

**THE ACCIP TERMINATION REPORT:**

**THE CONTINUING DESTRUCTIVE EFFECTS OF  
THE TERMINATION POLICY ON CALIFORNIA  
INDIANS**

A Report by  
The Advisory Council on California Indian Policy  
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## **ACCIP TERMINATION TASK FORCE**

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## Summary

The Termination Policy sought to end the special trust relationship between the United States and Indian people, which had been the cornerstone of federal-Indian relations since the United States' earliest years. In light of the destitute living conditions of most California tribes, Congress intended termination of the trust relationship to take place only after specific services were provided to prepare them for the discontinuation of federal aid and supervision, and only after the affected tribe consented to termination. In practice, however, the Executive branch achieved tribal consent through misrepresentation and undue influence, and then terminated federal status without providing the preparatory services.

Despite the fact that the termination policy has been expressly repudiated by both Congress and the Executive branch, some California tribes remain "terminated." Moreover, those that have been restored have not received adequate federal assistance in reestablishing sovereign relations with the federal government, in strengthening their own governments, and in acquiring lands to replace those lost through termination. This report addresses the historical context of the termination policy and the lingering effects of termination on California Indians, and contains recommendations for remedying the continuing effects of this failed federal policy.

## Recommendations

1. **Congress should enact comprehensive legislation establishing a process for the expedited restoration of the remaining terminated California tribes, including modification of the criteria used to evaluate requests for tribal restoration.**

Though termination has not been the official policy of the federal government since 1970,<sup>1</sup> there has not been a single comprehensive piece of federal legislation to restore the remaining terminated California tribes. This is particularly striking in light of the fact that the federal government has lost or settled all of the California rancheria un-termination cases litigated over the past quarter century. Certainly, Congress has shown its awareness of the need for restoration of terminated tribes by passing at least 12 individual restoration bills between 1973 and 1990.<sup>2</sup> It was not until 1993, however, that Congress finally acted to legislatively restore any terminated California tribes. The two tribes restored by Congress—the Paskenta Band of Nomlaki Indians and the United Auburn Indian Community—bring the total number of California tribes restored through litigation or legislation to twenty-nine.

Today, of the 38 California rancherias terminated under the Rancheria Act of 1958, nine remain terminated.<sup>3</sup> Of these, at least three would meet the following criteria used by the Federal government in evaluating a terminated tribe's eligibility for restoration:<sup>4</sup>

1. there exists an ongoing, identifiable community of Indians who are members of the formerly recognized tribe or who are their descendants;
2. the tribe is located in the vicinity of the former reservation [or rancheria or other lands set aside for their use];
3. the tribe has continued to perform self-governing functions either through elected representatives or in meetings of their general membership;
4. there is widespread use of their aboriginal language, customs and culture;
5. there has been a marked deterioration in their socioeconomic conditions since termination; and
6. their conditions are more severe than in adjacent rural areas or in other comparable areas within the State.<sup>5</sup>

Generally, Criteria 5 and 6 have not been an issue in the restoration of terminated California tribes because the effects of termination were so devastating, economically and socially. Moreover, despite the negative effects of termination on tribal organization and culture in California, most of California's terminated tribes do not have trouble meeting Criteria 4.<sup>6</sup> Criteria 1, 2 and 3, however, have proven the most difficult to meet for tribes seeking restoration.

Criteria 2 and 3 should be modified or eliminated. Termination often resulted in the loss of land to creditors and tax sales. Moreover, the former rancherias were often located in economically depressed areas, and tribal members reasonably chose to move to more urbanized areas to seek employment. In addition, termination removed two major factors that contributed

to the political cohesiveness and function of the tribal entity—tribal communal lands and the federal-tribal trust relationship. When the government distributed tribal lands per capita and severed the trust relationship, the focus of the tribal community naturally shifted from a communal self-governing function based on a common interest in tribal land and federal Indian programs, to individual survival. Tribal relationships receded from formal self-governing functions required by the common ownership of land and common interest in the benefits of the federal-tribal trust relationship to more subtle, less formal, social, economic, and religious interactions between tribal members. Thus, requests for restoration of terminated California tribes should be evaluated under criteria that take account of those factors inherent in the termination process which discouraged Indian people from remaining on their former lands and removed the incentive for them to continue to maintain a formal governing structure.

**2. Congress should appropriate funds to assist those terminated California tribes seeking restoration.**

Terminated tribes seeking restoration must employ attorneys, anthropologists and other experts to help them prove that they meet the government's criteria for restoration. To defray these and other costs of the tribal restoration effort, terminated tribes usually turn to charities and select public agencies, such as the Administration for Native Americans (ANA) and the State of California's Indian Assistance Program,<sup>7</sup> for seed money to begin the challenging process of initiating and coordinating the effort to restore tribal status through litigation or legislative advocacy. Unlike unacknowledged tribes seeking federal recognition, the terminated tribes have no access to technical assistance or support from the Bureau of Indian Affairs (BIA)<sup>8</sup> In essence, the tribe bears the entire administrative and financial burden of reversing the effects of a policy that the Federal government itself now recognizes as misguided.

A good example of the commitment and effort necessary to achieve restoration is the seven-year saga of the Scotts Valley Band of Pomo Indians, one of the rancherias terminated under the original Rancheria Act.<sup>9</sup> Beginning with only a handful of tribal members who had moved after termination to find employment in widely dispersed California counties, this small band held meetings in the homes of tribal members; relied on donations from tribal members to defray the expenses associated with organizing the community, updating its membership roll, and scheduling and conducting meetings; and used the resources of a local Indian Seniors' Center in Ukiah, California, to coordinate its efforts with those of three other terminated tribes. Assisted by the donated time of a local economic development planner, the Band developed a three-year budget and plan for restoration. These were eventually used as a model for allocation of special federal appropriations to the Band and three other tribes scheduled for restoration as part of the negotiated settlement in Scotts Valley Band of Pomo Indians, et al. v. United States.<sup>10</sup> Thus, with no financial resources and just a core group of tribal members who committed their time to the restoration effort, the Band was able to reverse its termination and begin the longer-term process of redressing the social and economic effects of termination.

**3. Congress should appropriate supplemental “Restored Tribes” funding for newly restored California tribes.**

With respect to newly-restored tribes, the initial tasks faced by the tribes are the development and adoption of comprehensive governing documents, obtaining funds for land acquisition and essential tribal operations, and reestablishing a working partnership with the BIA and other federal agencies. These essential tasks, which present problems to even well-established tribes, often threaten to overwhelm a newly-restored tribe because of the lingering effects of termination. Without “Restored Tribes” or some other form of supplemental funding, newly restored tribes often lack the means to establish and minimally staff a tribal office as a base of tribal operations. Though the challenges of operating tribal programs and exploring options for economic development are imposing even when funds are available, the difference is that, with supplemental funding, the tribe possesses the financial means to begin developing the capacity to carry out these self-governing functions.

The “Restored Tribes” funding is also a gesture of good faith and a sound investment by Congress in Indian tribes whose tenacity in seeking restoration will likely be replicated in pursuit of their status and interests as self-governing entities.

**4. Congress should enact legislation (a) stating that it is the policy of the United States Government, in carrying out its public and other federal land management functions, to assist newly restored California tribes to identify and acquire public and other federal lands, which have been or may be classified as available for disposal under federal law, for the purpose of meeting tribal housing and economic development needs; and (b) directing federal agencies to consult with the tribes in identifying such public and other federal lands within or near the aboriginal territories of the tribes suitable for such purposes.**

The restored California tribes each have a very limited land base, or no land at all. The lack of an adequate land base is the primary limiting factor in the efforts of restored tribes to reconstitute their tribal governments, provide housing for tribal members, and develop local economies. Without the ability to acquire federal lands in trust, the primary means of funding tribal land acquisition for housing and economic development is the Department of Housing and Urban Development’s Indian Community Development Block Grant Program. In the past, this program has given many California tribes the funding they needed to acquire small parcels of private land, primarily for housing. Its effectiveness today for this purpose is more limited. This is due to the increasingly tight restrictions that the Secretary of the Interior has placed on the fee-to-trust land acquisitions, coupled with the State of California’s heightened scrutiny of fee-to-trust transfers because of their potential to give the tribes the means of engaging in gaming operations, which have proven to be a successful vehicle for tribal economic development. These factors have stalled tribal efforts to expand their limited land base and develop economically feasible operations capable of generating jobs for tribal members and revenues for provision of essential tribal governmental services, such as education, health care, housing, and reservation

infrastructure improvements.

California tribes, especially those which have had their federally recognized status restored, need affirmative action by Congress to simplify the transfer of federal lands for the creation or expansion of tribal homelands. The current federal land acquisition regulations and policies are simply not adequate to address the immediate needs of these tribes or, for that matter, most of California's recognized tribes. The restored tribes need a congressional remedy responsive to their unique situation, as well as that of the other landless or land-poor California tribes.

5. **The Wilton Miwok Indian Community, the Federated Indians of the Graton Rancheria, and the Mishewal Wappo Tribe of Alexander Valley should be immediately restored by Congress. In addition, the other six tribes that remain terminated should receive special consideration, according to criteria modified as recommended above, when they are ready to seek restoration.**

The Wilton Miwok Indian Community, the Federated Indians of the Graton Rancheria, and the Mishewal Wappo Tribe of Alexander Valley meet the current criteria for restoration, and should thus be immediately restored.

6. **Congress should enact legislation declaring that it is the policy of the United States to not interfere with decisions regarding enrollment and eligibility criteria for restored tribes, and that no federal agency should try to influence a restored California tribe to limit its membership to persons listed on the distribution roll prepared pursuant to the Rancheria Act, and their descendants.**

In its advisory capacity to newly restored tribes, the BIA often urges the tribes to confine their membership to persons appearing on the distribution list prepared during termination, and their descendants. This advice interferes with the tribes' exclusive sovereign power to determine tribal membership, sows conflict among different groups of potential members, and ignores the fact that many tribal members were arbitrarily omitted from the distribution list in the first place. However, because the advice also serves to limit the scope of the BIA's trust responsibility, it is unlikely that the BIA will abandon this practice without legislative direction to do so.

