract at a rate not to exceed 40 cents per mile for a weight space of twenty-five cubic feet, or two hundred and twenty-five pounds. Whenever sufficient air mail is not available, first-class mail matter may be added to make up the maximum load specified in such contract."

Contracts authorized for carrying air mail at fixed rates per mile for weight spaces.

Proviso.
Special rates for limited space or weight.

SEC. 2. That section 6 of the Act of May 17, 1928 (45 Stat. 594; U. S. C., Supp. III, title 39, sec. 465c), be amended to read as follows:

Air mail certificates.
Vol. 45, p. 594, amended.
U. S. C., Supp. IV, p. 551.

"SEC. 6. The Postmaster General may, if in his judgment the public interest will be promoted thereby, upon the surrender of any air-mail contract, issue in substitution therefor a route certificate for a period of not exceeding ten years from the date service started under such contract to any contractor or subcontractor who has satis-

Substitution of, for former contracts.

50 Stat. 320. 16 U. S. C. § 404c-12.

a proper and suitable entrance road to Mammoth Cave National Park, as authorized in section 12 of this Act. The funds heretofore deposited in the Treasury under special fund receipt account 146664 shall, upon the passage of this Act, be transferred to the general fund of the Treasury as miscellaneous receipts: *Provided*, That no part of this authorization shall be used for road development or construction until after all the lands within the maximum boundaries, as authorized by the Act of May 25, 1926 (44 Stat. 635), have been acquired by purchase, condemnation or otherwise."

Restriction.

16 U. S. C. §§ 404-404c.

Approved June 30, 1948.

[CHAPTER 765]

AN ACT

June 30, 1948 [H. R. 2878] [Public Law 852]

To amend the Act approved May 18, 1928 (45 Stat. 602), as amended, to revise the roll of the Indians of California provided therein.

Indians of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act of May 18, 1928 (45 Stat. 602), as amended by the Act of April 29, 1930 (46 Stat. 259), be, and the same is hereby, amended as follows:

Revision of roll.

"SEC. 7. That the Secretary of the Interior, under such rules and regulations as he may prescribe, is hereby authorized and directed to revise the roll of the Indians of California, made by him in accordance with the provisions of the Act of May 18, 1928 (45 Stat. 602), as amended, by removing from said roll the names of persons who have died since May 18, 1928, and by adding the names of children, and their descendants, now living, born since May 18, 1928, to enrollees qualified under section 1 of the Act of May 18, 1928, whose names appear on said roll. The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to the revision of said roll. Any person claiming to be entitled to enrollment may, within one year after the approval of this Act, as herein amended, make an application in writing to the Secretary of the Interior for enrollment. After the expiration of such period of time, the Secretary of the Interior shall have one year to approve and promulgate such revised roll, after which the roll shall be closed and thereafter no additional names shall be added thereto: *Provided*, That the Secretary of the Interior shall prepare and distribute to the Indians of California not less than three thousand copies of an alphabetical printed list, consisting of the name of each Indian on the roll approved May 17, 1933, giving name, address, age at time of enrollment, and such other factual information, if any, as the Secretary may deem advisable as tending to identify each enrollee."

Application for enrollment.

Distribution of list.

Appropriation authorized.

SEC. 2. There is hereby authorized to be appropriated, out of any funds in the Treasury of the United States to the credit of the Indians of California, the sum of $25,000 to remain available until expended, to be used to defray the expenses incurred by the Secretary of the Interior in revising the roll, as provided herein.

Approved June 30, 1948.

[CHAPTER 766]

AN ACT

June 30, 1948 [H. R. 4856] [Public Law 853]

To delay the liquidation of mineral interests reserved to the United States as required by the Farmers' Home Administration Act of 1946, and for other purposes.

Liquidation of mineral interests.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, no mineral interests reserved to the

64 Stat. 189

64 Stat. 189

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compensation for annual leave, such payments may be made if a notice of election has been or is filed by an officer or employee, or the duly authorized representative of the estate of an officer or employee who is deceased, before the expiration of one hundred and eighty days after the enactment of this section 2.

"(d) Any payments heretofore made which are in conformity with the provisions of this Act, as amended, are ratified.

"(e) There is authorized to be appropriated not to exceed $3,052.26 for the purpose of making payments under this Act, as amended."

Appropriation authorized.

Approved May 23, 1950.

[CHAPTER 196]

AN ACT

To provide for a per capita payment from funds in the Treasury of the United States to the credit of the Indians of California.

May 24, 1950
[H. R. 1354]
[Public Law 524]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act of May 18, 1928 (45 Stat. 602), as amended by the Act of April 29, 1930 (46 Stat. 259), and by the Act of June 30, 1948 (62 Stat. 1166), is hereby further amended to read as follows:

Indians of California.

"SEC. 7. The Secretary of the Interior, under such regulations as he may prescribe, is hereby authorized and directed to revise the roll of the Indians of California, as defined in section 1 of this Act, which was approved by him on May 16, 1933, in the following particulars: (a) By adding to said roll the names of persons who filed applications for enrollment as Indians of California on or before May 18, 1932, and who, although determined to be descendants of the Indians residing in the State of California on June 1, 1852, were denied enrollment solely on the ground that they were not living in the State of California on May 18, 1928, and who were alive on the date of the approval of this Act; (b) by adding to said roll the names of persons who are descendants of the Indians residing in the State of California on June 1, 1852, and who are the fathers, mothers, brothers, sisters, uncles, or aunts of persons whose names appear on said roll, and who were alive on the date of the approval of this Act, irrespective of whether such fathers, mothers, brothers, sisters, uncles, or aunts were living in the State of California on May 18, 1928; (c) by adding to said roll the names of persons born since May 18, 1928, and living on the date of the approval of this Act, who are the children or other descendants of persons whose names appear on said roll, or of persons whose names are eligible for addition to said roll under clauses (a) or (b) of this section, or of persons dying prior to the date of the approval of this Act, whose names would have been eligible for addition to said roll under clauses (a) or (b) of this section if such persons had been alive on the date of the approval of this Act; and (d) by removing from said roll the names of persons who have died since May 18, 1928, and prior to the date of the approval of this Act. Persons entitled to enrollment under clause (a) of this section shall be enrolled by the Secretary of the Interior without further application. Persons claiming to be entitled to enrollment under clauses (b) or (c) of this section shall, within one year after the approval of this amendment, make an application in writing to the Secretary of the Interior for enrollment, unless they have previously filed such an application under the amendment to this section made by the Act of June 30, 1948 (62 Stat. 1166). The Secretary of the Interior shall prepare not less than five hundred copies of an alphabetical list of the Indians of California whose names appear on the roll approved on May 16, 1933, giving the name, address, and age at time of enrollment of each such enrollee, together with such other factual information, if any, as the Secretary

Revision of roll.

may deem advisable as tending to identify each enrollee, and shall distribute copies of this list to the various communities of California Indians. The Indians of California in each community may elect a committee of three enrollees who may aid the enrolling agent in any matters relating to the revision of said roll. After the expiration of the period allowed by this section for filing applications, the Secretary of the Interior shall have six months to approve and promulgate the revised roll of the Indians of California provided for in this section. Upon such approval and promulgation, the roll shall be closed and thereafter no additional names shall be added thereto."

Per capita payments.

SEC. 2. Notwithstanding the provisions of section 6 of the Act of May 18, 1928 (45 Stat. 602), the Secretary of the Interior, under such regulations as he may prescribe, is hereby authorized and directed to distribute per capita the sum of $150 to each Indian of California living on the date of the approval of this Act, who is now or may hereafter be enrolled under sections 1 and 7 of said Act of May 18, 1928, as amended by section 1 of this Act. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on the roll of the Indians of California approved on May 16, 1933, as he identifies such enrollees, before the completion of the revised roll provided for in section 1 of this Act. The Secretary of the Interior is hereby authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the per capita payments required by this section, including not to exceed $15,000 for the purpose of defraying the expenses incident to carrying out the provisions of this Act. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any of such persons, except for debts owing to the United States.

Withdrawal of funds authorized.

59 Stat. 94.

Approved May 24, 1950.

[CHAPTER 197]

May 24, 1950
[H. R. 5097]
[Public Law 525]

AN ACT

For the administration of Indian livestock loans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all acceptances of cash settlements by the Commissioner of Indian Affairs for livestock lent by the United States to any individual Indian, or to any tribe, association, corporation, or other group of Indians, and all sales and relending of livestock repaid in kind to the United States on account of such loans are hereby authorized and ratified: *Provided*, That hereafter the value of such livestock for the purposes of any such cash settlement shall be based on prevailing market prices in the area and shall be ascertained by a committee composed of three members, one of whom shall be selected by the superintendent of the particular agency, one of whom shall be selected by the chairman of the tribal council, and one of whom shall be selected by the other two members.

Livestock loaned to Indians.

Value of livestock.

SEC. 2. Any moneys hereafter received in settlement of such debts or from the sale of livestock so repaid to the United States shall be deposited in the revolving fund established pursuant to the Acts of June 18, 1934 (48 Stat. 984), and June 26, 1936 (49 Stat. 1967), as amended and supplemented.

Deposit of receipts.

25 U. S. C. §§ 461-479, 501-509; Sup. III, §§ 502, 505.

Approved May 24, 1950.

68 Stat. 240

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Dept. of Interior employee in Alaska.

"SEC. 4. Any employee of the Department of the Interior, stationed in Alaska, notwithstanding such employment, may, in the discretion of the Secretary, purchase or lease under this Act one tract for residence or recreation purposes in the Territory of Alaska: *Provided, however*, That any conveyance by the Secretary to such employee shall contain a provision under which said tract shall revert to the United States if used, within twenty-five years after issuance of patent for such tract, for other than residential or recreation purposes.

Oreg. and Calif. R. R. and Coos Bay Wagon Road grant lands.

"SEC. 5. The authority to lease lands under this Act shall extend to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon and under the jurisdiction of the Department of the Interior, except that—

"(a) such lands shall be leased only for residential, recreational, or community site purposes and not for business purposes; and

"(b) no lease of such lands shall be made if such lease would interfere with the application of the sustained yield timber management requirement established with respect to such lands by the Act entitled 'An Act relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon', approved August 28, 1937 (50 Stat. 874)."

43 USC 1181a-1181f.

Approved June 8, 1954.

Public Law 391 — CHAPTER 271

June 8, 1954
[H. R. 2974]

AN ACT

To extend the time for enrollment of the Indians of California, and for other purposes.

California Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act of May 18, 1928 (45 Stat. 602), as amended by the Act of April 29, 1930 (46 Stat. 259), the Act of June 30, 1948 (62 Stat. 1166), and the Act of May 24, 1950 (64 Stat. 189), is hereby further amended by deleting the words "six months" in the penultimate sentence and by inserting in lieu thereof the words "until June 30, 1955," and by inserting after the third sentence "For the purposes of clause (d) of this section, when the Secretary of the Interior is satisfied that reasonable and diligent efforts have been made to locate a person whose name is on said roll and that such person cannot be located, he may presume that such person died prior to the date of approval of this Act, and his presumption shall be conclusive".

25 USC 657.

SEC. 2. That the Secretary of the Interior shall transmit to Congress on or before August 31, 1955, a full and complete report of funds used and the purposes accomplished to carry out the provisions of this Act and the Act approved May 18, 1928 (45 Stat. 602), as amended by the Act of April 29, 1930 (46 Stat. 259), the Act of June 30, 1948 (62 Stat. 1166), and the Act of May 24, 1950 (64 Stat. 189).

25 USC 651-658.

Approved June 8, 1954.

Public Law 392 — CHAPTER 272

June 8, 1954
[H. R. 7061]

AN ACT

To prescribe and regulate the procedure for adoption in the District of Columbia.

D. C. adoption procedure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CASES DECIDED

IN

THE COURT OF CLAIMS

July 1, 1944, to January 31, 1945

INCLUSIVE, IN WHICH, EXCEPT AS OTHERWISE INDICATED, JUDGMENTS WERE RENDERED WITHOUT OPINIONS

No. K-344. December 4, 1944

The Indians of California.