## **I. Introduction**

The Termination Policy sought to end the special trust relationship between the United States and Indian people that had been the cornerstone of federal-Indian relations since the United States' earliest years. It represented another destructive Indian policy that reverberated throughout the smallest and most vulnerable of California's tribal communities. Like the Allotment Policy of an earlier era, implementation of the Termination Policy in California set in motion a series of events that disrupted tribal institutions and traditions, ultimately resulted in the divestment of these small tribes and their constituent members of the majority of their lands, and left the tribes in a more desperate and impoverished state than before.

Through termination, Congress sought to wind up the affairs of certain designated tribes by terminating federal supervision over the tribes, their eligibility for federal benefits, and their coverage under federal Indian laws.<sup>11</sup> Some supporters of the policy claimed it would liberate the Indians from excessive federal supervision, and finally bestow the full privileges of United States citizenship on them.<sup>12</sup> The overriding effect of the Termination Policy, however, was the loss of Indian land to private, non-Indian ownership. Any progress toward self-governance engendered among these tribes by the Indian Reorganization Policy of the 1930s and 1940s was reversed, and assimilation of their peoples and cultures into the American mainstream became the ultimate goal. The termination experiment, like the Allotment Policy, failed to improve the socioeconomic and political situation of the Indians affected.

While Congress and the Executive branch both have acknowledged the failure of the termination policy, they nevertheless have left unremedied most of the devastating effects of that policy. Nationally, Congress has addressed the restoration of terminated tribes on a piecemeal, case-by-case basis. It has never taken the initiative to legislate a comprehensive, national approach to the restoration issue, including remedial measures to redress the continuing effects of termination. Instead, the burden remains on the very tribes that were financially and culturally devastated by termination to persuade Congress to reverse the misguided federal actions of an earlier era. In the meantime, these terminated tribes have extremely limited access to government services and benefits, especially those that foster and support tribal self-determination; their lands are not secured by federal trust status for future generations of tribal members; and they enjoy less federal protection of their cultural heritage than recognized tribes.

While most of the terminated tribes in California have been restored to their status as federally recognized tribes through litigation or legislation, the effects of termination have not been reversed. Termination ended the federal trust status of tribal lands and broke up tribal communal land holdings by distributing the lands per capita to selected tribal members—the “distributees”—and their families. As a result, most of the rancheria lands passed into non-Indian hands within a relatively short period of time. This process was accelerated by the extreme poverty and high unemployment among the Indians and the failure of the Bureau of Indian Affairs (BIA) to prepare them for state taxation and regulation of their lands. In addition, the lack of adequate water and sanitation facilities decreased the utility and value of the rancheria lands and

created health problems for rancheria residents. In most cases, the restored tribes have not fully recovered from the effects of termination, especially the loss of tribal lands. Some restored tribes remain without a land base at all. Overall, even the relatively small amount of private land that the restored tribes have acquired and placed in trust status for housing and economic development purposes has not been adequate. Where former rancheria boundaries have been restored by judicial fiat, the existence of privately owned parcels within the boundaries engenders resistance to tribal jurisdiction and authority.<sup>13</sup> In general, restored tribal governments continue to suffer the effects of the years during which their relationship with the federal government was severed, and thus are disadvantaged in competing for project funding with tribes who have well-established relationships with federal officials and broader experience in dealing with federal agencies.

This report examines the historical context of the termination policy and its implementation in California, details the lingering effects of termination on tribes that remain terminated and those that have been restored, and presents specific recommendations for remedial federal action.

## **II. The Historical Context of the Termination Policy in California**

In reviewing the Termination Policy as it was implemented in California under the Rancheria Act of 1958, one must keep in mind that its effects were cumulative—termination occurred in the larger context of a previous history of federal neglect and inconsistent policies toward the California Indians. Without an appreciation of that context, one cannot fully comprehend the impact that termination had on Indian people who witnessed the further erosion of their way of life, and the complete withdrawal of federal trust protection of their lands and people—all occurring under the guise of a federal policy that promised more, but rendered less, always less.

Federal Indian policy most closely resembles a pendulum that, once exhausted at the limit of its political arc, reverses course and swings to an equally extreme limit in the opposite direction, and so on. Federal policies with respect to the California Indians were no exception to this general pattern, but the effects of these pendulous swings on the California tribes were especially harsh due to the confluence of a number of unique historical events.

Pursuant to the 1848 Treaty of Guadalupe Hidalgo, all lands of California were ceded to the United States by the Republic of Mexico. Nine days before the Treaty was signed, gold was discovered at Sutters Mill on the south fork of the American River, setting off one of the greatest migrations in history.<sup>14</sup> This unprecedented influx of non-Indians totally disrupted the Indian way of life, dislodged most California tribes and bands from their aboriginal territory, and caused a drastic reduction in the Indian population. On September 9, 1850, California was admitted as a state to the Union.<sup>15</sup>

Between 1851 and 1852, eighteen treaties were negotiated with 139 Indian signatories. The treaties would have established an Indian land base in California of approximately 8.5 million

acres. In reliance on the treaties, many Indians moved to the lands that were to be set aside. The treaties, however, were rejected by the United States Senate, leaving the Indian signatories without a protected interest in the lands ceded by the treaties or the purported reservations.<sup>16</sup> Because the Senate also sealed the file on these treaties, the tribes were not notified of the Senate's rejection of the treaties until 1905.<sup>17</sup>

By the turn of the century, the California Indian population had been reduced from an estimated 150,000 to approximately 16,500.<sup>18</sup> Despite Congress' attempt to protect the occupancy rights of California Indians,<sup>19</sup> 11,300 of those survivors had been displaced from their aboriginal homes, and had no land base.<sup>20</sup>

Following the publication of Helen Hunt Jackson's "A Century of Dishonor" in 1881,<sup>21</sup> public attention began to focus upon the destitute state of these so-called "landless" Indians. The Commissioner of Indian Affairs initiated an investigation in response to reports that the California Indians were literally starving to death. Congress thereafter authorized an investigation of the existing conditions of Indians in Northern and Central California, and directed the Commissioner to report to Congress "some plan to improve the same."<sup>22</sup> C. E. Kelsey, a San Jose attorney and officer of the Northern California Indian Association, was appointed Special Agent to the Commissioner to carry out the Congressional mandate.

Six months from the date of his appointment, Kelsey completed his report and submitted it to the Commissioner of Indian Affairs. According to his report, Agent Kelsey "visited and personally inspected almost every Indian settlement between the Oregon line and the Mexican border."<sup>23</sup> Kelsey found that, for the most part, Indians in Northern California consisted of small, scattered bands and remnants of bands averaging about 50 in number. The Indians were forced to live on lands abandoned by settlers as unusable.<sup>24</sup>

Kelsey attributed the continuing decreases in Indian population in the state to the lack of a secure Indian land base. He noted that "[t]he entire Indian population of Northern California has decreased. . . by about 1,100 in the last three years, most of the decrease being in the landless bands."<sup>25</sup>

Kelsey emphasized the need for immediate relief for the homeless Northern California Indians.<sup>26</sup> He recommended that Congress buy small parcels of land for these destitute and displaced Indians, and indicated "that the land should be of good quality with proper water supply, and shall be located in the neighborhoods in which the Indians wish to live."<sup>27</sup> He also made specific recommendations for the improvement of the reservations in Southern California.<sup>28</sup>

On March 29, 1906, the Commissioner of Indian Affairs, after "a comprehensive review," approved Kelsey's report and ". . . strongly urge[d] that Congress be requested to make an appropriation of sufficient amount to enable the Department to carry out the plans proposed."<sup>29</sup>

The Senate acted on this recommendation by amending the Indian Office appropriation bill

to include an additional appropriation of \$100,000 to purchase lands for homeless California Indians. The House assented to the Senate amendment, and the bill was enacted as part of the Indian Office Appropriation Act of 1906.<sup>30</sup>

The 1906 appropriation was followed by similar appropriations on an almost annual basis through 1933,<sup>31</sup> just prior to the enactment of the Indian Reorganization Act (hereafter "IRA") in 1934.<sup>32</sup> That Act delegated specific authority to the Secretary of Interior to acquire land for Indians.<sup>33</sup> The land acquisition program for the homeless California Indians ultimately resulted in the creation or purchase of some 82 rancherias.<sup>34</sup> These rancherias, however, did not always provide proper homesites, irrigable land, a water supply, and other necessities. In fact, several rancherias were virtually uninhabitable due to the lack of a fresh water supply.<sup>35</sup> Thus, the main goal of the land acquisition program—to provide homeless California Indians with a secure and usable land base—was not realized in most cases. Nevertheless, the lands that were acquired did provide a refuge, if only temporary, and limited means of subsistence to many California Indians. However, because of the poverty, low educational achievement, and the small, isolated nature of the rancheria communities, they became the most vulnerable targets of the termination policy.

### III. History of the California Rancheria Act

The IRA and other New Deal legislation generally encouraged tribal autonomy and self-determination of Indian tribes. Beginning in 1944, however, another change in federal Indian policy further aggravated the problems on the rancherias. Forces within the BIA began to propose partial liquidation of the rancheria system.<sup>36</sup> At this early date, this recommendation was prompted, in part, by a sincere dissatisfaction with the inherent problems that existed as a result of the way the rancherias were acquired and managed by the federal government.

Following the resignation of Commissioner John Collier in February of 1945, those who favored the rapid, total and—if necessary—involuntary assimilation of Indians into the "mainstream" of dominant white society gained great influence with the BIA.<sup>37</sup> Shortly thereafter, termination became the focal point for Congress' federal Indian policy.

The BIA in California launched a massive effort to convince Congress that all of the California Indians residing on trust lands were ready for termination.<sup>38</sup> Many of those familiar with the situation of the Indians in California, including Felix Cohen, the great Indian law scholar, disagreed. The Association on American Indian Affairs (AAIA), joined by Mr. Cohen, registered strong dissents with Congress over the process outlined in the early bills for withdrawal of federal responsibility and services in California. The following statement by the AAIA, echoed in letters and statements from many of the California Indians themselves, illustrates the significant break from prior federal Indian policy that termination represented:

The legislation bears internal evidence of a marked change from the enlightened constructive Federal policy in Indian affairs of recent years. The former policy stood for honorable fulfillment of Federal obligations, constructive rehabilitation

of impoverished Indian groups, and increasing Indian self-government and self-determination. The policy embodied in the proposed legislation is that the Federal government's only Indian concern is with restricted Indian property, and that it is exclusively for the Federal government to decide when and how to end its responsibilities in that regard. All other obligations toward the Indian, whether based on treaty, statute, charter, agreement, or common decency may be disregarded and forgotten. From this standpoint the proposed legislation is not only unwise and unsound, it is immoral and an affront to the dignity and honor of the United States.<sup>39</sup>

This assessment that federal withdrawal from California represented yet another breach of trust with the California Indians merely slowed the juggernaut of termination. Strong resistance from southern California's mission bands resulted in their eventual exclusion from the process; other, larger tribes, such as Round Valley, Hoopa and Tule River also prevailed in their resistance. Ultimately, it was the smaller, more isolated rancheria communities that became targeted for termination.

Congressional Committees, the BIA, and the California Legislature considered the issue of termination for several years,<sup>40</sup> until Congress officially adopted it as a broad national Indian policy in 1953 by Concurrent Resolution.<sup>41</sup> The express goal of termination was

to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, [and] to end their status as wards of the United States . . .<sup>42</sup>

The Resolution further declared it "to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas. . . should be freed from Federal supervision and control. . ." and that the BIA should thereafter be abolished in those states. Congress slated at least five additional tribes in other states for termination.<sup>43</sup>

That same year, Congress passed Public Law 280,<sup>44</sup> which transferred civil and criminal jurisdiction over Indian land to the States included in the Act.<sup>45</sup> California was the only State named in both the Concurrent Resolution espousing termination and Public Law 280. Shortly after the passage of these two Acts, the BIA drastically reduced services to all California Indians,<sup>46</sup> even though no California tribes were actually terminated until 1961.<sup>47</sup> In fact, federal health services for California Indians were completely discontinued by 1955.<sup>48</sup> This discontinuation of services continues to be felt in California, since federal agencies tend to base current funding on historic funding levels.

Around this time, there were roughly 500,000 acres of federally owned land held for the use and/or occupancy of California Indians, which the BIA considered to be of generally poor

quality. Only 60,000 acres, mostly in Southern California, were considered suitable for irrigation and cultivation. Only 10,000-12,000 acres were actually under cultivation in 1952, and half of this acreage was located on a single reservation. In addition, the BIA had reduced its presence in California to one agency, staffed by 150 full-time employees, and its health and education services had been drastically reduced. The median family income among Indians residing on reservations in California was between \$2,500 and \$3,500 per year, and on many of the rancherias the median family income was much less. Moreover, on all of the rancherias there was a substantial need for improvements to roads, housing, water systems, irrigation and sanitation systems; and among the residents, a need for vocational education assistance, health care and social services, because of the poor economic conditions.<sup>49</sup>

Given the deplorable living conditions on many of the rancherias, the State of California and California tribes vigorously opposed early termination legislation that did not provide assistance to tribes to prepare them for the termination of federal supervision and benefits.<sup>50</sup> Their successful resistance to termination without adequate preparation for and funding of the process was short-lived.

Following several failed attempts at terminating California tribes, the Rancheria Act was passed by the House of Representatives on August 13, 1957.<sup>51</sup> In the Senate, the California termination bill was passed on July 18, 1958,<sup>52</sup> with an amendment that increased the number of affected rancherias from 14 to 41.<sup>53</sup> The House concurred in the Senate amendments on August 7, 1958, and H.R. 2824 was signed by the President on August 18, 1958.<sup>54</sup>

The California Rancheria Act of 1958<sup>55</sup> was aimed at terminating the trust relationship between the United States and the listed tribes only after the affected Indians had been prepared for the end of federal supervision and benefits. Thus, a central feature of the Act provided that physical improvements were to be made to the listed rancherias, so that the Indian distributees would receive marketable title. "Before making the conveyances authorized by this Act," the Secretary of Interior was directed:

1. to make such land surveys of the rancherias as were necessary to convey marketable title to the lands comprising the rancherias;
2. to construct or improve roads serving the rancherias (e.g., access roads) to the standards of the counties where the rancherias were located and transfer the roads to the county road systems upon termination; and
3. to install or rehabilitate such irrigation and domestic water systems as the Secretary and the Indians affected agreed should be completed.<sup>56</sup>

In addition, the Secretary was:

authorized to undertake . . . a special program of education and training designed

to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians.<sup>57</sup>

Another distinctive feature of the Act was that termination was not to be imposed on the listed tribes without their consent. "Section 2(b) manifests the clearly *permissive* character of any execution of the plan, mandating that the plan be carried out only if approved by a majority of the Indians voting in a referendum."<sup>58</sup> Sections 1 and 2(a) made the formulation of a plan mandatory, but section 2(b) gave the Indians the choice of either accepting or rejecting it. There was nothing in the Act which required the Indians of a rancheria eventually to accept a plan, or which gave the Secretary of the Interior any authority to override their vote to reject a plan.<sup>59</sup>

By the Act of August 11, 1964,<sup>60</sup> Congress materially amended the 1958 Rancheria Act. The Act's provisions were extended to all rancherias and reservations "lying wholly within the State of California." Except in the case of the original 41 rancherias named in section 1 of the 1958 Act, however, the process of developing a distribution plan could only be started after distribution had been "requested by a majority vote of the adult Indians of a rancheria or reservation . . ." This amendment allowed the Indians to veto termination at the very outset of the process.<sup>61</sup> The significance of this modification is underscored by the fact that it appears that only two tribes elected to proceed with termination under the amended Rancheria Act.<sup>62</sup>

Despite the permissive nature of the Rancheria Act, for the most part it was presented to the California tribes targeted for termination as a *fait accompli* and their best chance of obtaining some measure of federal assistance before the BIA withdrew entirely from California. From the very outset, it was a process skewed heavily toward ending the federal trust responsibility to as many California tribes as possible in the least costly manner. It is not surprising, then, that the mandates of the Rancheria Act were violated regularly and with impunity by overzealous bureaucrats intent on achieving the overarching goal of assimilating tribal communities into the social and economic mainstream of American life by withdrawing all special protections afforded Indian people and lands under the federal Indian laws.

#### **IV. Implementation of the Act**

The government's implementation of the Rancheria Act can only be described as a resounding failure. In fact, in every case where a court reviewed the government's actions taken pursuant to the Rancheria Act, the court found the termination to be unlawful, and that the trust responsibility owed to Indian people had been breached.<sup>63</sup> Indeed, in the majority of these cases, the government itself admitted that termination was unlawful, and chose to litigate only those issues related to the question of what was an appropriate remedy.<sup>64</sup> Thus, there is no question that the government failed to properly implement the Act. This, however, does not end the inquiry. An understanding of what the basic obligations of the government were under the Act, and how it failed the Indian beneficiaries in its discharge of these obligations, is essential to a complete understanding of the continuing consequences of termination.

Pursuant to the Rancheria Act, the affected tribes consented to termination in reliance on representations that the U.S. government would provide the tribes with the education and physical improvements necessary to break the tribes' dependence on government programs. Thus, the tribes agreed to relinquish the limited federal aid they had received in the hope that their standards of living would finally improve. The government, however, consistently failed to provide the services mandated by the Rancheria Act and promised in the termination agreements. Thus, rather than liberating Indians from government control and dependency on federal benefits, the government's unfulfilled promises, coupled with the simultaneous withdrawal of federal services, guaranteed that living conditions would only get worse.

The implementation of the Rancheria Act took place in three phases. First, a plan for distribution of the assets of the particular rancheria was developed, and the persons deemed eligible to participate in the distribution (so-called "distributees") voted to approve or reject the plan. Second, the improvements mandated by the Act and set forth in the distribution plan were to be provided by the BIA and the Indian Health Service (IHS). Finally, the BIA Sacramento Area Director was to submit a completion statement to the Secretary for approval and, if approved, the Secretary would publish a termination proclamation in the Federal Register. The Secretary delegated his authority to approve distribution plans and termination proclamations to the Commissioner of Indian Affairs.

Major problems with implementation of the Rancheria Act can be attributed to the fact that the Secretary did not promulgate any regulations governing the preparation of distribution plans or the provision of the improvements promised in the plans and mandated by the Act. Nor were there any regulations governing the determination of when improvements had been satisfactorily completed. The only written policies developed by the Interior Department to implement the Act provided a procedure for obtaining approval of a proposed distribution plan by the distributees and by the Secretary of the Interior.<sup>65</sup>

As the following discussion demonstrates, the Bureau's presentation of termination as a *fait accompli* compromised the consensual aspect of the distribution plans. In its rush to conclude the termination process, the BIA failed to adequately consider the Indians' needs and to prepare them and their property for the full imposition of state and local taxing and regulatory jurisdiction. The consequences of the government's failure to fulfill its statutory and fiduciary obligations to the Indians at each stage of the termination process were devastating.