Indian claims; special jurisdictional act; treaties not ratified; title under Mexican law; use and occupancy; cession.

Decided October 5, 1942; claimants entitled to recover, subject, however, to offsets, if any, and amount of recovery and offsets, if any, to be determined under Rule 39 (a), Opinion 98 C. Cls. 583. Motion for new trial overruled January 4, 1943.

Plaintiffs' petition for writ of certiorari denied by the Supreme Court June 7, 1943; 319 U. S. 764.

In accordance with the opinion of the court (98 C. Cls. 583) and the order of the Supreme Court denying certiorari (319 U. S. 764), the case having been referred to a commissioner of the court to ascertain values, a stipulation was filed by the parties, which in part is as follows:

II

> That the area of land for which the plaintiff Indians are entitled to recover under the aforesaid jurisdictional act as found by this Court in its decision of October 5, 1942, is 8,518,900 acres; that the value of said land per acre as fixed by the aforesaid jurisdictional act is $1.25; that the total value of said land for which the plaintiff Indians are entitled to recover is the sum of $10,648,625.

III

> That there has been set aside by the United States for the plaintiff Indians as reservations and otherwise, by

Executive Orders, acts of Congress or otherwise a total of 611,226 acres of land, which it is agreed had a value of $1.25 per acre, or a total value of $764,032.50; that the defendant is entitled to a credit or offset of said sum of $764,032.50 against plaintiffs' recovery on account of land; that plaintiffs' net recovery on account of land shall be $10,648,625, minus $764,032.50, or $9,884,592.50

IV

That the definite items provided for in the unratified treaties involved in this litigation, consisting of goods, wares, merchandise, and other chattels, which would have been furnished if the treaties referred to in Exhibit "A" to the petition herein had been ratified, were of the value of $1,407,149.48, which amount the plaintiffs are entitled to recover under the jurisdictional act and the aforesaid decision of this Court.

V

That the services and facilities which would have been supplied if the said treaties had been ratified would have been furnished for a period of twenty-five (25) years and would have cost the United States the sum of $5,762,200 to supply, which amount the plaintiffs are entitled to recover under the jurisdictional act and the aforesaid decision of this Court.

VI

That the total amount which it is agreed the plaintiffs are entitled to recover under the aforesaid jurisdictional act and the decision of this Court, subject however under the aforesaid act and decision to the offsets specified in the following paragraph No. VII of this stipulation, is as follows:

On account of land as specified in paragraphs II and III of this stipulation	$9,884,592.50
Definite treaty items as specified in paragraph IV of this stipulation	1,407,149.48
Services and facilities as specified in paragraph V of this stipulation	5,762,200.00
Total	17,053,941.98

VII

That the total amount available to the defendant in this action as offsets against the plaintiffs' recovery under the terms of the aforesaid jurisdictional act is made up of the following items:

Disbursements made out of "specific appropriations for the support, education, health, and civilization of Indians in California"	$5, 547, 805. 87
Disbursements made out of appropriations for the Indian Service generally but by the appropriation acts certain amounts were apportioned to the Indian Service in California	1, 573, 249. 66
Out of disbursements made for the support and maintenance of the non-reservation Indian schools at Fort Bidwell, Greenville, and Riverside, California	4, 908, 044. 11
Total	12, 029, 099. 64

VIII

That the aforesaid offsets in the total sum of $12,029,-099.64, as set out in paragraph VII above, shall be deducted from the total amount which the plaintiff is entitled to recover, as stated in paragraph VI above, namely, $17,053,941.98, making the net amount for which judgment may be entered by the Court the sum of $5,024,842.34.

Whereupon, following the filing of a report by the commissioner stating that "net recovery in favor of the plaintiffs is recommended in the sum of $5,024,842.34," it was ordered December 4, 1944, that judgment for the plaintiffs be entered in the net sum of $5,024,842.34.

No. 45950. OCTOBER 2, 1944

Huston St. Clair et al, trading as Virginia Smokeless Coal Company.

Government contract for coal. Upon a stipulation filed by the parties and agreement to comprise, and upon a memorandum report by a commissioner recommending that judgment be entered for the plaintiff in the agreed sum of $2,850.00, and on plaintiff's motion for judgment, it was ordered October 2, 1944, that judgment for the plaintiff be entered in the sum of $2,850.00.

No. 45951. OCTOBER 2, 1944

Sovereign Pocahontas Company.

Government contract for coal. Upon a stipulation filed by the parties, and an agreement to compromise, and upon a memorandum report by a commissioner recommending

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BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, et al.,	)	Docket No. 31
ERNEST RISLING, et al.,	)	Docket No. 37
THE BARON LONG, et al., BANDS OF MISSION INDIANS OF CALIFORNIA,	)	Docket Nos. 80 & 80-D
THE PITT RIVER INDIANS OF CALIFORNIA,	)	Docket No. 347
Petitioners,	)	Consolidated.
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

FINAL DETERMINATION OR JUDGMENT

Upon motion for judgment filed pursuant to a stipulation of compromise settlement, filed herein and incorporated by reference in this determination or judgment; it appearing that appeals by the United States and Clyde F. Thompson, et al., and Ernest Risling, et al. (Court of Claims Appeal 2-61) have been dismissed by the United States Court of Claims; the Commission having held a hearing on the proposed settlement in Los Angeles, Fresno and Eureka, California, and Washington, D. C. on May 13, 14, 15, 18, 19, 22 and 23 and June 3, 4 and 5, 1964, evidence both oral and written having been received and considered; and Findings of Fact and an Opinion having been made and entered in said matter; it further appearing that said compromise settlement was held to be fair and just to all of the parties and has

been duly approved by the Indian groups concerned and the authorized representative of the Secretary of the Interior; that final determination or judgment should be entered in accordance with said Stipulation, Findings of Fact and Opinion and the order of consolidation entered herein on this date;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motion for final determination or judgment pursuant to said stipulation, filed herein, be and the same is hereby granted; that petitioners in said consolidated dockets do have and recover of and from the defendant the net sum of $29,100,000; that said determination or judgment be a single judgment in favor of all of the petitioners (as representatives of the tribes, bands or groups on whose behalf said petitions were presented, as construed and defined by our order of March 3, 1964, in Dockets 31, 37 and 319) as a single class.

Dated at Washington, D. C., this 20th day of July, 1964.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

FILED
AUG 1 0 1951
Clerk
INDIAN CLAIMS COMMISSION

92, 94, 88

for '62 Calif. Court of Claims

BEFORE THE INDIAN CLAIMS COMMISSION

- - - - - - - -

No. 80

- - - - - - - - - -

BARON LONG (EL CAPITAN), CAMPO, INAJA, LA JOLLA, LOS COYOTES, MANZANITA, MESA GRANDE, OLD CAMPO, PALA, PAUMA, PECHANGA, RINCON, SAN JUAN CAPISTRANO, SAN LUIS REY, SANTA ROSA, SANTA YSABEL, SOBOBA, OLD PALA, SAN FELIPE, MESA CHIQUIT, PUERTA NORIA, MATAGUAY, TAH-WEE, SAN PASQUAL, BUENA VISTA, LAS FLORES, YAPECHI, POTRERO, YUIMA, LA POSTA, VALLECITO, SEQUAN, OLD MISSION, LAGUNA, SANTA MANUEL, SAN IGNACIO, MORONGO, AGUANGA, KAHWEAH (CAHUILLA) GUATAY, CUYAPAIPE, SANTA GERTRUDES, JAMUL, PUERTA CRUZ, TORREZ-MARTINEZ, GABRIELENOS BANDS OF MISSION INDIANS OF CALIFORNIA.

v.

THE UNITED STATES OF AMERICA

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BEFORE THE INDIAN CLAIMS COMMISSION

- - - - - - -

No. 80

- - - - - - -

BARON LONG (EL CAPITAN), CAMPO, INAJA, LA JOLLA, LOS COYOTES, MANZANITA, MESA GRANDE, OLD CAMPO, PALA, PAUMA, PECHANGA, RINCON, SAN JUAN CAPISTRANO, SAN LUIS REY, SANTA ROSA, SANTA YSABEL, SOBOBA, OLD PALA, SAN FELIPE, MESA CHIQUIT, PUERTA NORIA, MATAGUAY, TAH-WEE, SAN PASQUAL, BUENA VISTA, LAS FLORES, YAPECHI, POTRERO, YUIMA, LA POSTA, VALLECITO, SEQUAN, OLD MISSION, LAGUNA, SANTA MANUEL, SAN IGNACIO, MORONGO, AGUANGA, KAHWEAH (CAHUILLA) GUATAY, CUYAPAIPE, SANTA GERTRUDES, JAMUL, PUERTA CRUZ, TORREZ-MARTINEZ, GABRIELENOS BANDS OF MISSION INDIANS OF CALIFORNIA.

v.

THE UNITED STATES OF AMERICA

- - - - - - -

A M E N D E D

P E T I T I O N

TO THE HONORABLE COMMISSIONERS OF THE INDIAN CLAIMS COMMISSION:

Your petitioners respectfully represent and allege as follows:

FIRST COUNT
(Loss of lands and title)*

1.

Petitioners are identifiable bands of Mission Indians of California duly authorized by Section 10 of the Act of Congress approved August 13, 1946, Public Law 726, 79th Congress, 2d Session (60 Stat. 1049), an act to create and establish an Indian Claims Commission, to present the claims of said bands to the said Commission. Substantially all of the members of each of said bands live in the southern part of the State of California. The names of the petitioners are as follows:

1. Baron Long (El Capitan)
2. Campo
3. Inaja
4. La Jolla
5. Los Coyotes
6. Manzanita
7. Mesa Grande
8. Old Campo
9. Pala (including the Agua Caliente, or Cupa, band from Warner's Ranch)

* Titles under each count are stated for convenience and do not adequately reflect the allegations set forth. They are not to be considered part of the pleadings.

10. Pauma
11. Pechanga
12. Rincon
13. San Juan Capistrano
14. San Luis Rey
15. Santa Rosa
16. Santa Ysabel
17. Soboba
18. Old Pala
19. San Felipe
20. Mesa Chiquit
21. Puerta Noria
22. Mataguay
23. Tah-Wee
24. San Pasqual
25. Buena Vista
26. Las Flores
27. Yapechi
28. Potrero
29. Yuima
30. La Posta
31. Vallecito
32. Sequan
33. Old Mission
34. Laguna
35. Santa Manuel
36. San Ignacio
37. Morongo
38. Aguanga
39. Kahweah (Cahuilla)
40. Guatay
41. Cuyapaipe
42. Santa Gertrudes
43. Jamul
44. Puerta Cruz
45. Torrez-Martinez
46. Gabrielenos

2.

The claims herein set forth are presented pursuant to the aforesaid Indian Claims Commission Act; jurisdiction to hear and determine the said claims, and each of them, is conferred on the Commission by Section 2 of said Act.

3.

None of the claims herein set forth has been the subject of any action taken by the Congress or by any department of the government or in any judicial proceeding; none is included, in whole or in part, in any suit pending in the Court of Claims or the Supreme Court of the United States, and none has been filed in the Court of Claims under any legislation whatsoever. The claims herein set forth were not adjudicated in the case of the Indians of California v. United States, 98 Court of Claims 583, 1942, pursuant to the act of May 18, 1928 (45 Stat. 602) as amended, but constitute new and additional claims authorized by the said Indian Claims Commission Act.

4.

Pursuant to contracts duly executed by and between representatives of the first seventeen (17) of petitioners' bands named and numbered in Section 1 of this Petition, approved by the Secretary of the Interior on February 18, 1949, and pursuant to similar contracts executed by representatives of the additional twenty - nine bands named and numbered in Section 1 hereof, duly approved by the Secretary of the Interior, the petitioners retained Norman M. Littell as General Counsel and Claims Attorney for the said bands, together with his associate attorney, S. King Funkhouser.