A. The failure to properly fund and plan the termination process

Under the 1958 Act, a plan to distribute the assets of the rancheria was to be devised for each rancheria named in the Act.<sup>66</sup> Immediately after the Act was passed, the BIA notified all listed rancherias that it intended to develop distribution plans for them as rapidly as possible.<sup>67</sup> Since no regulations governing the preparation of distribution plans were ever promulgated, the Commissioner of Indian Affairs approved distribution plans based solely on the plan itself and the recommendation of the Sacramento Area Director.

Once the distribution plan had been approved, a prescribed notice was required, after which any Indian could submit to the Area Director any objections to the plan.<sup>68</sup> After reviewing objections, the Secretary was required to hold a referendum election among the distributees. If approved by a majority of the distributees, the plan became final.<sup>69</sup>

In the implementation of the Rancheria Act, the Secretary of the Interior and the BIA secured the tribes' approval of the termination/distribution plans through misrepresentation and undue influence. The tribes agreed to termination in reliance on the government's promises to make desperately needed improvements to the rancherias. It appears, however, that the BIA knew at the outset of this process that the promised improvements would never be made. Under the terms of a secret agreement with some members of the Congressional subcommittee that reviewed the legislation, the BIA agreed not to seek any special appropriation to carry out the specific obligations imposed on the government under the Rancheria Act.<sup>70</sup> As a result of this agreement, the BIA funded its implementation activities entirely out of its regular appropriations for California, hence the gross under-funding of the termination program (and the benefits promised to the Indians under the Act). Moreover, this action diverted the already inadequate funding of BIA programs for those California reservations and rancherias not included in the legislation, to support the termination process. Thus, implementation of the termination policy had far-reaching effects that extended beyond the rancherias, and impacted California tribes that had not even been slated for termination.<sup>71</sup>

In addition, the BIA failed to inform the tribes that the physical improvements and educational programs offered in exchange for termination were already available through 42 U.S.C. §§ 2004a and 2004b, which sought to improve conditions on Indian trust land in regards to roads, sewers, water supply, and educational opportunities. The BIA also used undue influence to secure each tribe's approval of the distribution plan by representing that agreement to termination was the only way to secure needed improvements, and dropping from the tribal rolls members who opposed termination.<sup>72</sup>

Even more importantly, however, the BIA failed to disclose the economic, social and cultural consequences of termination, including its effect on future members of the community in areas such as religion, Indian education programs, and tribal sovereignty. Generally, termination of a tribe's status resulted in the transfer of tribal lands held in trust to private ownership, transfer of jurisdiction over tribal lands from the federal government to the state, and discontinuance of federal services arising from the trust responsibility.<sup>73</sup> Thus, terminated tribes lost all protection of their traditional way of life. Being classified as "Non-Indians" by the government meant the loss of religious rights granted only to Native people, loss of access to special Indian education programs for tribal children, and the loss of the ability to be heard at the federal and state level as Native American people. These issues were not even raised, let alone discussed, with the tribes proposed for termination; on the contrary, the government presented the Rancheria Act as if it would solve the tribes' economic problems and improve Rancheria infrastructure without altering their cultural and political identity.

B. The failure to ensure that the rancheria distribution plans actually met the Indians' needs and that water and sanitation facilities were provided as promised

After a tribe approved a distribution/termination plan, both the Secretary and the BIA failed to execute the duties arising under that plan and under the Rancheria Act itself. Despite the Congressional mandates and authorization for a \$509,235 appropriation to carry out the provisions of the Act, virtually none of the promised improvements were ever made, nor were any educational programs provided.

The Secretary did not promulgate regulations, or even establish Department policies, to govern the provision of the improvements mandated by the Act. Thus, no uniform standards were established for determining a rancheria's needs, and there was nothing to ensure that the improvements provided would comply with the state and county standards. The BIA took the position that such compliance was unnecessary.<sup>74</sup> This position was contrary to Section 3 of the Act, and created difficulties for the rancheria residents after termination, when the state and counties acquired jurisdiction over the rancherias.<sup>75</sup> On the Redwood Valley Rancheria, for example, the BIA installed shallow wells operated by hand pumps. The houses lacked any indoor plumbing, including flush toilets. After the deeds were distributed, county health officials cited the houses because the absence of indoor plumbing violated the Mendocino County health code. The residents were given thirty days to install adequate sanitation facilities, at their own expense, to avoid condemnation of their houses.<sup>76</sup>

Nor did any regulation or policy require that distribution plans detail the improvements to be provided under the plans. Rather, the plans generally described existing conditions on the rancheria and the improvements requested by the distributees in conclusory terms. For example, the plan for the Graton Rancheria described the need for water as follows: "Domestic water is obtained from a stream which runs through the property. A need for the development of an adequate domestic water system exists."<sup>77</sup> Accordingly, the plan required the BIA to "Develop a domestic water system, either by providing individual wells or by construction of a water distribution system or a combination thereof . . ."<sup>78</sup> These provisions of the Graton Plan are typical of those plans which found that a need for water works existed.<sup>79</sup> None of the distribution plans sent to the Commissioner for approval provided the specifications to be used in making any of the Section 3 improvements requested in the plans.

The BIA did adopt several informal policies, however, that established limits on the extent of the improvements that would be provided. Specifically, the BIA refused to install indoor plumbing in any house, and refused to provide water to parcels of rancheria property upon which a house was not constructed.<sup>80</sup> This resulted in poor sanitation, including potential contamination of existing water sources, and imposed an immediate limitation on the individual distributee's ability to use or develop the land as a homesite. In the absence of a water distribution system, there was little motivation, much less money, to use the land for residential purposes.

C. The failure to ensure that termination would not occur until the specific requirements of the Rancheria Act and the individual rancheria distribution plans had been met

Other than the general requirement that the Secretary determine that the provisions of a distribution plan "had been carried out to the satisfaction of the Secretary,"<sup>81</sup> there were no formal written rules or regulations governing the procedure for determining whether the improvements were adequate, prior to publishing a termination proclamation in the Federal Register. In practice, the Area Director would consult informally with the personnel responsible for each improvement (e.g., road engineer, irrigation engineer), and when he was told that the improvements had been completed, "... then somebody sat down and wrote the completion statement."<sup>82</sup>

The completion statements generally contained conclusory language that all provisions of the distribution plan had been completed. The statements contained no details about the alleged improvements. For example, the completion statement for the Graton Rancheria states: "A domestic water system was provided by developing a well and constructing a water distribution system."<sup>83</sup> The Graton completion statement, like its distribution plan, is typical of the completion statements prepared for the other terminated rancherias.

The Commissioner of Indian Affairs approved the publication of the termination proclamations for each rancheria. No regulations were in place to govern his determination, and in practice the Commissioner based his decision solely on his review of the completion statement. After approval of the completion statement by the Commissioner, the Secretary published the termination proclamation in the Federal Register, declaring those persons listed in the proclamation to be ineligible for benefits and services available to Indians based on their status as Indians.<sup>84</sup>

V. **The Trust Obligations of the Federal Government in the Termination Process**

The trust relationship between the United States and the California Indians pre-existed the passage of the Rancheria Act and was acknowledged and confirmed in the Act itself.<sup>85</sup> "The federal government has long been recognized to hold, along with its plenary power to regulate Indian affairs, a *trust status toward the Indian—a status accompanied by fiduciary obligations.*"<sup>86</sup>

As the trustee for the Indians affected by the Rancheria Act, the Secretary of the Interior was bound to deal with the beneficiaries of that trust according to the same rigorous standards which govern relations between private trustees and beneficiaries.<sup>87</sup> Judicial interpretations of the Rancheria Act establish that the fiduciary obligations of the United States toward the Indian people under the Act were to continue in full force until the termination process had been completed.<sup>88</sup> Thus, until the moment of actual termination, federal actions taken to implement the Rancheria Act were bound and constrained by the trust duties of the United States to Indian

people. The un-termination cases make it clear that the Secretary and the BIA failed to fulfill their fiduciary responsibilities in implementing the Rancheria Act.<sup>89</sup>

In addition, based on the standards announced by the United States Supreme Court in Morton v. Ruiz, 415 U.S. 199 (1977), the Secretary and the BIA were required to promulgate substantive standards, in conformity with the procedures required by the Administrative Procedure Act (APA),<sup>90</sup> to establish a rational basis for providing services under Section 3 of the Act. Thus, the Secretary's failure to promulgate such standards was a violation of the APA.

While the government's breach of trust with the California Indians in the termination process is confirmed in the government's own records and admissions, and in the litigation brought to restore the terminated rancherias,<sup>91</sup> the government has never remedied many of the effects of termination.

## **VI. Efforts to "Un-Terminate" or Restore California's Terminated Tribes**

Thirty-eight of the 41 tribes listed in section 1 of the Rancheria Act were terminated according to the process described above.<sup>92</sup>

Pursuant to the terms of the Rancheria Act, lands were distributed in fee to individual Indians, but the water and sanitation facilities promised the Indians under the terms of the Act were, in every circumstance, either inadequate or simply not provided. Moreover, the BIA did not even address the Indians' need for adequate housing. As a consequence, the rancherias at the time of termination had inadequate or nonexistent water and sanitation systems, inadequate roads, no housing, or housing that was in serious disrepair, and no economic base to support employment and provide the wages needed to pay property taxes and make the necessary capital improvements to bring rancheria housing and infrastructure into compliance with local county housing, zoning, and other ordinances. Due to the government's failure to live up to the Rancheria Act, it was not long before distributed lands were transferred out of Indian ownership pursuant to tax sales, to satisfy debts incurred by the Indians, and, in some cases, as a result of fraudulent or questionable actions by the non-Indian purchasers.<sup>93</sup> This situation persisted until the late 1960s when California Indian Legal Services (CILS) was established. Commencing in 1967, CILS led the effort to reverse, through litigation, the termination of the California rancherias and to restore the recognition and services that the termination policy had stripped from the California tribes.

Initially, the cases challenging the government's conduct pursuant to the Rancheria Act sought to compel the government to comply with its fiduciary and statutory duties, and thus complete the improvements mandated by the Rancheria Act and the distribution plans. As the Indian people began to realize the full consequences of termination, however, restoration of tribal status became the primary goal of litigation. Where tribes achieved restoration through litigation, the remedies generally included: restoration of rancheria boundaries and the status of rancheria lands as "Indian Country"<sup>94</sup>; restoration of tribal status, making tribal members eligible for federal benefits based on their status as Indians, and allowing tribal entities to organize and be recognized

as sovereign authorities<sup>95</sup>; and those lands that had been distributed in fee to individual Indians were eligible to be returned to trust status.<sup>96</sup> Damages were also awarded,<sup>97</sup> though in some settlements tribes accepted physical improvements to Rancheria lands instead of monetary damages.

Judgments and settlements in the un-termination cases usually stipulated a time limit for actions that had to be taken to secure a privately owned parcel's eligibility to be held in trust.<sup>98</sup> While these time limits seemed reasonable when entered, it soon became clear that many rancheria residents were confused about these requirements. The BIA's refusal to accept fractional interests created additional problems. In cases where the reservation boundaries had not been restored, any delay by the BIA in accepting lands into trust caused problems for the residents, as many counties continued to assess taxes on Indian-owned fee lands. Thus, even after restoration was achieved through litigation, tribes and individuals were forced to litigate against counties to prevent further diminishment of their land base through tax sales.

During the past quarter century, judicial decisions and settlements have restored 27 of the 38 rancherias that were terminated under the original Rancheria Act.<sup>99</sup> Two additional tribes, the United Auburn Indian Community and the Paskenta Band of Nomlaki Indians, were restored by Acts of Congress in 1993.<sup>100</sup>

## **VII. The Lingering Effects of Termination on California Tribes**

Since President Nixon first declared it to be a failure in 1970, both Congress and the Executive Branch have repudiated the misguided policy of termination.<sup>101</sup> However, despite its complete rejection of the termination policy, the Federal Government has failed to take the necessary step of providing a comprehensive legislative solution to the continuing problems of restored tribes and the remaining terminated tribes.

It has been almost forty years since passage of the Rancheria Act. Still, the Advisory Council on California Indian Policy is compelled to ask questions that should have been anticipated, and to which answers should have been provided, long before termination was accepted as policy, and long before the first California distribution plan was prepared. What were the human and economic costs involved in the dismantling of rancheria communities? What was the risk of loss of Indian homes and lands, however meager or unproductive, to creditors, tax sales, and fraudulent transactions once the protection of federal trust status was withdrawn? Was termination simply another chapter in an established pattern of federal neglect and malfeasance toward the California Indians? What were the effects of withdrawing all federal Indian programs and benefits from Indian communities mired in poverty and high unemployment? The real tragedy is that many of these questions *were* asked, and a substantial amount of information was compiled on the conditions of the California Indians before the enactment of the Rancheria Act.<sup>102</sup> Despite the knowledge that most of the targeted Indian communities were not prepared for termination, the government nevertheless carried out the policy. Indeed, it was implemented in a way that left the Indians with no real control over the process and ultimately deprived them of the very

inducements they were offered in return for their "consent."

Though it would not be possible to accurately quantify the effects on the tribes terminated under the Rancheria Act, there is no doubt that these Indian communities suffered severe deprivation when federal trust protections were withdrawn from their lands and water, sanitation and other services were not provided as promised.<sup>103</sup> In addition, individual terminated Indians were denied access to federal Indian programs and benefits and lost certain immunities from state taxation and regulation based on their previous status as reservation Indians. Courts have quantified some of the economic costs of these illegal terminations in damages awarded against the United States in cases arising out of the BIA's failure to properly discharge its statutory and fiduciary obligations under the Rancheria Act.<sup>104</sup> Yet, the "intangible" costs of termination, such as the loss of community identity resulting from the policy goal of dismantling tribal land holdings and institutions in favor of individual land ownership and self-interest, will never be known. Viewed from the hindsight of the current struggles of restored tribes to reconstitute their communities and reach consensus on community goals, we can conclude that these costs were substantial and have been borne by the Indian people and tribes themselves.

In identifying the continuing effects of termination on California tribes, a distinction needs to be made between restored tribes and those that remain terminated. For those that remain terminated, two major factors limit their means of recourse to reestablish a government-to-government relationship with the Federal government—the lack of financial resources, and the dispersion and disintegration of their communities which occurred because of termination. These factors also limit the ability of restored tribes to move quickly to reestablish themselves within the community of federally recognized tribes. Still, the restored tribes have a major advantage over the terminated tribes, because their status as federally recognized tribes affords them the potential to access funds for tribal organization and self-governance, land acquisition, and economic development. In short, they have the *potential* for a brighter future.

#### A. Effects on Tribes that Remain Terminated

The California tribes that remain terminated have virtually no voice in the formulation of federal Indian policy. They have no land base that is secure by virtue of its being held in trust by the United States for the benefit of the tribe. Moreover, many statutes apply only to federally recognized tribes and their members, and members of terminated tribes receive none of the protections and benefits provided by these statutes. Even where Congress intends a broader application of a particular statute, the federal agencies charged with implementing Indian programs invariably hold that only federally recognized tribes and their members are eligible to participate.<sup>105</sup> Thus, terminated tribes are generally unable to participate in traditional activities on federal lands, such as gathering plants for ceremonial use and other cultural activities. The graves of their ancestors and their cultural artifacts are not protected under the Native American Graves Protection and Repatriation Act (NAGPRA) and other laws designed to protect Native American cultural resources.<sup>106</sup> In effect, almost the entire body of federal law aimed at protecting and preserving Native American cultures and fostering tribal self-determination has no application to

terminated tribes and their members.

B. Effects on Restored Tribes

Restored tribes experience problems of a different character because they have reestablished their government-to-government relationship with the United States. Many of their problems are related to their inability to take full advantage of their self-governing status because of the lack of established governing institutions and procedures, inadequate financial support for essential tribal operations, stiff competition with other federally recognized tribes for limited federal program funds, an inadequate or nonexistent land base, and the BIA's inability to provide the technical and financial support necessary to overcome the disabling effects of termination.

1. The lack of a land base sufficient to support tribal housing and economic development

Because significant portions of the rancheria land base had passed into private hands following termination,<sup>107</sup> it was usually impossible in the restoration process to acquire and return these lands to tribal trust status. Thus, the restored tribes have either a significantly reduced land base or no land at all. Of the 29 restored California tribes, seven have fewer than 50 acres in tribal ownership and 16 have no tribal land base at all. The other six restored tribes each have less than 160 acres in tribal ownership.

Even where rancheria lands were restored and the original rancheria boundaries reestablished, private ownership within reservation boundaries has made assertions of tribal jurisdiction difficult. Private landowners often resist and challenge the exercise of tribal authority, and local governments simultaneously attempt to exercise jurisdiction.<sup>108</sup> These jurisdictional challenges deplete limited tribal resources and complicate tribal planning and economic development initiatives.

2. Difficulties encountered in reconstituting tribal communities under a unified leadership

Attempts to develop a tribal governing document often falter in the intra-tribal strife between different interest groups and factions over issues such as tribal membership, election procedures, and the allocation of tribal power between tribal and general councils. Tribal communities that were split and dispersed by termination and the distribution of lands per capita find themselves struggling to renew and reestablish the bonds of community and to place the tribe above individual self-interested goals. The termination policy's focus was just the opposite—on individual land ownership and self-interested economic behavior—and effectively discouraged the continuation of tribal hierarchical and communal structures. Thus, restored tribal governments often find themselves grappling with the political and social residue of the termination policy.

Too often the BIA exacerbates the problem by carrying forward some of the paternalistic

attitudes of the termination era. In its role as federal trustee, the BIA often urges terminated tribes to confine their membership to lineal descendants of the distributees and dependent members listed in the distribution plans prepared under the Rancheria Act. This advice, while serving the BIA's interest in confining its trust responsibility to a smaller Indian service population, also sows the seeds of conflict among different groups of potential tribal members. Moreover, this artificial limitation ignores the fact that the distribution plans prepared in the process of termination frequently and arbitrarily excluded tribal members who objected to the distribution plans or who resided off the rancheria. Often, the numbers of excluded tribal members exceeded those of rancheria residents.<sup>109</sup> Restoration of tribal membership through the exclusive use of distribution plans thus perpetuates the arbitrariness that characterized the original termination process, leaves many Indian people disenfranchised, and sparks dissension within restored tribes at a time when tribal cohesiveness is most needed.

Similarly, efforts to identify lands for acquisition in trust and to fund and reestablish essential tribal operations are often delayed or completely thwarted during the early post-restoration stages, for a variety of reasons. Where some original rancheria lands remain, disputes frequently arise between those who remained on the rancheria during termination and those who left the grinding poverty of these rural enclaves to seek a better life elsewhere. With limited means of resolving these disputes, either through traditional peacemaking or more formal processes,<sup>110</sup> these tribes often find themselves mired in conflict at the very time when they most need cooperation in the difficult process of reversing the legacy of termination—the loss of lands and services, and the dismantling of tribal institutions.