5.

Petitioners are the descendants and heirs of Indian tribes or bands, more particularly described hereinafter, which for centuries have inhabited the areas of land hereinafter described in what is now the State of California. Upon the coming of the first white man, Cabrillo, into the waters of California along the coast, in 1542, the coastal lands were found to be

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Handbook of North American Indians

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Litigation and its Effects

OMER C. STEWART

The legal status of the Indians of California and the litigation affecting them is based upon all the governmental laws concerned with California Indians from the time the Spanish explorers and missionaries arrived in the area of California. Spanish and Mexican law governing citizenship and property was accepted by the United States. In the Treaty of Guadalupe Hidalgo, July 4, 1848, the United States government pledged itself to protect rights to property and to religious and civil freedoms of Mexican citizens who elected to remain in the United States. Those citizens included the Indians of California.

Under the federal system of the United States, the state of California retained certain powers, and the majority of the California constitutional convention in 1849 voted to deprive California Indians of some of the civil rights promised in the Treaty of Guadalupe Hidalgo. Although Indians had been invited to participate, the constitutional convention voted to restrict future voting to White persons and requested that the Indians be removed from the state. In 1850 the California legislature enacted laws that prevented Indians from giving evidence in any case in which a White person was a party and authorized the indenture of Indians as uncompensated laborers to White persons. Indians were denied firearms.

At about the time that the U.S. Congress admitted California into the Union, another act of Congress (September 30, 1850) authorized the president to negotiate treaties with the Indians of California to cede and relinquish to the United States their title and interest to all lands in California. Commissioners were appointed to negotiate the treaties and 18 treaties were signed by representatives of 139 different Indian groups or tribelets between March 19, 1851, and January 7, 1852. Under the treaties 18 reservations were to be established for the Indians on which they would receive some clothing and food as well as education in the "art of civilization." The area to be reserved for Indians amounted to 8,619,000 acres (fig. 1).

As soon as the provisions of the treaties became known the legislature of California adopted resolutions opposing the ratification of the treaties; consequently, when the treaties were submitted by President Millard Fillmore to the Senate for ratification on June 1, 1852, the Senate rejected the treaties and took the unusual step of placing them in secret files of the Senate. There they remained until January 18, 1905, when the Senate voted to remove the injunction of secrecy. The failure to ratify the treaties left the federal government without explicit legal obligation toward the Indians of California.

Even without the treaties, the U.S. government recognized that it was morally and legally bound to protect the Indians of California and to compensate them for their land in which they had original Indian titles as a result of use and occupancy from time immemorial. The Supreme Court of the United States had ruled as early as 1823 (*Johnson* v. *M'Intosh*, 8 Wheat 543) that American Indians had rights of occupancy and ownership equal to the fee simple absolute title of the Whites; however, California White citizens of the nineteenth century almost completely frustrated the feeble attempts of the federal government to treat the Indians of California fairly.

Federal efforts to protect California Indians took the form of establishing executive order reservations. The first was Hoopa Valley, in Humboldt County, consisting of 116,572 acres set apart in 1864 (see table 1). Three other reservations were authorized but local opposition either delayed or blocked them. In 1873 Tule River Reservation in Tulare County (49,074 acres, later enlarged) and Round Valley Reservation in Mendocino County were established with the hope that individuals of many tribelets would move to these reservations, yet many stayed away. Some other reservations established early were Cahuilla in 1875 in the desert and Palm Springs (Agua Caliente) in 1896, both in Riverside County. In 1891 an extension to the Hoopa Reservation, designated as the Klamath Strip, was added on both sides of Klamath River from the original reservation toward the ocean.

The publication of *Century of Dishonor* (1881) and the novel *Ramona* (1884) by Helen Hunt Jackson, dealing with the plight of California Indians, pricked the conscience of America and stimulated more federal help for California Indians. Small reservations, often called rancherias, were purchased in southern California beginning with Rincon and La Jolla in 1892, Ramona and 10 others in 1893. The procedure continued and was extended throughout California until 1940 when XL Ranch was purchased for the Achumawi in Modoc County, and in 1942 Chico Colony of 25 acres for any Indians who wished to settle there. In all, 117 California Indian communities were established by the federal government

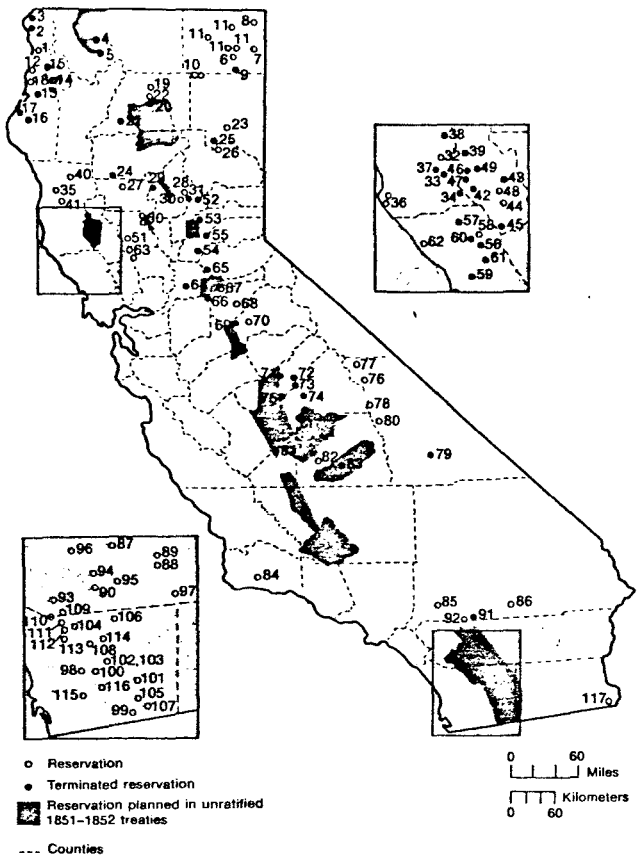

Fig. 1. Reservations and rancherias. Numbers identify the reservations in table 1.

on land set aside from the public domain or purchased with federal funds. Sizes varied from the 116,572 Hoopa Reservation to a one-acre plot in Strawberry Valley, Yuba County, made available in 1914. The area of land under some federal restriction as of 1950 was 632,599.58 acres. That year a toal of 10,000 Indians listed the federal reservations and rancherias as their homes. There were 14,100 California Indians not attached to reservations (U.S. Congress. House. Committee on Interior and Insular Affairs 1953).

The Indians who signed the 18 treaties in 1851 and 1852 remembered the treaty councils. Friends of the Indians did their best to obtain compensation for the Indians as soon as federal failure was known. The reservations and rancherias were not considered as an adequate substitution.

In 1905-1906, Kelsey (1906) labored as a Bureau of Indian Affairs special agent for California Indians. Kroeber (1957a:218) wrote that "Kelsey was an attorney in San Jose who . . . had been appointed to survey the landless non-reservation Indians of California, their needs, and what might be done for them, and on whose recommendations various small tracts . . . were purchased . . . ." Eight were purchased in 1907, seven in 1908, 10 in 1909. Kelsey's lecture in San Francisco to the Commonwealth Club of California in 1909 may have been the beginning of the support of that service club for legislation to redress, in part, the wrongs done to California Indians.

Shortly after Kelsey aroused the Commonwealth Club, Frederick G. Collett started his work as a beneficent missionary among California Indians. From them he learned of their unratified treaties. Collett shifted his labors from converting Indians to the Christian faith to convincing state and federal legislators to enact laws that would allow the Indians to sue the federal government. From 1914 until his death in 1955 Collett was an active lobbyist for California Indians. Much of his support was provided by annual "dues" collected from Indians. A number of organizations joined the struggle and spent considerable effort competing with one another. In the 1920s the following groups were active in behalf of the Indians: Native Sons of the Golden West, Federated Women's Clubs, California Indian Rights Association, Inc., Northern California Indian Association, Mission Indian Federation, and Women's Christian Temperance Union (K.M. Johnson 1966:62). In 1927 the California legislature passed a bill authorizing the attorney general of California to bring suit against the United States, in the event Congress authorized such a suit. The California Indians' Jurisdictional Act became law on May 18, 1928. In the Court of Claims the number K-344 was assigned the case and the number alone often has been used to identify it.

As with all federal dealing with California Indians, K-344 was very complex and controversial. Many Indians and their attorneys opposed having the case handled by the attorney general of the state of California. On the other hand, the Jurisdictional Act of 1928 (45 Stat. 602) defined a group as the Indians of California. After unusual delays and several unsuccessful attempts to get better jurisdictional acts, on December 4, 1944, the U.S. Court of Claims awarded the Indians of California $17,053,941.98 for the 18 reservations the Indians were promised in 1851-1852 but did not receive. But from that amount the federal government deducted as an offset $12,029,099.64, the amount spent by the government for the benefit of the Indians of California over the years, including reservations. There remained $5,024,842.34. In 1950 Congress authorized the payment of $150.00 to each Indian on the corrected and updated roster of California Indians prepared under the original provisions of the act. Finally, in 1954, Congress once more amended the 1928 act to allow appeals until June 30, 1955 (68 Stat. 240). On that date, the secretary of interior approved a roll bearing 36,095 names. As of June 30, 1971, $6,408,630 judgment fund plus interest had been distributed to Indians of California in per capita payments from the case authorized in 1928. Remaining in the fund to be distributed was $1,496,246.08 as of that date.

The 1928 Jurisdictional Act, even though it brought small cash payments to all the identifiable Indians of California, did not compensate the Indians for all the

they lost to the United States. The payment was a minimum compensation of $1.25 per acre for 8,619,000 acres promised in the 1851-1852 treaties, less the value of the 611,226 acres actually made available to California Indians in reservations and rancherias as well as any other benefit. Could the Indians be paid for the remaining 91,764,600 acres of the state of California? Indians, their attorneys, and their friends were not at all satisfied with provisions of the Jurisdictional Act of 1928, so that efforts for a more satisfactory hearing were continued.

Attorneys for California Indians, lobbyists like Frederick G. Collett, and organizations like the Indian Rights Association and the Commonwealth Club maintained pressure on the U.S. Congress for another day in court that would consider payment for the 91 million acres of California not covered by the 1928 case. California Indians were not the only ones demanding a hearing on their tribal claims. Almost all tribes had claims and dozens had retained law firms in Washington, D.C., to work for them to have their claims adjudicated.

On August 11, 1946, the Indian Claims Commission Act (60 Stat. 1049) became law and identifiable groups of Indians of the United States were allowed to present any claims against the U.S. government the Indians and their attorneys might discover and for which petitions could be filed within five years. By August 13, 1951, 23 separate petitions had been filed for some Indians of California. In 1958 Indians along the northern and eastern border of California whose lands extended into adjacent states were removed from claims of the Indians of California because they could share in recovery by their own tribal cases. These groups were the Modoc, Northern Paiute, Shoshoni, Southern Paiute, Chemehuevi, Mohave, and Quechan. For Indians wholly within the state of California there were two groups claiming to represent all the Indians of California (Dockets 31 and 37) as well as separate petitions from 46 bands of Mission Indians, Yokiah (Central Pomo), Shasta, Yana, and Achumawi. By an order of the Indian Claims Commission of July 20, 1964 (13 Ind. Cl. Comm. 369) these were all combined into Dockets 31, 37 after 20 years of legal maneuvering.