3. The lack of supplemental "catch-up" funding to address newly restored tribes' inability to effectively compete with tribes that have never suffered termination

Even in the one area where restoration should bring the support and resources necessary for the restored tribe to gradually "catch up" for the years lost by termination, the California tribes have not fared well.<sup>111</sup> Although restoration makes a tribe eligible for assistance from the BIA, this new status is a mixed blessing. Newly restored tribes must immediately compete with all other tribes for increasingly limited public funds. Competition is stiff, and frequently one-sided, because the more established tribes have the personnel and administrative capacity to maintain a competitive advantage in fund-raising. This undermines the restoration process by impeding development of the political and administrative capacity necessary for the newly restored tribe to function as a government. Providing multi-year<sup>112</sup> "catch-up" funding on a per tribe basis, as a supplement to the funds for which each tribe would be eligible under existing public programs, could reduce or eliminate this disadvantage.

4. The lack of adequate technical assistance and support services to guide and assist the tribes in the difficult process of restoration

When restoration occurs, the BIA assumes new trust obligations to the restored tribe and new demands are made on the BIA's resources. Thus, in California, restoration forces understaffed and under-funded BIA agencies to take on new responsibilities at a time when Congress is determined to downsize the BIA and transfer most of its programs into the Tribal Priority Allocation (TPA). Restored tribes that need intensive technical assistance and support services in reconstituting their tribal governments, completing their base rolls and conducting their first post-restoration tribal elections, contracting for programs and services under Indian Self Determination and Educational Assistance Act, and initiating and completing fee-to-trust land acquisitions, are under-served, even where the BIA extends its best efforts. For example, at the time of restoration of the four Scotts Valley tribes, the BIA Central California Agency's service area encompassed more than 50 federally recognized tribes with lands distributed across 21 California counties.<sup>113</sup> It is, therefore, not surprising that the BIA is invariably unable to meet deadlines imposed in restoration statutes, whether they involve completing tribal rolls, reviewing constitutions, holding elections, or adopting plans for tribal economic development. This stalls tribal development, fosters dissension in tribal communities, and encourages political challenges that weaken and distract fragile interim governments. These failures are without remedy and can make a tribe vulnerable to extra-tribal interests that can derail or prevent responsible, planned tribal development.

## CONCLUSION

The termination policy, as implemented in California, was a policy of expediency designed to terminate federal benefits and services to most of California's smaller tribes, as quickly and as cheaply as possible. It failed in its touted goal of assimilating these tribal peoples into the American social and economic mainstream—putting them on an equal footing with other Americans. Instead, it thrust most of them into greater poverty, and divided their most essential asset—the tribal homeland, by ending its protected federal status. Although all branches of the federal government have now acknowledged its failure, Congress has not acted to reverse the continuing effects of the termination policy on the California tribes. Restoration of tribal status is only a beginning. Congress must act to provide the restored California tribes with the means, including adequate financial and technical support, to reestablish their tribal homelands and communities and to fully exercise their self-governing powers.

## ENDNOTES

1. See Message from the President of the United States Transmitting Recommendations for Indian Policy, H.R. Doc. No. 363, 91<sup>st</sup> Cong., 2<sup>nd</sup> Sess. (1970).
2. See, e.g., Menominee Restoration Act, 25 U.S.C. §§ 903 et seq.; Paiute Tribe of Utah Restoration Act, 25 U.S.C. §§ 761 et seq.; Restoration of the Wyandotte, Ottawa, Peoria and Modoc Tribes of Oklahoma, 25 U.S.C. §§ 861 et seq.; Cow Creek Band of Umpqua Tribe of Indians Recognition Act, 25 U.S.C. §§ 712 et seq.; Grand Ronde Restoration Act, 25 U.S.C. §§ 713 et seq.; Coos, Lower Umpqua, and Siuslaw Restoration Act, 25 U.S.C. §§ 714 et seq.; Klamath Indian Tribe Restoration Act, 25 U.S.C. §§ 566 et seq.; Siletz Indian Tribe Restoration Act, 25 U.S.C. §§ 711 et seq.; Coquille Restoration Act, 25 U.S.C. §§ 715 et seq.; Ysleta Del Sur Pueblo Restoration Act, 25 U.S.C. §§ 1300g et seq.; Alabama and Coushatta Indian Tribes of Texas Restoration Act, 25 U.S.C. §§ 731 et seq.; Ponca Restoration Act, 25 U.S.C. §§ 9893 et seq.
3. In addition, the two rancherias that were apparently terminated pursuant to the 1964 amendments to the Rancheria Act remain terminated. See Appendix A.
4. The three tribes are the Wilton Miwok Indian Community, the Federated Indians of the Graton Rancheria, and the Mishewal Wappo Tribe of Alexander Valley. Other tribes may also meet these criteria, but the authors do not have direct knowledge of the state of those tribes.
5. See S. Rep. No. 330 to accompany S. 1747, A Bill Providing for the Restoration of Federal Recognition to the Ponca Tribe of Nebraska, and for Other Purposes, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. 1990 (Testimony of Eddie F. Brown, Assistant Secretary - Indian Affairs).
6. Criteria 4 was not an issue in the 1994 legislative restoration of either the Auburn Indian Community or the Paskenta Band.
7. The California Indian Assistance Program (CIAP) is part of the Community Affairs Division of the California Department of Housing and Community Development (HCD). Located in Sacramento, CIAP is involved primarily in rural areas assisting *both* federally recognized California Indian tribal governments and California Indian communities that are not federally recognized, including terminated California tribes.
8. See 25 C.F.R. § 83.3(e). Unacknowledged tribes can request technical assistance pursuant to 25 C.F.R. § 83.5(c).
9. Three other terminated tribes (the Guidiville Indian Community, the Lytton Indian Community and the Mechoopda Tribe of the Chico Rancheria) eventually joined this effort and were restored along with the Scotts Valley Band in Scotts Valley Band of Pomo Indians v. United States, No. C-86-3550 VRW (N.D. Cal. 1992).
10. Id.

11. Robert N. Clinton et al., American Indian Law, (3<sup>rd</sup> Ed. 1993), 158; see H. Con. Res. 108, 83<sup>rd</sup> Cong., 1<sup>st</sup> Sess., 67 Stat. B-132 (1953).
12. See Wilkinson & Biggs, The Evolution of the Termination Policy, 5 Am. Indian L. Rev. 139, 152 (1977).
13. See, e.g., Governing Council of Pinoleville Indian Community v. Mendocino County, 684 F.Supp. 1042 (N.D. Cal. 1988).
14. Cary McWilliams, California: the Great Exception, (Peregrine Smith, Inc., 1976) at 25-26.
15. 9 Stat. 452 (1850).
16. Cong. Globe 32<sup>nd</sup> Cong., 1<sup>st</sup> Sess. 2103. In most cases, the tribes' aboriginal title was extinguished by the Act of March 3, 1851 ch. 41, 9 Stat. 631 (1851), which required every person "claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government" to present their claims within two years. Most tribes failed to assert their aboriginal title within the two-year period, largely because the Indians were not notified of the Act and were not aware of its applicability to their claims. In the case of the parties to the unratified treaties, those tribes did not know until 1905 that the treaties they signed were not ratified, and thus had no idea that they needed to protect their aboriginal title.
17. H.R. Rep. No. 801, 103d Cong., 2<sup>nd</sup> Sess, 2 (1994).
18. Id. at 1-2.
19. In 1853 Congress passed the Act of March 3, 1853, to provide for the survey of the Public Lands of California. Section 6 of that Act stated that Indian tribes then in possession of any tract of land would be protected from losing their occupancy rights to non-Indians under the Homestead and Preemption laws of 1841. 10 Stat. 244.
20. See the report of C.E. Kelsey to the Commissioner of Indian Affairs (hereinafter "Kelsey Report"), attached hereto as Exhibit 1, at 2.
21. Helen Hunt Jackson, A Century of Dishonor, (originally published by Harper and Brothers in 1881, now available from the University of Oklahoma Press, 1995).
22. Act of March 3, 1905, 33 Stat. 1048, 1058.
23. See Kelsey Report at 2.
24. Kelsey reported that if the Indians were able to make the land productive, they faced eviction by nearby non-Indian landowners:

It is not strange that the Northern California Indians have ceased to try to have

gardens, when any appearance of thrift is warrant for their ejection from the premises. Indeed, most of them at the present time are living on land where, for lack of water or worthlessness of the soil, gardens are impossible. Most of the Indians have now been crowded out of anything like good soil and are found in waste places not having value enough to attract anyone else. It is now a matter of difficulty for an evicted Indian to find any place of refuge, except in other Indian settlements already overcrowded.

See Kelsey Report at 9.

25. Id. at 15.

26. Id.: "It seems clear to your special agent that the Northern California Indians have not had a 'square deal,' and that it is not too late to do belated justice. The landless Indians cannot be placed in status quo ante, but they can be given what is sometimes expressed as 'a white man's chance,' and it ought to be possible to put an end to the periodical wiping out of Indian children."

27. Id. at 23-24.

28. Id. at 16-22, 23-24. Many of these reservations had been created by the Mission Indian Relief Act of 1891, 26 Stat. 712. See also H.R. Rep. No. 801, 103d Cong., 2<sup>nd</sup> Sess., 2 (1994).

29. Letter from the Secretary of the Interior, dated April 2, 1906, to the Senate Committee on Indian Affairs.

30. 34 Stat. 325 (1906).

31. See the Act of April 30, 1908, Pub. L. No. 60-104, 35 Stat. 70, at 76; the Indian Appropriation Act of March 3, 1909, Pub. L. No. 60-316, 35 Stat. 781; the Indian Appropriation Act of April 4, 1910, Pub. L. No. 61-114, 36 Stat. 269, at 273; the Indian Appropriation Act of March 3, 1911, Pub. L. No. 61-454, 36 Stat., 1058, at 1062; the Indian Appropriation Act of August 24, 1912, Pub. L. No. 62-335, 37 Stat. 518 at 523; the Indian Appropriation Act of June 30, 1913, Pub. L. No. 63-4, 38 Stat. 77 at 86; the Appropriation Act of August 1, 1914, Pub. L. No. 63-159, 38 Stat. 582, 589; the Appropriation Act of May 18, 1916, Pub. L. No. 64-80, 39 Stat. 123, at 132. Subsequent annual appropriations through 1933 totaled approximately \$290,000 for the purchase of land for homeless California Indians.

32. 25 U.S.C. §§ 461 et seq.

33. 25 U.S.C. § 465.

34. See, "Reservation Data, California, 1951," reproduced in Hearings: A Review of California Indian Affairs, House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, 85th Cong., 1st Sess., May 24, 1963, Serial No. 10, pp. 186, et seq.

35. See Sherburn F. Cook, The Population of the California Indians, 1769-1970 (University of California Press, 1976), 62, 67. See also, C.H. Merriam, The Indian Population of California, *American Anthropology*, 594-596 (1905).
36. See, e.g., "The Status of the Indian in California Today, a Report by John G. Rockwell, Superintendent of the Sacramento Agency to the Commissioner of Indian Affairs," Sacramento Indian Agency, 1944.
37. See, e.g., S. Tyler, A History of Indian Policy, (Washington: Government Printing Office, 1973), 147, 151-88. See also, Deposition of Leonard M. Hill, taken in Duncan v. U.S.A., No. 10-75 (Ct. of Cl.), and Duncan v. Andrus, No. C-71-1572 WWS (N.D. Cal.), on September 2, 1975, at 23, 29-34, excerpts of which are submitted herewith as Exhibit 2 (hereafter, "Hill Deposition").
38. In a document (National Archive Record Group 75, CCF 1940-57, 59A-643—Records for 1953-54) entitled "General Withdrawal Programming, Sacramento Area," dated July 1, 1952, the BIA outlined in detail its plan for withdrawal from California and concluded: "It is our opinion that all groups in California are ready for complete withdrawal of Bureau responsibility, assuming that these responsibilities and services [currently being provided by the BIA] will be transferred to the Indians themselves, local or state governments or to other auspices and that safeguards provided in the pending California Withdrawal Bill are retained." (Emphasis added.) Id. at 83.
39. Statement, dated June 13, 1952, by Oliver La Farge, President, AAIA, on legislation (S. 3005, H.R. 7490, and H.R. 7491) "To Facilitate the Termination of Federal Supervision Over Indian Affairs in California," at 9.
40. A more comprehensive history of the hearings, reports and bills that preceded the Rancheria Act is set out as Appendix A.
41. H. Con. Res. 108, 83<sup>rd</sup> Cong., 1st Sess., 67 Stat. B-132 (1953).
42. Id.
43. See United States v. Burland, 441 F.2d 1199, 1202 n. 4 (9<sup>th</sup> Cir.), cert. denied, 404 U.S. 842 (1971) (listing termination statutes passed subsequent to H.R. Con. Res. 108).
44. The Act of August 15, 1953 is widely known as "Public Law 280" because it was originally enacted as Pub. L. No. 83-280. It is now codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360.
45. The States originally included in Public Law 280 were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.
46. See State Advisory Commission on Indian Affairs, "Final Report to the Governor and the Legislature," (1969), at 9: "The special Johnson-O'Malley funds for Indian education were withdrawn over a five-year period, but other federal services to Indians were terminated by

1955.”

47. The first Termination Proclamation published pursuant to the Rancheria Act appeared on April 11, 1961, and applied to Buena Vista, Cache Creek, Mark West, Paskenta, Ruffey's Rancheria, Strawberry Valley, and Table Bluff. See 26 Fed. Reg. 3073.

48. See State Advisory Commission on Indian Affairs, *supra* note 46, at 22.

49. See excerpt from the Deposition of Maurice Babby, attached hereto as Exhibit 3, at 99-100; see also Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs (June 3, 1957) for further background information on conditions of the individual rancherias slated for termination.

50. In its report to the California Legislature, the special Senate Interim Committee on California Indian Affairs set forth specific problems that needed to be addressed and resolved prior to termination. (Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs (June 3, 1957), 14-21.) The Committee's concern that the government make full disclosure of the effects of termination is reflected in its recommendation that “[a] statewide education and orientation program should be undertaken under the direction of qualified educators to fully inform all Indians as to the nature and extent of their rights and to orient them to special problems which will be presented to them in the event of termination of federal supervision.” Id. at 15.

51. 104 Cong. Rec. 15205 (1957).

52. 104 Cong. Rec. 15232 (1958).

53. S. Rep. No. 1874, 85<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1-2 (1958).

54. 104 Cong. Rec. 16566; 104 Cong. Rec. 18234.

55. Pub. L. No. 85-671, 72 Stat. 619 (1958).

56. See id., § 3(a)-(c). The 1964 Act transferred some of the section 3(c) duties from the Interior Department to the Department of Health Education and Welfare (HEW) (now Health and Human Services), and required that sanitation systems (in addition to water facilities) be installed before termination. In 1959, Congress had authorized, but not required, HEW to complete sanitation and domestic water systems on Indian reservations. Act of July 31, 1959, Pub. L. No. 86-121, 73 Stat. 267, 42 U.S.C. § 2004(a). The effect of the 1964 amendment was to retroactively mandate the installation of sanitation facilities on the affected rancherias. Rancheria Act § 10(b).

57. Pub. L. No. 85-671, § 9 (1958).

58. Duncan v. Andrus, 517 F.Supp. 1, 3 (N.D. Cal. 1977).

59. The Act's permissive nature was further clarified by its legislative history and subsequent court decisions. See *id.*; Duncan v. United States, 667 F.2d 36 (Ct. Cl. 1981); Table Bluff Band of Indians v. Andrus, 532 F.Supp. 255 (N.D. Cal. 1981); Smith v. United States, 515 F.Supp. 56 (N.D. Cal. 1978). The Department of the Interior (DOI) initially concurred in this interpretation of the Rancheria Act as being non-mandatory. See DOI Solicitor's memorandum to the Commissioner of Indian Affairs, dated August 1, 1960, stating (at page 4) that, "[t]he bill as enacted is not mandatory." DOI later reversed its earlier interpretation of this aspect of the Rancheria Act, however, when it promulgated new regulations to govern the termination process in 1965. See, e.g., the former 25 C.F.R. § 242.3(d), n. 1 (1977). These regulations were voided in Kelly v. Department of the Interior, 339 F. Supp. 1095 (E.D. Cal. 1972), on the ground that they were promulgated in violation of the Administrative Procedure Act.

60. Pub. L. No. 88-419 (1964).

61. See, e.g., H.R. Rep. No. 1305, 88<sup>th</sup> Cong., 2<sup>nd</sup> Sess. at 3 (1964).

62. See Appendix B.

63. See, e.g., Smith, 515 F.Supp. at 60; Duncan v. Andrus, 517 F.Supp. 1, 6 (N.D. Cal. 1977); Duncan, 667 F.2d at 44-45; Table Bluff Band of Indians, 532 F.Supp. at 259.

64. See Smith, 515 U.S. at 57; Duncan v. Andrus, 517 F.Supp. at 4; Duncan v. United States, 667 F.2d at 44; Table Bluff Band of Indians, 532 F.Supp. at 258.

65. These regulations were first published June 9, 1959, and codified at 25 C.F.R. Part 242. Though the regulations contemplated that proposed distribution plans would be prepared by the Indians affected by the plan, in practice BIA personnel prepared all of the distribution plans. In 1965, successor regulations were promulgated to implement the 1964 amendments to the Rancheria Act, but were subsequently voided. See Kelly, *supra* note 59.

66. See Pub. L. No. 85-671, § 2, 72 Stat. 619 (1958).

67. Defendants Watt, Smith, Finale and Burcell Answers to Plaintiffs' Second Set of Interrogatories, filed September 8, 1981, in Tillie Hardwick v. United States, No. C-79-1710 SW (N.D. Cal.)(3/14/89), at 2, Answer No. 1.

68. 25 C.F.R. §§ 242.4-242.5 (1977).

69. 25 C.F.R. § 242.6 (1977).

70. Hill deposition at 34-36; see also, Memorandum of Sacramento Area Director to Area Indian Advisory Board, dated October 8, 1976, (attached hereto as Exhibit 4) regarding a meeting held on August 26, 1976, concerning Area Office funding, and accompanying Transcription of August 26<sup>th</sup> Meeting. The Memorandum states that "[m]oney spent in completing distribution plans of rancherias being terminated came from the area's regular annual budget, even though Congress

authorized appropriations for termination costs under the Rancheria Act of 1958 and the amendment in 1964." Id. at 1.

71. Id. at 3: "The BIA never went in for money under that authorization [under the Rancheria Act], so in effect what the BIA did during this period was to take program money from the nonterminated Rancherias and spent them [sic] on terminated Rancherias reducing the amount of dollars available for those reservations and rancherias that were not in the process of terminating."

72. See, e.g., Bureau of Indian Affairs, "Study of Wilton Rancheria, Nov. 1952," attached hereto as Exhibit 5.

73. See Rennard Strickland, ed., Felix S. Cohen's Handbook of Federal Indian Law, 1982 ed., (Charlottesville, Va.: The Michie Co., 1982), 174-175.

74. Hill deposition at 65-69.

75. Hill deposition at 67. The BIA installed water systems and subdivided the rancherias under section 3(c). The Indian Health Service (IHS) installed plumbing and waste disposal facilities under Pub. L. No. 86-121 prior to 1964, and under Section 3(c) after 1964, which made mandatory the provision of such facilities to terminating rancherias. In every case, however, the IHS installed inside plumbing and septic systems after the BIA had conducted their surveys, without conforming lot sizes to local health code requirements. Therefore, notwithstanding the IHS Policy to construct the facilities according to state and local sanitary code requirements, the IHS was powerless to change a lot's size if it was inadequate under local requirements to accommodate a septic system's leach lines. Thus, the IHS policies could not remedy the BIA's failure to consider local requirements.