Some of the major difficulties in the litigation of the Indians of California were set forth by the Indian Claims Commission July 20, 1964 (13 Ind. Cl. Comm. 369): "This case has a long history of litigation in this Commission and in the Court of Claims. The claims of Dockets 31 and 37 were initially dismissed because petitioners were held not to be an identifiable group with capacity to sue (1 Ind. Cl. Comm. 383). The Court of Claims reversed (122 Ct. Clms. 419) and the Supreme Court denied *certiorari* (344 U.S. 856). A motion to amend the petition granted over objection (4 Ind. Cl. Comm. 147); the claimed exclusive right to assert claims to lands in California was denied and the capacity of the Mission Indians and the Pit River Indians was upheld (6 Ind. Cl. Comm. 86); the lands claimed in other tribal claims were separated from the lands the Commission permitted to be claimed by petitioners in Dockets 31 and 37 (6 Ind. Cl. Comm. 666); the Yokiah [Pomo], Yana, and Shasta claims were consolidated with Docket 31 and 37 for all purposes, including judgment (6 Ind. Cl. Comm. 674); after trial an interlocutory judgment of Indian title and date of taking was entered in favor of petitioners in Docket 31 and 37 (8 Ind. Cl. Comm. 1), on July 31, 1959. In Docket 347, an interlocutory judgment on the title phase (including the taking and valuation date of March 3, 1853) was entered in favor of the Pit River Indians (7 Ind. Cl. Comm. 815) on July 29, 1959."

The hearings for Dockets 31 and 37, in Berkeley in June 1954 and in San Francisco in September 1955, warrant mention. Alfred L. Kroeber, Samuel A. Barrett, Robert F. Heizer, and Edward W. Gifford were the anthropologists who testified for the petitioners. Julian H. Steward, Ralph L. Beals, W. Duncan Strong, Harold E. Driver, Erminie Wheeler-Voegelin, Walter R. Goldschmidt, and Abraham M. Halpern were expert anthropological witnesses for the Department of Justice. In the opinion of the Commission decided July 31, 1959 (8 Ind. Cl. Comm. 1) the entity "Indians of California" was recognized as an "identifiable group" and could present a case before the Indian Claims Commission, in accordance with the opinion of the Court of Claims (122 Ct. Clms. 349). The Commission ruled that 8,811,070 acres were removed from consideration because that amount of land had been granted by the governments of Spain and Mexico and ownership had been confirmed by the United States in 1851.

The Commission wrote further: "One of the most difficult, if not the most difficult, question we have to decide is what California lands the petitioners actually occupied and used for their subsistence, that is, the lands they exploited for their day to day lives." The Commission found that "the Indian groups ranged throughout their respective territories in their gathering, hunting, and fishing exertions . . . their exploitation of the available resources in a given territory required frequent and extended travel within the territories claimed . . . during a normal season [they] would visit and use the whole territory to which they asserted ownership as their exclusive places of abode" (13 Ind. Cl. Comm. 369).

In the hearing for Docket 347, Pit River Indians, evidence was presented that 60 animals were used—birds, reptiles, fish, mammals, insects (antelope to yellow jacket larvae)—which were found scattered throughout the length and breadth of the area. Waterfowl, fish, and aquatic mammals were taken from streams, marshes, and lakes. Fifty-five plants were used for food, clothing, weapons, medicines, and houses. Eagles and mountain sheep were found on mountain tops; and jackrabbits, antelope, sage hens, and sage hen eggs were obtained from the extensive sage brush plains. This evidence

confirmed the opinion expressed by the Commission in Dockets 31, 37.

The July 31, 1959 (8 Ind. Cl. Comm. 1) ruling by the Indian Claims Commission that the Indians of California had "Indian title to these lands by virtue of the act of March 3, 1851" and that "the case will now proceed to a determination of the acreage . . ., less the Spanish and Mexican land grants and the reservations . . ., the value thereof as of the date of acquisition by the United States, and the question of what offsets, if any, the United States may be entitled . . ." set in motion another complex series of legal struggles.

Evaluation law suits are both very expensive and time consuming. The law firm of Wilkinson, Cragun, and Barker, attorneys for Docket 31, and the attorneys most experienced in Indian claims litigation, having gained an award of 32 million dollars for the Ute Indians, favored a negotiated settlement rather than a long, costly, and potentially dangerous legal battle. Under the leadership of Robert W. Barker, the more than a dozen other attorneys, mostly in California, representing various segments of Indians, agreed to accept a compromise negotiated settlement. Such a compromise was agreed to both by attorneys for the Department of Justice and by Barker for combined dockets of Indians of California in July 1963. The amount agreed to was 29,100,000 dollars to pay for 64,425,000 acres, the area remaining after deducting reservation lands previously paid for, land grants of Spain and Mexico, and land of border Indians having independent cases (13 Ind. Cl. Comm. 369). The compromise settlement was contingent upon being accepted by both the Pit River Indians, who had won their independent suit determining liability, and the Mission Indians with independent cases pending, as well as being approved by all the other Indians of California. The Stipulation for Compromise and Settlement and Entry of Final Judgment for payment of 29,100,000 dollars provided 26 lines for signatures of attorneys representing various groups or organizations of California Indians. All signed in 1963, except Louis L. Phelps, Attorney of Record, Docket 347, Pit River Indians.

In August 1963 conferences among the representatives of the Bureau of Indian Affairs, the Department of Justice, the Indian Claims Commission, the attorneys for the Indians, and the Indians themselves were announced. September 1963 meetings were held with Mission Indians at Riverside, Escondido, San Diego, and Los Angeles. The Mission Indians voted 1,559 "for" and 354 "against" accepting the compromise.

On September 28, 1963, a meeting for Pit River Indians was held at Alturas. Of the 760 eligible Pit River Indians to whom notices had been sent, only 187, or 24.5%, voted at the meeting. Seventy-five voted for the settlement, 105 against it, and 7 ballots were spoiled. On November 8, 1963, a mail ballot sent to the eligible Pit River Indians who had not voted on September 28, 1963, elicited an additional 221 votes: 137 "for," 83 "against," 1 "spoiled." The total vote was thus: 212 "for," 188 "against," with 8 spoiled ballots. The vote of 408 represented 53.7% of the 760 eligible Pit River Indians as of December 10, 1963.

The Pit River Indians' strong, vociferous, and persistent opposition to the settlement of the claim of the Indians of California stimulated the Indian Claims Commission to hold 15 other meetings in various parts of the state in January and February 1964, with a return engagement for the Pit River Indians, March 7, 1964, at Alturas, at which 22 voted "for" and 19 voted "against" the compromise. At Yuma, Arizona, where a few Quechan Indians enrolled as Indians of California met on March 14, 1964, the vote was 7 "for" and 9 "against," but their vote was submerged in the general group. For the 15 meetings held January to March 1964, the final totals were: 4,276 (67%) for acceptance; 2,118 (33%) for rejection; total 6,394. On March 18, 1964, ballots were mailed to the 13,369 enrolled adult California Indians who had not previously voted: 5,380 "yes" and 650 "no" for 6,030 valid ballots were returned. The final tabulation was: 11,427 (77.54%) affirmative and 3,310 (22.46%) negative, for a total 14,737 (58.8%) of 20,041 California Indians eligible to vote (13 Ind. Cl. Comm. 369). On the basis of this tally the Commission on July 20, 1964, issued its Final Determination or Judgment to pay 29,100,000 dollars to the Indians of California. Congress appropriated the amount authorized by the Act of October 7, 1964 (78 Stat. 1033).

It required over four years, until September 21, 1968, for Congress to enact the legislation, Public Law 90-507 (82 Stat. 860) to authorize the secretary of the interior to spend up to 325,000 dollars to prepare a list of Indians of California eligible to share in the award. The above law authorized the distribution of remaining funds available under the Act of 1928, plus interest, as well as the judgment and interest from the 1964 claim less costs. By November 1971, 75,000 persons had applied for enrollment in order to share in the distribution of the claims money, and the secretary of the interior had expended the $325,000 authorized in 1968 for the preparation of the roll.

As of May 24, 1972, 92,218 applications had been sent out of which 75,433 had been returned. Of these, 61,143 had been declared eligible, 4,462 had been declared not eligible. Appeals were filed by 1,709 applicants. Notices of eligibility had been mailed to 55,899 California Indians.

As of June 30, 1971, the 1964 award of $29,100,000 had been reduced by payment of attorneys' fees to $26,491,000 but had been increased by interest less costs by $9,643, 543.66 to a total of $36,134, 534.66 to be added to the $1,496,246.08 remaining from the Act of 1928. Thus, as of June 30, 1971, $37,630,781.74 was available for per capita distribution to nearly 65,000 Indians of California.

There remains to be considered the future legal status of Indian lands in California. In the 1920s, largely through the efforts of Charles De Young Elkus, the Commonwealth Club of San Francisco directed its efforts to the transfer of responsibility for Indians of California from the federal government to the California State government. Pressure to accomplish this transfer was increased following the passage of the California Indian Jurisdictional Act of 1928 (45 Stat. 602). In later years such a transfer was designated "termination" and many Indian leaders opposed the termination of federal jurisdiction. In 1936 and 1938 the superintendent of the Sacramento Agency of the Bureau of Indian Affairs submitted reports to the commissioner of Indian affairs outlining a program to definitely liquidate the U.S. Indian service in California in 10 years. BIA officials in California made similar recommendations in 1944, 1949, and 1950.

In 1947 William Zimmerman, then acting commissioner of Indian affairs, stated his approval for the immediate removal of U.S. Indian Bureau supervision of California Indians. In 1951 special agents of the BIA were dispatched to California by Commissioner of Indian Affairs Dillon S. Myers to make a local study in preparation to terminating federal responsibility. Population and acreage data in table 1 came from that study.

In 1951 the California legislature passed a resolution: "That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to dispense with any and all restrictions, whatever their nature, whereby the freedom of the American Indian is curtailed in any respect, whether as to governmental benefits, civil rights or personal conduct." Commissioner Myers prepared bills to facilitate the termination of federal supervision over Indian affairs in California on April 10, 1952 (H.R. 7490, H.R. 7491, and S. 3005), which were not enacted. In 1957 H.R. 9512 was introduced into Congress. This bill proposed a joint state and federal Indian appeals board and otherwise recommended all federal trust property in California be given to the Indians as fee patent land and then the Indians would be the responsibility of the state of California. One difficulty revolved around Indian water rights. Finally the U.S. Congress agreed to terminate the trust status of California Indian lands as requested by members of the different rancherias. On August 18, 1958, the first California Indian "rancheria bill" was enacted by the 85th Congress, H.R. 2824, which became Public Law 85-671. Forty-one rancherias containing 7,601 acres became the property in fee of 1,330 Indians (see fig. 1 and table 1). Additional rancherias and reservations may be removed from federal supervision upon request of occupants of the area and upon congressional amendment to Public Law 85-671 passed in 1958.

The enrollment to receive shares from the claims cases under the laws of 1928 and the Claims Commission Act of 1946 was completed in December 1972, Almost 70,000 Indians received $668.51 each, making the final payment near 46 million dollars (Janet L. Parks, personal communication 1975).

Table 1. Indian Reservations in California

Map No.	*Reservations and Rancherias*	*Population 1951*	*Area in Acres*	*Tribe*	*Date Terminated*
	Del Norte County				
1	Coast Indian Community (Resighini)	40	228	Yurok	
2	Crescent City (Elk Valley)	22	100	Tolowa	1958
3	Smith River	110	164	Tolowa	1958
	Siskiyou County				
4	Quartz Valley	40	604	Shasta	1958
5	Ruffeys	2	441	Shasta	1958
	Modoc County				
6	Alturas	12	20	Achumawi	
7	Cedarville	13	17	N. Paiute	
8	Fort Bidwell	112	3,340	N. Paiute	
9	Likely	0	40		1964
10	Lookout (2 parcels)	16	50	Achumawi	
11	XL Ranch (4 parcels)	39	8,760	Achumawi	
	Humboldt County				
12	Big Lagoon	0	9		
13	Blue Lake	22	26	Wiyot	1958
14	Hoopa Valley	600	87,496	Hupa	

Table 1. Indian Reservations in California *(Continued)*

Map No.	*Reservations and Rancherias*	*Population 1951*	*Area in Acres*	*Tribe*	*Date Terminated*
	Humboldt County *(Continued)*				
15	Hoopa Extension (Klamath Strip)	375	17,299	Yurok	
16	Rohnerville	30	15	Wiyot	1958
17	Table Bluff	40	20	Mixed	1958
18	Trinidad	9	60	Yurok	
	Shasta County				
19	Big Bend (Henderson)	11	40	Achumawi	
20	Montgomery Creek	1	72	Achumawi	1958
21	Redding (Clear Creek)	36	31	Undesignated	1958
22	Roaring Creek	0	80		
	Lassen County				
23	Susanville	45	30	Undesignated	
	Tehama County				
24	Paskenta	4	260	Nomlaki	1958
	Plumas County				
25	Greenville (2 parcels)	40	275	Maidu	1958
26	Taylorsville	0	160		
	Glenn County				
27	Grindstone Creek	30	80	Nomlaki	
	Butte County				
28	Berry Creek	0	33		
29	Chico (Meechupta)	40	25	Undesignated	1958
30	Enterprise (2 parcels)	14	81	Maidu	
31	Mooretown	14	160	Undesignated	1958
	Mendocino County				
32	Coyote Valley	34	100	Pomo	
33	Guidiville	35	243	Pomo	1958
34	Hopland	75	2,070	Pomo	1958
35	Laytonville	90	200	Cahto	
36	Manchester—Point Arena	85	369	Pomo	
37	Pinoleville	100	97	Pomo	1958
38	Potter Valley (2 parcels)	12	96	Pomo	1958
39	Redwood Valley	17	80	Pomo	1958
40	Round Valley	500	25,654	Mixed	
41	Sherwood Valley	0	291		
	Lake County				
42	Big Valley (Mission)	124	102	Pomo	1958
43	Cache Creek	2	160	Pomo	1958
44	Lower Lake	6	140	Pomo	
45	Middletown	21	109	Pomo	1958
46	Robinson	45	88	Pomo	1958
47	Scotts Valley (Sugar Bowl)	25	57	Pomo	1958
48	Sulphur Bank	13	50	Pomo	
49	Upper Lake (2 parcels)	70	561	Pomo	1958

No.	Reservations and Rancherias	Population 1951	Area in Acres	Tribe	Date Terminated
	Colusa County				
50	Colusa (Cachil Dehe)	50	254	Nomlaki	
51	Cortina	4	640	Miwok	
	Yuba County				
52	Strawberry Valley	2	1	Undesignated	1958
	Nevada County				
53	Nevada City	4	75	Maidu	1958
	Placer County				
54	Auburn	80	20	Maidu	1958
55	Colfax	0	40		1964
	Sonoma County				
56	Alexander Valley	12	54	Wappo	1958
57	Cloverdale	45	27	Pomo	1958
58	Dry Creek	14	75	Pomo	
59	Gratton	3	15	Pomo	1958
60	Lytton	10	50	Pomo	1958
61	Mark West	4	35	Pomo	1958
62	Stewarts Point	88	40	Pomo	
	Yolo County				
63	Rumsey (2 parcels)	18	141	Nomlaki	
	Sacramento County				
64	Wilton	30	39	Miwok	1958
	El Dorado County				
65	Shingle Springs	1	240	Miwok	1966
	Amador County				
66	Buena Vista	5	70	Miwok	1958
67	Jackson	5	330	Miwok	
	Calaveras County				
68	Sheep Ranch	9	2	Undesignated	
	Tuolumne County				
69	Chicken Ranch	9	40	Miwok	1958
70	Tuolumne	50	312	Miwok	
	Madera County				
71	North Fork	6	80	Monache	1958
72	Picayune	21	80	Chukchansi Yokuts	1958
	Fresno County				
73	Big Sandy (Auberry)	101	280	Monache	1958
74	Cold Springs (Sycamore)	25	160	Monache	1958
75	Table Mountain	50	160	Chukchansi Yokuts	1958
	Inyo County				
76	Big Pine	50	279	N. Paiute	
77	Bishop	500	875	N. Paiute	
78	Fort Independence	42	320	N. Paiute	
79	Indian Ranch	0	560		1958
80	Lone Pine	115	237	N. Paiute-Shoshoni	

Table 1. Indian Reservations in California *(Continued)*

Map No.	*Reservations and Rancherias*	*Population 1951*	*Area in Acres*	*Tribe*	*Date Terminated*
	Kings County				
81	Santa Rosa	82	170	Tachi Yokuts	
	Tulare County				
82	Strathmore	0	40		1964
83	Tule River	200	54,116	Yokuts	
	Santa Barbara County				
84	Santa Ynez	28	99	Mission	
	San Bernardino County				
85	San Manuel	18	653	Mission	
86	Twentynine Palms	0	161		
	Riverside County				
87	Agua Caliente (Palm Springs)	78	31,128	Cahuilla	
88	Augustine	8	616	Cahuilla	
89	Cabazon	15	1,480	Cahuilla	
90	Cahuilla	32	18,252	Cahuilla	
91	Mission Creek	1	2,560	Serrano	1970
92	Morongo	125	31,723	Serrano	
93	Pechanga	20	4,125	Luiseño	
94	Ramona	0	520		
95	Santa Rosa	10	11,093	Cahuilla	
96	Soboba	150	5,116	Cahuilla	
97	Torres-Martinez	250	30,132	Cahuilla	
	San Diego County				
98	Barona Ranch	22	5,005	Ipai-Tipai	
99	Campo (2 parcels)	63	15,010	Ipai-Tipai	
100	Capitan Grande	0	15,234		
101	Cuyapaipe	3	5,320	Ipai-Tipai	
102	Inaja and Cosmit	20	880	Ipai-Tipai	
103	La Jolla	112	8,329	Luiseño	
104	La Posta	0	3,879		
105	Los Coyotes	25	25,050	Ipai-Tipai	
106	Manzanita	27	3,520	Ipai-Tipai	
107	Mesa Grande	100	5,963	Ipai-Tipai	
108	Mission Reserve	0	9,480		
109	Pala	100	11,016	Luiseño	
110	Pauma and Yuima	70	250	Luiseño	
111	Rincon	85	3,486	Luiseño	
112	San Pasqual	8	1,343	Luiseño	
113	Santa Ysabel	40	9,679	Ipai-Tipai	
114	Sycuan	15	604	Ipai-Tipai	
115	Viejas (Baron Long)	37	1,609	Ipai-Tipai	
	Imperial County				
116	Fort Yuma	1,100	7,853	Quechan	
	Public domain allotments		130,922		
	Total	7,168	612,530		

Source: U.S. Congress. House. Committee on Interior and Insular Affairs 1953.

UNITED STATES, Plaintiff,

v

STATE OF CALIFORNIA

— US —, 56 L Ed 2d 94, 98 S Ct —

[No 5, Orig]

Argued February 27, 1978. Decided May 15, 1978.

SUMMARY

As a part of ongoing litigation in the United States Supreme Court between the United States and California concerning dominion over submerged lands within the three-mile marginal sea off the California coast, the instant proceedings raised the question whether California or the United States had dominion over the submerged lands and waters within the Channel Islands National Monument.

In an opinion by STEWART, J., joined by BRENNAN, POWELL, REHNQUIST, and STEVENS, JJ., it was held that (1) although Presidential Proclamation No. 2825 (63 Stat 1258), issued in 1949, enlarged the Monument to encompass areas within one nautical mile of the shorelines of the Santa Barbara and Anacapa Islands, California had dominion over the submerged lands and waters because of the general grant of dominion over submerged lands made by the Submerged Lands Act of 1953 (43 USCS §§ 1301 et seq.), and (2) the exemption to the grant provided by § 5(a) of the Act (43 USCS § 1313(a)) for "any rights the United States has in lands presently and actually occupied by the United States under claim of right" did not apply, since the Proclamation did not and could not enhance the strength of the United States' basic claim to a property interest in the submerged lands and waters in controversy.

WHITE, J., joined by BURGER, Ch. J., and BLACKMUN, J., dissented, stating that the exemption of § 5(a) of the Act applied since a claim of right arose when the submerged lands and waters were made part of the Monument by the Proclamation.

MARSHALL, J., did not participate.

HEADNOTES

Classified to U. S. Supreme Court Digest, Lawyers' Edition

Waters § 14 — Submerged Lands Act — lands transferred to states — exceptions

1a, 1b. Although Presidential Proclamation No. 2825 (63 Stat 1258) enlarged the Channel Islands National Monument to encompass areas within one nautical mile of the shorelines of the Santa Barbara and Anacapa Islands, dominion over the submerged lands and waters within the monument lies with California and not the United States by reason of the general grant of dominion over submerged lands made by the Submerged Lands Act of 1953 (43 USCS §§ 1301 et seq.); these lands do not fall within the exception to the grant provided by § 5(a) of the Act (43 USCS § 1313(a)) for "any rights the United States has in lands presently and actually occupied by the United States under claim of right," since the Proclamation does not and cannot enhance the strength of the United States' basic claim to a property interest in the submerged lands and waters in controversy. (White, J., Burger, Ch. J., and Blackmun, J., dissented from this holding.)

Waters § 14 — Submerged Lands Act — purpose

2. The purpose of the Submerged Lands Act of 1953 (43 USCS §§ 1301 et seq.) is to undo the effect of a decision of the United States Supreme Court holding that the United States was possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seawards three nautical miles.

Public Lands § 8 — Antiquities Act — reservation for national monument

3. A reservation of federally controlled public lands for national monument purposes under the Antiquities Act of 1906 (16 USCS § 431) means no more than that the land is shifted from one federal use, and perhaps from one federal agency, to another; a reservation for a national monument cannot operate to escalate the underlying claim of the United States to the land in question.

SYLLABUS BY REPORTER OF DECISIONS

California, and not the United States, has dominion over the submerged lands and waters within the one-mile belts surrounding Santa Barbara and Anacapa Islands within the Channel Islands National Monument. When, by Presidential Proclamation in 1949, the Monument was enlarged to encompass areas

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78 Am Jur 2d, Waters § 385.
43 USCS §§ 1301–1315, 1313(a)
US L Ed Digest, Waters § 14
ALR Digests, Waters § 44
L Ed Index to Annos, Public Lands; Waters
ALR Quick Index, Public Lands; Waters and Watercourses
Federal Quick Index, Public Lands; Submerged Lands; Submerged Lands Act

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within one nautical mile of the shorelines of these islands, the submerged lands and waters within the one-mile belts were under federal dominion as a result of this Court's decision two years earlier in United States v California, 332 US 19, 91 L Ed 1889, 67 S Ct 1658. But, assuming that the Proclamation intended to reserve such submerged lands and waters, dominion over them was subsequently transferred to California by the Submerged Lands Act of 1953, whose very purpose was to undo that decision. The § 5(a) "claim of right" exemption from the Act's broad grant, relied on by the Government, clearly does not apply to claims based on the 1947 California decision. The reservation for a national monument made by the 1949 Proclamation could not enhance the Government's claim to the submerged lands and waters in dispute since the statutory authority under which such monuments are created merely authorizes land to be shifted from one federal use to another.

Stewart, J., delivered the opinion of the Court, in which Brennan, Powell, Rehnquist, and Stevens, JJ., joined. White, J., filed a dissenting opinion, in which Burger, C. J., and Blackmun, J., joined. Marshall, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Allan A. Ryan argued the cause for plaintiff.
Russell Iungerich argued the cause for defendant.

OPINION OF THE COURT 5

Mr. Justice **Stewart** delivered the opinion of the Court.

[1a] The question in this case, arising under our original jurisdiction, is whether California or the United States has dominion over the submerged lands and waters within the Channel Islands National Monument, which is situated within the three-mile marginal sea off the southern California mainland.[1] For the reasons that follow, we hold that dominion lies with California and not the United States.

The Antiquities Act of 1906 authorizes the President to reserve lands "owned or controlled by the Government of the United States" for use as national monuments.[2] Pursuant to this Act, President Franklin Roosevelt in 1938 issued Proclamation No. 2281, 52 Stat 1541. This Procla-

1. This case is part of ongoing litigation stemming from an action brought in this Court more than two decades ago. United States v California, 332 US 19, 91 L Ed 1889, 67 S Ct 1658. The first decree was entered in 1947, 332 US 804, 92 L Ed 382, 68 S Ct 20; a supplemental decree was entered in 1966, 382 US 448, 15 L Ed 2d 517, 86 S Ct 607; and a second supplemental decree in 1977, 432 US 40, 53 L Ed 2d 94, 97 S Ct 2915. In each instance, jurisdiction was reserved to enter further orders necessary to effectuate the decrees. California initiated the present suit under the 1966 reservation of jurisdiction:

"As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may have been unable to agree, either party may apply to the Court at any time for the entry of a further supplemental decree."

2. Section 2 of the Act, 34 Stat 225, 16 USC § 431 [16 USCS § 431], provides in pertinent part as follows:

"The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

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mation "reserved from all forms of appropriation under the public-land laws" most of Anacapa and Santa Barbara Islands, which were then federal lands,[3] and set them aside as the Channel Islands National Monument.[4] As the Proclamation recognized, these islands "contain fossils of Pleistocene elephants and ancient trees, and furnish noteworthy examples of ancient volcanism, deposition, and active sea erosion . . . ." Ibid.

The two large islands and the many smaller islets and rocks surrounding them also shelter a variety of marine life, some rare or endangered. Prompted by a desire to protect these species[5] and other "objects of geological and scientific interest," President Truman issued a Proclamation in 1949, enlarging the Monument to encompass "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands . . . ." Proclamation No. 2825, 63 Stat 1258. It is undisputed that the islets and protruding rocks within these one-mile belts have long belonged to the United States and, as a result of President Truman's Proclamation, are now part of the Monument.[6] It is equally clear that the tidelands of Anacapa and Santa Barbara Islands, as well as of the islets and rocks, belong to California.[7] What is disputed in this

3. Federal title to the islands can be traced to the 1848 Treaty of Guadalupe Hidalgo, 9 Stat 922, by which Mexico ceded to the United States the islands lying off the coast of California, along with the adjacent mainland. See Bowman, The Question of Sovereignty over California's Off-Shore Islands, 31 Pac Hist Rev 291 (1962). While the Treaty obligated the United States to respect private property rights derived from Mexican land grants, all nongranted lands previously held by the Government of Mexico passed into the federal public domain. When California was admitted to the Union in 1850, the United States retained ownership of these public lands. See An Act for the Admission of the State of California into the Union, 9 Stat 452 (1850).

4. The 1938 Proclamation did not reserve as a national monument the entire land area of these two islands. Portions were exempted for continued lighthouse purposes, for which the entire islands had previously been reserved. 52 Stat 1541.

5. As early as 1940, government officials recognized that enlargement of the Monument would be desirable to protect the birds, sea otters, elephant seals, and fur seals that inhabit the rocks and islets encircling the two large islands, and early drafts of the 1949 Proclamation acknowledged an intent to protect marine life. But after a representative of the Department of Justice expressed the view that the Antiquities Act did not permit establishment or enlargement of a national monument to protect plant and animal life, all references to marine life were dropped from the Proclamation.

6. As noted previously, the Antiquities Act authorizes the President to set aside only "lands owned or controlled by the Government of the United States . . . ." 34 Stat 225, 16 USC § 431 [16 USCS § 431]. Like Anacapa and Santa Barbara Islands, the islets and rocks protruding above the water within the boundaries of the extended Monument were in 1949 public lands owned by the Federal Government. See n 3, supra.

7. The term "tidelands" is "defined as the shore of the mainland and of islands, between the line of mean high water and the line of mean lower low water . . . ." United States v California, 382 US, at 452, 15 L Ed 2d 517, 86 S Ct 607. Those tidelands in California that had not been subject to Mexican land grants entered the federal public domain in 1848, where they remained in trust until California gained statehood in 1850. At that time, they passed to the State under the "equal footing" doctrine. See Borax, Ltd. v Los Angeles, 296 US 10, 80 L Ed 9, 56 S Ct 23; United States v California, 382 US 448, 15 L Ed 2d 517, 86 S Ct 607. Because the tidelands within the Monument were not "owned or controlled" by the United States in 1938 or in 1949, Presidents Roosevelt and Truman could not have reserved them by simply issuing proclamations pursuant to the Antiquities Act.

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litigation is dominion over the submerged lands and waters within the one-mile belts surrounding Anacapa and Santa Barbara Islands.[8]

When President Truman issued Proclamation No. 2825 in 1949, the submerged lands and waters within these belts were under federal dominion and control, as a result of this Court's decision two years earlier in United States v California, 332 US 19, 91 L Ed 1889, 67 S Ct 1658. That case had held that the United States was "possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seawards three nautical miles . . . ." Id., at 805, 92 L Ed 382, 68 S Ct 20.

There can be no serious question, therefore, that the President in 1949 had power under the Antiquities Act to reserve the submerged lands and waters within the one-mile belts as a national monument, since they were then ". . . controlled by the Government of the United States."[9] Thus, whether Proclamation No. 2825 did in fact reserve these submerged lands and waters, or only the islets and protruding rocks, could be, at the time of the Proclamation, a question only of Presidential intent, not of Presidential power.

In addressing the controversy now before us, the parties have devoted large parts of their briefs to canvassing this question of intent: What did the Proclamation mean by the use of the word "areas"?[10] We find it unnecessary, however, to decide this question. For even assuming that President Truman intended to reserve the submerged lands and waters within the one-mile belts for Monument purposes, we have concluded that the Submerged Lands Act of 1953, 67 Stat 29, 43 USC § 1301 [43 USCS § 1301], subsequently transferred dominion over them to California.

[2] The very purpose of the Sub-

8. The present controversy apparently arose when California was frustrated in carrying out its program of leases for the harvesting of kelp in these waters. Giant kelp known as Macrocystis grows in the water along portions of the California coast and is harvested to obtain various substances, including algin, a chemical with many commercial uses. See National Geographic, August 1972 and March 1974.

9. Although the Antiquities Act refers to "lands," this Court has recognized that it also authorizes the reservation of waters located on or over federal lands. See Cappaert v United States, 426 US 128, 138–142, 48 L Ed 2d 523, 96 S Ct 2062; United States v Oregon, 295 US 1, 14, 79 L Ed 1267, 55 S Ct 610.

10. In preparation for the Proclamation, memoranda were circulated within and among Government agencies, many of which proposed adding to the Monument "all islets, rocks, and waters" within one nautical mile of Anacapa and Santa Barbara Islands. The final version of the 1949 Proclamation, however, was not so clear. It began: "Whereas it appears that certain *islets and rocks* situated near Anacapa and Santa Barbara Islands . . . are required for the proper care, management, and protection of the objects of geological and scientific interest located on lands within [the Channel Islands National Monument] . . ." (emphasis added). The Proclamation then went on to reserve "the areas within one nautical mile" of each of the two large islands, "as indicated on the diagram hereto attached . . . ." The diagram showed Anacapa and Santa Barbara Islands, each encircled by a broken line at a distance of one mile from the island's shoreline. At the bottom of the two maps appeared acreage figures that, according to stipulations filed by the parties, described approximately the entire surface area circumscribed by the broken lines.

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merged Lands Act was to undo the effect of this Court's 1947 decision in United States v California, supra. In enacting it, Congress "recognized, confirmed, established, and vested in and assigned to" the States "(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources . . . ." 67 Stat 29, 43 USC § 1301 [43 USCS § 1301]. The submerged lands and waters within one mile of Anacapa and Santa Barbara Islands plainly fall within this general grant.[11]

[1b] The United States contends, however, that the Submerged Lands Act did not operate to relinquish these submerged lands and waters to California because of an exception to the broad statutory grant that Congress provided in § 5(a) of the Act.[12] The final clause of § 5(a), upon which the United States relies, exempted from the grant "any rights the United States has in lands presently and actually occupied by the United States under claim of right."[13] The legislative history shows that this "claim of right" clause was added to preserve unperfected claims of federal title from extinction under § 3's general "conveyance or quitclaim or assignment."[14] In the words of the Acting Chairman of the Senate Com-

11. Section 2 of the Act, 67 Stat 29, 43 USC § 1301 [43 USCS § 1301], defines "lands beneath navigable waters" as "all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles . . . ." The term "natural resources" is defined to "include[], without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life" but not "water power, or the use of water for the production of power . . . ."

12. Section 5(a) of the Act, 67 Stat 32, 43 USC § 1313 [43 USCS 1313], provides:
"There is excepted from the operation of section 3 of this Act—
"(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right."

13. The parties have stipulated that "the United States 'presently and actually occupied' the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands for purposes of § 5 of the Submerged Lands Act of 1953, 43 USC § 1313 [43 USCS § 1313]." Thus, the question is simply what "rights" the United States had in these submerged lands and waters in 1953.

14. Remarks of Senator Cordon, Hearings before the Senate Committee on Interior and Insular Affairs on SJ Res 13, S 294, S 107, S 107 Amendment, and SJ Res 18, 83d Cong, 1st Sess, 1322 (1953). During Committee hearings on the bill, the following exchange occurred between Senator Kuchel and Senator Cordon, who was Acting Chairman of the Committee:
"SENATOR KUCHEL. What does 'claim of right' mean?
"SENATOR CORDON. Well, it means that

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mittee on Interior and Insular Affairs, the clause "neither validates the claim or prejudices it," but merely "leaves it where we found it" for eventual adjudication.[15]

The entire purpose of the Submerged Lands Act would have been nullified, however, if the "claim of right" exemption saved claims of the United States based solely upon this Court's 1947 decision in United States v California. Not surprisingly, therefore, the legislative history unmistakably shows that the "claim of right" must be "other than the claim arising by virtue of the decision in [that case] . . . ."[16] Thus, this exception applies to the submerged lands and waters in controversy here only if the United States' claim to them ultimately rests on some basis other than the "paramount rights" doctrine of this Court's 1947 California decision.

The United States has pointed to no other basis for believing that the submerged lands and waters in question were owned or controlled by the United States in 1949. The crucial question, then, is whether the 1949 reservation of the submerged lands and waters for Monument purposes (assuming that was the intent of the Proclamation) somehow changed the nature of the Government's claim. If it did not—if the ownership or control of these areas by the United States in 1953 existed solely by virtue of this Court's 1947 decision in United States v California—then § 3 of the Submerged Lands Act transferred "title to and ownership of" the submerged lands and waters to California, along with "the right and power to manage, administer, lease, develop, and use" them. 67 Stat 30, 43 USC § 1311 [43 USCS § 1311].

[3] We have concluded that the 1949 Proclamation did not and could not enhance the strength of the Government's basic claim to a property interest in the submerged lands and waters in controversy. Reservation of federally controlled public lands for national monument purposes has the effect of placing the area reserved under the "supervision, management, and control" of the Director of the National Park Service. 39 Stat 353, 16 USC §§ 1–3 [16 USCS §§ 1–3]. Without such reservation, the federal lands would remain subject to "private appropriation and disposal under the public land laws," 78 Stat 985, 43 USC § 1400(c) [43 USCS § 1400(c)], or to continued federal management for other designated purposes, see, e. g., id.; 78 Stat 986, 43 USC § 1411 [43 USCS § 1411]. The Antiquities Act of 1906 permits the President, "in his discretion," to create a national monument and reserve land for its use simply by issuing a proclamation

the United States is in actual occupancy and claims it has a right to the occupancy.

"SENATOR KUCHEL. And it permits the United States to keep the property in the absence of title?

"SENATOR CORDON. No; it does not. It leaves the question of whether it is a good claim or not a good claim exactly where it was before. This is simply an exception by the United States of a voluntary release of its claim, whatever it is. It does not, in anywise, validate the claim or prejudice it.

"SENATOR KUCHEL. Why should we recognize it, Senator, any more than any other so-called color or title of claim . . . ?

"SENATOR CORDON. For the reason that in my opinion, Senator, this land now is not land to which the State has title and we are conveying title. We may except what we will." Id., at 1321.

15. Id., at 1321, 1322.

16. Id., at 1322.

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with respect to land "owned or controlled by the Government of the United States." 34 Stat 225, 16 USC § 431 [16 USCS § 431]. A reservation under the Antiquities Act thus means no more than that the land is shifted from one federal use, and perhaps from one federal managing agency, to another.[17] A reservation for a national monument purpose cannot operate to escalate the underlying claim of the United States to the land in question.

Congress was well aware of its power to transfer to the States as much or as little of the submerged lands in which the Government held "paramount rights" as it deemed wise. With that knowledge, Congress expressly "emphasize[d] that the exceptions spelled out in [§ 5] do not in anywise include any claim resting solely upon the doctrine of 'paramount rights' enunciated by the Supreme Court with respect to the Federal Government's status in the areas beyond inland waters and mean low tide." S Rep No. 133, 83d Cong, 1st Sess, 20 (1953). A plainer statement of congressional intent would be hard to find.

Because the United States' claim to the submerged lands and waters within one mile of Anacapa and Santa Barbara Islands derives solely from the doctrine of "paramount rights" announced in this Court's 1947 California decision, we hold that, by operation of the Submerged Lands Act, the Government's proprietary and administrative interests in these areas passed to the State of California in 1953.[18]

The parties are requested to submit an appropriate decree within 90 days.

Mr. Justice **Marshall** took no part in the consideration or decision of the case.

SEPARATE OPINION

Mr. Justice **White**, with whom The **Chief Justice** and Mr. Justice **Blackmun** join, dissenting.

Although the majority lucidly states the issue in this case, it plainly errs in deciding it.

Section 5(a) of the Submerged Lands Act excepted from its general cession of land to the States those "rights the United States has in lands presently and actually occupied by the United States under claim of right."[1] Actual title to the lands was not required; lands to

17. This view is reflected in a memorandum written by the Director of the Bureau of Land Management to the Director of the National Park Service in 1947, in response to the latter's proposal that the Channel Islands National Monument be enlarged:

"If you wish to have these islands added to the Channel Islands National Monument, the bureau will be glad to prepare an appropriate proclamation. In the event you desire at this time to have the islands withdrawn for national monument classification, a public land order to accomplish this purpose will be prepared."

18. With the exception, of course, of any interests retained by the United States via provisions other than the last clause of § 5(a) of the Submerged Lands Act. E. g., § 6 provides for the retention by the United States of its navigational servitude and its "rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs . . . ." 67 Stat 32, 43 USC § 1314 [43 USCS § 1314].

1. 43 USC § 1313(a) [43 USCS § 1313(a)].

which the United States held title were already excepted by the previous language in § 5(a). The reference to claims of right was critical for the United States' stake in submerged lands, since United States v California, 332 US 19, 804, 91 L Ed 1889, 67 S Ct 1658 (1947), did not actually vest the United States with title to the submerged lands. While specifically denying California title, the Court fell short of declaring title in the United States, recognizing instead the federal "paramount rights" in the lands. 332 US, at 805, 92 L Ed 382, 68 S Ct 20.

Section 5(a) was added at the suggestion of the Attorney General. His purpose was to guarantee "that all installations and acquisitions of the Federal Government within such area [as was to be ceded] belong to it."[2] Senator Holland's original Joint Resolution No. 13 had provided:

> "There is excepted from the operation of section 3 of this Act—(a) all specifically described tracts or parcels of land and resources therein or improvements thereon title to which had been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the decisions of the courts of such State, or their respective grantees, or successors in interest, by cession, grant, quitclaim, or by condemnation, provided such owner or owners had lawfully acquired the title to such lands and resources in accordance with the statutes or decisions of the courts of the State in which the lands are located . . . ." Hearings before the Senate Committee on Interior and Insular Affairs on SJ Res 13, S 294, S 107, S 107 Amendment, and SJ Res 18, 83d Cong, 1st Sess, p 14 (1953).

The Attorney General's substitute read as follows:

> "There is excepted from the operation of section 3 of this Joint Resolution: (a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in which title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by the United States when the State entered the Union; all lands acquired by the United States by eminent domain proceedings; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and all lands presently occupied by the United States under claim of right . . . ." Hearings, supra, at 935.

The clearest, most observable difference between the original draft and the language proposed by the Attorney General is this final statement about "lands presently occupied by the United States under claim of right."[3] The conclusion is

2. Letter of Attorney General Brownell, Hearings before the Senate Committee on Interior and Insular Affairs on SJ Res 13, S 294, S 107, S 107 Amendment, and SJ Res 18, 83d Cong, 1st Sess, p 935 (1953).

3. There is no quarrel that the use of the word "lands" in this context extends to submerged lands. The act concerns submerged lands in its section ceding the area to the states, 43 USC § 1311 [43 USCS § 1311], and similarly in this section concerning exceptions to that cession.

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that some lands to which the United States did not possess outright title might be part of federal installations, and if so, they were to be preserved in federal control. This inference is strongly supported in further legislative history.

The Acting Chairman of the Senate Committee on Interior and Insular Affairs explained to the joint resolution's author why the Committee had added the phrase concerning claim of right:

> "I should like to add that the last language quoted, namely, 'any rights the United States has in lands presently and actually occupied by the United States under claim of right,' came into the bill at the request of the Department of Justice. It was presented to the committee and explained by the Department of Justice as being for the purpose of reserving to the Federal Government the area of any installation, or part of an installation—and I use the term 'installation' to distinguish a specific area, used for a specific purpose, from any vast area that might be claimed under the paramount right doctrine—actually occupied by the Government under a claim of right." 99 Cong Rec, at 2619 (Sen. Cordon).

The resolution's author, Senator Holland, asked the Acting Chairman:

> "Am I correct in understanding that under that particular provision the mere fact that the Supreme Court might have held that the United States has paramount rights in submerged lands beyond mean low water, and within State boundaries, would not in any way give the United States the right to claim exceptions of such lands from the joint resolution, *in view of the fact that such lands would not be 'presently and actually occupied by the United States'?* Am I correct in that understanding?
>
> "Mr. CORDON: The Senator is correct in his understanding." Ibid. (emphasis added).

Hence, the test is whether the lands held under some claim of right are "actually occupied" by the Federal Government. If so, they are not relinquished.

The same issue arose in the hearings, with identical resolution. The Acting Chairman explained:

> "[A]ny land occupied by the United States under claim by the United States that it has a right there, is excluded from this conveyance or quitclaim or assignment. . . . It is general language that . . . protects every installation of every kind." Hearings, supra, at 1322.

Senator Long summarized, to the Acting Chairman's agreement,

> "That, in effect, says that this act does not at all affect any land which the United States is actually occupying. And that means that a representative of the United States Government in one capacity or another is occupying that land." Ibid.

Senator Long was concerned that the definition of occupied lands might be stretched to include submerged lands over which the Federal Government had been given dominion in United States v California, supra, by reason of the fact that the United States Navy from time to

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time might sail across them. It was in response to *that* suggestion that the Acting Chairman made the statement quoted by the majority that "the claim of right is other than the claim arising by virtue of the decision in [that case] . . . ."[4] Such a construction was, of course, barred, for it would eviscerate the purpose of returning any submerged lands. Majority opinion, ante, at ——, 56 L Ed 2d 100. But this ignores the much narrower meaning of "submerged lands occupied by the United States under claim of right" which was intended: the submerged lands that were actually occupied as part of a federal "installation," meaning "a specific area, used for a specific purpose." The distinction is between a general claim under United States v California to paramount rights, and a very specific claim associated with a federal installation actually occupied. Recalling the Acting Chairman's words, "Occupancy to me is some type of actual either continuous possession or possession in such way as to indicate that the individual claims some special right there different from a vast unoccupied area."[5] "[The language is] for the purpose of reserving to the Federal Government the area of any installation, or part of an installation—and I use the term 'installation' to distinguish a specific area, used for a specific purpose, from any vast area that might be claimed under the paramount right doctrine . . . ."[6]

The Channel Islands National Monument includes the submerged lands within a one-mile radius of Anacapa and Santa Barbara Islands.[7] The parties have stipulated that "the United States 'presently and actually occupied' the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands for purposes of Section 5 of the Submerged Lands Act of 1953, 43 USC § 1313 [43 USCS § 1313]."[8] The federal occupation is to fulfill the specific purpose of providing for "the proper care, management, and protection of the objects of geological and scientific interest located on lands within the said monument." Presidential Proclamation No. 2825, Joint Appendix, at 67. The federal occupation is under claim of right, since only federally "owned or controlled" property can be made into a national monument. 16 USC § 431 [16 USCS § 431].

The majority opinion stresses that the United States occupation of the submerged lands within the Channel

4. Majority opinion, ante, at ——, 56 L Ed 2d 100, quoting Hearings, supra, n 2, at 1322.

5. Hearings, supra, n 2, at 1322.

6. 99 Cong Rec, at 2619.

7. Although the point is contested, there is little left to decide upon reading in President Truman's Executive Proclamation No. 2825 of February 9, 1949, Joint Appendix, at 67, that "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands" were added to the National Monument. The parties have stipulated that "the acreage figures shown on the diagram accompanying Presidential Proclamation No. 2825 are figures which approximate the total surface area of Anacapa and Santa Barbara Islands and one nautical mile of waters surrounding those islands." Joint Appendix, at 2. This leaves no force at all to defendant's reliance on the Proclamation's preamble which refers to "certain islets and rocks" but not specifically to submerged lands or water.

8. Joint Appendix, at 1. The stipulation was made contingent upon a finding that the submerged lands and waters within the one-mile radius were found to be part of the National Monument.

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Islands National Monument[9] was originally premised on federal control of those areas as granted in United States v California, supra. This is true. The paramount rights of the United States to these submerged lands, and the absence of California title to them, were recognized in that 1947 decision. In 1949, President Truman allocated a small portion of all the submerged lands within the Federal Government's paramount rights to become part of the Channel Islands National Monument. And in 1953, all the submerged lands not actually occupied by the Federal Government were ceded to the States. But the Channel Islands National Monument remained.

Submerged lands for which the federal claim rested "solely upon the doctrine of 'paramount rights'"[10] were given up by the Federal Government. The majority's quotation of that statement comes from that part of the Senate Report explaining why the Attorney General's language was accepted, the language that included for the first time "rights . . . in lands presently and actually occupied by the United States under claim of right . . . ." It says "any claim resting *solely* upon the doctrine of 'paramount rights'" (emphasis added) is lost to the Federal Government, but the majority holds that any claim *originating* in the doctrine of paramount rights is lost. The majority does not recognize that some rights can originate in the paramount rights doctrine, yet rest on actual occupation under claim of right as part of a federal installation, annexed before the doctrine of paramount rights was waived in 1953.

That, I respectfully submit, is an erroneous interpretation of even that one bit of legislative history.[11] It is also contrary to the dominant theme in the legislative history that general, amorphous paramount rights claims were lost, but specific claims coupled with actual occupation of an installation were not. And most critically, the majority view is without support in the statute's plain language that "all lands presently occupied by the United States under claim of right" were preserved. It is stipulated that the lands were occupied, and a *claim* of right certainly arises when a President treats property in a manner to which only United States property is subject.[12]

I respectfully dissent.

9. The majority does not reach whether the submerged lands are actually within the Monument.

10. S Rep No. 133, 83d Cong, 1st Sess, 20 (1953).

11. The purpose of the Attorney General's proposed amendment was to preserve federal control over "all installations and acquisitions of the Federal Government within such area." Hearings, supra, n 2, at 935. The submerged lands within a one-nautical-mile radius became an "acquisition" of the Channel Islands National Monument "installation" in 1949.

12. On the face of the statute, it might be asked how any claim of right could arise more clearly than for a President to incorporate the property within a national monument. If President Truman did not act under claim of right, it is hard to surmise how he did act.

*[382 US 448]
*UNITED STATES OF AMERICA, Plaintiff,

v

STATE OF CALIFORNIA

382 US 448, 15 L ed 2d 517, 86 S Ct 607

[No. 5, Original]

January 31, 1966

SUPPLEMENTAL DECREE

Per Curiam.

In accordance with the Court's opinion in United States v California, 381 US 139, 14 L ed 2d 296, 85 S Ct 1401, proposed decrees have been submitted by the parties. The Court has examined such proposed decrees and the briefs and papers submitted in support thereof, and enters the following decree:

The United States having moved for entry of a supplemental decree herein, and the matter having been referred to the late William H. Davis as Special Master to hold hearings and recommend answers to certain questions with respect thereto, and the Special Master having held such hearings and having submitted his report, and the issues having been modified by the supplemental complaint of the United States and the *[382 US 449] answer of the *State of California thereto, and the parties having filed amended exceptions to the report of the Special Master, and the Court having received briefs and heard argument with respect thereto and having by its opinion of May 17, 1965, approved the recommendations of the Special Master, with modifications, it is ordered, adjudged and decreed that the decree heretofore entered in this cause on October 27, 1947, 332 US 804, 92 L ed 382, 68 S Ct 20, be, and the same is hereby, modified to read as follows:

1. As against the State of California and all persons claiming under it, the subsoil and seabed of the continental shelf, more than three geographical miles seaward from the nearest point or points on the coast line, at all times pertinent hereto have appertained and now appertain to the United States and have been and now are subject to its exclusive jurisdiction, control and power of disposition. The State of California has no title thereto or property interest therein.

2. As used herein, "coast line" means—

(a) The line of mean lower low water on the mainland, on islands, and on low-tide elevations lying

wholly or partly within three geographical miles from the line of mean lower low water on the mainland or on an island; and

(b) The line marking the seaward limit of inland waters.

The coast line is to be taken as heretofore or hereafter modified by natural or artificial means, and includes the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, T. I. A. S. No. 5639.

3. As used herein—

(a) "Island" means a naturally-formed area of land surrounded by water, which is above the level of mean high water;

*[382 US 450]

*(b) "Low-tide elevation" means a naturally-formed area of land surrounded by water at mean lower low water, which is above the level of mean lower low water but not above the level of mean high water;

(c) "Mean lower low water" means the average elevation of all the daily lower low tides occurring over a period of 18.6 years;

(d) "Mean high water" means the average elevation of all the high tides occurring over a period of 18.6 years;

(e) "Geographical mile" means a distance of 1852 meters (6076.10333 . . . U. S. Survey Feet or approximately 6076.11549 International Feet).

4. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. The inland waters referred to in paragraph 2(b) hereof include—

(a) Any river or stream flowing directly into the sea, landward of a straight line across its mouth;

(b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;

(c) Any "historic bay," as that term is used in paragraph 6 of Article 7 of the Convention, defined essentially as a bay over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations;

(d) Any other bay (defined as a well-marked coastal indentation having such penetration, in proportion to the width of its entrance, as to contain landlocked waters, and having an area, including islands within the bay, at least as great as the area of a semicircle whose diameter equals the length of the closing line across the entrance of the bay, or the sum of such closing lines if the bay has more than one entrance), landward of a straight line across its entrance or, if the entrance is more

*[382 US 451]

than 24 *geographical miles wide, landward of a straight line not over 24 geographical miles long, drawn within the bay so as to enclose the greatest possible amount of water. An estuary of a river is treated in the same way as a bay.

5. In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by

the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway.

6. Roadsteads, waters between islands, and waters between islands and the mainland are not per se inland waters.

7. The inland waters of the Port of San Pedro are those enclosed by the breakwater and by straight lines across openings in the breakwater; but the limits of the port, east of the eastern end of the breakwater, are not determined by this decree.

8. The inland waters of Crescent City Harbor are those enclosed within the breakwaters and a straight line from the outer end of the west breakwater to the southern extremity of Whaler Island.

9. The inland waters of Monterey Bay are those enclosed by a straight line between Point Pinos and Point Santa Cruz.

10. The description of the inland waters of the Port of San Pedro, Crescent City Harbor, and Monterey Bay, as set forth in paragraphs 7, 8, and 9 hereof, does not imply that the three-mile limit is to be measured from the seaward limits of those inland waters in places where

*[382 US 452]

*the three-mile limit is placed farther seaward by the application of any other provision of this decree.

11. The following are not historic inland waters, and do not comprise inland waters except to the extent that they may be enclosed by lines hereinabove described for the enclosure of inland waters other than historic bays:

(a) Waters between the Santa Barbara or Channel Islands, or between those islands and the mainland;

(b) Waters adjacent to the coast between Point Conception and Point Hueneme;

(c) Waters adjacent to the coast between Point Fermin and Point Lasuen (identified as the bluffs at the end of the Las Bolsas Ridge at Huntington Beach);

(d) Waters adjacent to the coast between Point Lasuen and the western headland of Newport Bay;

(e) Santa Monica Bay;

(f) Crescent City Bay;

(g) San Luis Obispo Bay.

12. With the exceptions provided by § 5 of the Submerged Lands Act, 67 Stat 32, 43 USC § 1313 (1964 ed), and subject to the powers reserved to the United States by § 3(d) and § 6 of said Act, 67 Stat 31, 32, 43 USC §§ 1311(d) and 1314 (1964 ed), the State of California is entitled, as against the United States, to the title to and ownership of the tidelands along its coast (defined as the shore of the mainland and of islands, between the line of mean high water and the line of mean lower low water) and the submerged lands, minerals, other natural resources and improvements underlying the inland waters and the waters of the Pacific Ocean within three geographical miles seaward from the coast line and bounded on the north and south by the northern and southern boundaries of the State of California, including the right and power to manage, administer, lease, develop and use the said lands and natural re-

*[382 US 453]

sources *all in accordance with applicable State law. The United States is not entitled, as against the State of California, to any right, title

or interest in or to said lands, improvements and natural resources except as provided by § 5 of the Submerged Lands Act.

13. The parties shall submit to the Court for its approval any stipulation or stipulations that they may enter into, identifying with greater particularity all or any part of the boundary line, as defined by this decree, between the submerged lands of the United States and the submerged lands of the State of California, or identifying any of the areas reserved to the United States by § 5 of the Submerged Lands Act. As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may be unable to agree, either party may apply to the Court at any time for entry of a further supplemental decree.

14. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.

The **Chief Justice**, Mr. Justice **Clark**, and Mr. Justice **Fortas** took no part in the formulation of this decree.

[432 US 40]

UNITED STATES, Plaintiff,

v

STATE OF CALIFORNIA

432 US 40, 53 L Ed 2d 94, 97 S Ct 2915

[No. 5, Orig.]

June 13, 1977

ON JOINT MOTION FOR ENTRY OF A SECOND SUPPLEMENTAL DECREE

Joint motion for the entry of such decree is granted and a second supplemental decree is entered. Opinions reported: 322 US 19, 88 L Ed 1095, 64 S Ct 792; 381 US 139, 14 L Ed 2d 296, 85 S Ct 1401; order and decree reported: 332 US 804, 92 L Ed 382, 68 S Ct 20; supplemental decree reported: 382 US 448, 15 L Ed 2d 517, 86 S Ct 607.

[432 US 40]

The joint motion for entry of a second supplemental decree is granted.

SECOND SUPPLEMENTAL DECREE

For the purpose of identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree of January 31, 1966, 382 US 448, 15 L Ed 2d 517, 86 S Ct 607, between the submerged lands of the United States and the submerged lands of the State of California, it is ORDERED, ADJUDGED AND DECREED that this Court's Supplemental Decree of January 31, 1966, be, and the same is hereby, further supplemented as follows:

1. *Closing Lines Across Entrances to Bodies of Inland Waters*

a. The inland waters of the following bodies of water are enclosed by straight lines between the mean lower low-water lines at the seaward ends of the jetties located at their mouths:

1. Humboldt Bay
2. Port Hueneme
3. Santa Ana River
4. Agua Hedionda Lagoon

[432 US 41]

b. The inland waters of San Francisco Bay are those enclosed by a series of straight lines from the southwestern head of Point Bonita (37°48′56″N, 122°31′44″W); thence to the western edge of an unnamed island immediately to the south (37°48′55″N, 122°31′44.2″W); thence southward to the western edge of a second unnamed island (37°48′53″N, 122°31′44″W); thence southward to the western edge of a third unnamed island (37°46′57″N, 122°30′52″W); thence to a western head of Point Lobos (37°46′53″N, 122°30′49″W). The length of this closing line is 2.18 nautical miles.

c. The inland waters of Bodega-

Tomales Bay are those enclosed by a straight line drawn from Bodega Head (38°17′53.8″N, 123°03′25.3″W); thence to the western edge of an unnamed island northwest of Tomales Point (38°14′28.4″N, 122°59′41.5″W); thence southward to Tomales Point (38°14′26.5″N, 122°59′39″W).

d. The closing lines delineated in the foregoing paragraph are part of the coastline of California. The foregoing is without prejudice to the right of either party to assert or deny that other closing lines are part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act, 67 Stat 29, as amended.

2. *Artificial Extensions of the Coastline*

The mean lower low-water line along each of the following structures is part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act:

a. The Morro Bay breakwater

b. The Port San Luis breakwater

c. The Santa Barbara breakwater

d. The Ventura Marina breakwater

e. The Channel Islands Harbor breakwater

[432 US 42]

f. Three rubble groins at Point Mugu

g. The Santa Monica breakwater

h. The Venice Beach groin

i. The Marina del Rey breakwater

j. Three rubble groins along Dockweiler Beach

k. The Redondo Beach breakwater

l. Two harbor jetties at Newport Bay

m. The Dana Point breakwater

n. The Oceanside breakwater

o. Two harbor jetties at entrance to Mission Bay

p. The Zuniga jetty at San Diego (including the southern seaward end of this entire structure)

The foregoing is without prejudice to the right of either party to assert or deny that other artificial structures are part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act.

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.

UNITED STATES, Plaintiff,

v

STATE OF CALIFORNIA

— US —, 58 L Ed 2d 267, 99 S Ct —

[No. 5, Orig.]

Decided November 27, 1978.

THIRD SUPPLEMENTAL DECREE

To carry into effect this Court's decision of May 15, 1978, 436 US 32, 56 L Ed 2d 94, 98 S Ct 1662, and for the purpose of identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree herein of January 31, 1966, 382 US 448, 15 L Ed 2d 517, 86 S Ct 607, and by the Second Supplemental Decree herein of June 13, 1977, 432 US 40, 53 L Ed 2d 94, 97 S Ct 2915, between the submerged lands of the United States and the submerged lands of the State of California, it is ORDERED, ADJUDGED AND DECREED that this Court's Supplemental Decree be, and the same is hereby, further supplemented as follows:

1. The United States has no right, title or interest by virtue of the claim-of-right exception of § 5 of the Submerged Lands Act, 67 Stat 32, 43 USC § 1313 [43 USCS § 1313], in the tidelands (that is, lands lying between the lines of mean high water and mean lower low water) and submerged lands (that is, lands lying seaward of the line of mean lower low water) within the Channel Islands National Monument, as said Monument was established by Presidential Proclamation No. 2281, 52 Stat 1541 (Apr. 26, 1938), and enlarged by Presidential Proclamation No. 2825, 63 Stat 1258 (Feb. 9, 1949), to encompass "the areas within one nautical mile of the shoreline of Anacapa and Santa Barbara Islands. . . ." In all other respects, the terms of the Supplemental Decree and of the Second Supplemental Decree apply fully to the tidelands and submerged lands within the Channel Islands National Monument.

2. The land area above the mean high-water line of Anacapa and Santa Barbara Islands, and the land area above the mean high-water line of all islets and rocks within one nautical (geographical) mile of the coastline of Anacapa and Santa Bar-

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bara Islands are lands as to which the State of California has no title or property interest.

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to give proper force and effect to this decree and the prior decrees of this Court or to effectuate the rights of the parties in the premises.

Mr. Justice **Marshall** took no part in the formulation of this decree.