76. Declaration of Evangeline Duncan in Support of Plaintiff's Motion for Summary Judgment, submitted in Tillie Hardwick v. United States, No. C-79-1710 SW (N.D. Cal.)(3/14/89), at 5-6.

77. "A Plan for the Distribution of the Assets of the Graton Rancheria, According to the Provisions of Public Law 85-671, Enacted by the 85th Congress, Approved August 18, 1958," at 1.

78. Id. at 2.

79. See, e.g., the plans for the Potter Valley, Redwood Valley, North Fork, Pinoleville, Scotts Valley, Wilton, Rohnerville, Smith River, Picayune, and Indian Ranch Rancherias.

80. Hill deposition at 55, 74.

81. 25 C.F.R. § 242.10.

82. Babby deposition at 80.

83. "Graton Rancheria: Completion Statement," at 1.
84. 25 C.F.R. § 242.10. The BIA's position as to the legal effect of the publication of a termination proclamation was somewhat contradictory and unclear, and changed over time. In practice, rancheria assets, primarily deeds to rancheria real property, were routinely issued to distributees and recorded in the county recorders' offices before the proclamations were published. Thus, the completion statements all recite the date that the deeds were issued and recorded. After June 25, 1975, the Commissioner of Indian Affairs changed his position regarding when the federal government's trust duty to the rancherias was terminated, concluding that the provisions of sections 2(d), 10(b) and 11 did not apply until the Section 3 improvements had been satisfactorily completed, even in those cases where a termination proclamation had been published. See the June 25, 1975 memorandum expressing the Commissioner's policy. Of course, this change in policy implicitly recognizes that termination proclamations had been published for some rancherias on which all actions and/or improvements set forth in the distribution plans had not been satisfactorily completed.
85. See, e.g., Pub. L. No. 85-671, § 9 (1958).
86. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 660 (9<sup>th</sup> Cir. 1975) (citations omitted) (emphasis added).
87. See, e.g., United States v. Mason, 412 U.S. 391 (1973); Manchester Band of Pomo Indians v. United States, 363 F. Supp. 1238 (N.D. Cal. 1973).
88. See Duncan v. Andrus, 517 F. Supp. at 6; Smith, 515 F. Supp. at 59.
89. See cases cited in Endnote 59, *supra*.
90. 5 U.S.C. §§ 551 *et seq.*
91. See cases cited in Endnote 59, *supra*.
92. See Appendix B.
93. See, e.g., Duncan v. United States, 517 F. Supp. at 4 (noting that 77% of the Robinson Rancheria land had passed out of Indian ownership following termination). No comprehensive study has been completed on the amount of land that passed out of Indian ownership as a result of the termination of California tribes. A study conducted in 1972 indicated that at least half of the lands of most of the terminated rancherias had passed out of Indian ownership. See Vernon T. Johnson, California Rural Indian Health Board, "California Indian Rancheria Task Force Report," (1972). In general, termination resulted in the rapid transfer of Indian lands to non-Indian ownership. See Strickland, ed., *supra* note 73, at 181-182.
94. See, e.g., Table Bluff Band of Indians, 532 F. Supp. at 261.

95. See, e.g., id. at 261.
96. See, e.g., Smith, 515 F. Supp. at 61.
97. See, e.g., Duncan v. United States, 667 F.2d at 47-49; Smith, 515 F. Supp. at 60.
98. See, e.g., Stipulation for Entry of Judgment filed in Tillie Hardwick v. United States, No. C-79-1710 SW (N.D. Cal.) (7/21/83), at 4.
99. See Appendix B.
100. See Auburn Indian Restoration Act, Act of October 31, 1994, 108 Stat. 4533, 25 U.S.C. §§ 1300l et seq.; and Paskenta Band Restoration Act, Act of November 2, 1994, 108 Stat. 4793, 25 U.S.C. §§ 1300m et seq.
101. See Message from the President of the United States Transmitting Recommendations for Indian Policy, H.R. Doc. No. 363, 91<sup>st</sup> Cong., 2<sup>nd</sup> Sess. (1970); see also 25 U.S.C. § 2502 (f) (“Congress has expressly repudiated the policy of terminating recognized Indian tribes and has actively sought to restore recognition to tribes that previously have been terminated.”)
102. The State of California, realizing that the Indians were ill-prepared for termination and that termination of federal supervision without adequate planning and financial support would impose increased social and economic burdens on the State, took the extraordinary step of creating a special legislative committee with broad investigative powers to study and report to the California Legislature on these matters. See Resolution No. 115 of the 1953 Regular Session of the California Legislature, as amended by Senate Resolution No. 33 of the 1953 Regular Session; see also Senate Resolution No. 124 (Senate Journal, June 10, 1953, Page 4125).
103. See Duncan v. Andrus, 517 F. Supp. at 4, 6; Smith, 515 F. Supp. at 60, 62; Table Bluff Band of Indians, 532 F. Supp. at 259.
104. See, e.g., Smith v. United States, No. C-74-1016 (N.D. Cal.), Order entered May 5, 1988, awarding damages for denial of BIA housing assistance and state and local sales taxes; see also, Duncan v. United States, No. 10-75 (U.S. Cl. Ct.), Settlement Agreement, January 9, 1991, wherein the United States agreed to pay money damages to individual rancheria residents, provide new housing subject to stated conditions, and to construct water supply and wastewater disposal facilities.
105. See § I of the ACCIP Trust and Natural Resources Report.
106. See, e.g., the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001, and the National Historic Preservation Act, 16 U.S.C. § 470w.
107. See note 93, supra.

108. See, e.g., Governing Council of Pinoleville Indian Community v. Mendocino County, 684 F. Supp. 1042 (N.D. Cal. 1988).

109. For example, in the case of the Paskenta Rancheria, only two distributees and dependent members were listed in the distribution plan, but subsequent information obtained during the tribe's restoration process identified at least 60 tribal members who resided elsewhere. These tribal members had moved away from the Rancheria in order to hold down regular or seasonal employment. Though residing off the Rancheria, many of them returned to hunt, fish, bury their dead, and attend annual tribal gatherings.

110. See § VIII of the ACCIP Community Services Report (discussing the lack of tribal courts in California).

111. In 1993, 10 years after entry of the judgment in Tillie Hardwick v. U.S.A., No. C-79-1710-SW (N.D. Cal.), "un-terminating" 17 California rancherias, the Hardwick tribes collectively organized to petition Congress for supplemental base level funding, which should have been provided at the time of their restoration, to assist them in completing the process of reconstituting their tribal governments and administering essential tribal governmental programs in the areas of education, housing, land acquisition, natural resources protection, and for other programs. The tribes requested \$7.5 million to be distributed over three years. Ukiah Daily Journal article entitled "\$7.5 million sought by California Indian Tribes," March 29, 1993. In 1994, the tribes finally succeeded in obtaining a supplemental congressional appropriation of \$1,700,000 to establish adequate base level funding for their governments using a tiered approach based on the population size of each tribe.

112. The four tribes restored under the judgments entered in Scotts Valley Band, et al. v. U.S.A., No. C-86-3660 VRW (N.D. Cal.), received \$600,000 in FY 1991, \$538,000 in FY 1992, and in FY 1993, requested \$600,000. See February 12, 1992 letter from Assistant Solicitor Scott Keep to Stephen Quesenberry, California Indian Legal Services.

113. A November 1972 Department of the Interior report entitled Functions of the Bureau of Indian Affairs, Sacramento Area discussed creation of the Central California Agency, with broad geographic and tribal trust responsibility, in these terms: "... the central portion of the State, now known as the California Agency, and for which it is proposed to establish an agency, in fact has 50 per cent of the Indians living on trust lands; 43 per cent of the total membership of bands or tribes; 47 per cent of the reservations and rancherias and 50 per cent of the public domain allotments and purchased properties in the State." Id. at 62.

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De Facto Parent, Tamara Martinez

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

(SITTING AS JUVENILE COURT)

In re Pulido/Young Minors

) Case No. 208647-654

)

)

) ORDER APPOINTING COUNSEL,

) GRANTING INTERVENTION

) AND INVALIDATING PROCEEDINGS

) (Indian Child Welfare Act,

) 25 U.S.C. § 1901 et seq.)

Upon reviewing the petition for appointment of counsel, intervention and invalidation of proceedings filed by Tamara Martinez, de facto parent of Vanessa P., and her declaration in support of said petition, and finding no cause to reject such petition, the court makes the following **FINDINGS AND ORDERS**:

(1) Vanessa P. is an "Indian child" under the Indian Child Welfare Act. (25 U.S.C. § 1903(4).)

(2) Tamara Martinez is and has been the "Indian custodian" of Vanessa P. under the

Indian Child Welfare Act. (25 U.S.C. § 1903(6).)

(3) The instant action is a “child custody proceeding” governed by the Indian Child Welfare Act as well as state law. (25 U.S.C. §§ 1901 et seq., 1903(1).)

(4) Tamara Martinez is indigent.

(5) Ms. Martinez is entitled to court-appointed counsel under 25 U.S.C. § 1912(b) and is entitled to intervene in this proceeding under 25 U.S.C. § 1911(c).

[OPTIONAL] (6) Tamara Martinez is likewise an indigent de facto parent of Vanessa P., and due process requires that counsel be appointed to represent Ms. Martinez.

(7) The court hereby GRANTS Tamara Martinez’ petition for court-appointed counsel and appoints \_\_\_\_\_  
counsel for Ms. Martinez.

(8) The court clerk shall certify this appointment of counsel under 25 U.S.C. § 1912(b) and relay information of said appointment to the Secretary of the Interior forthwith.

(9) The court hereby GRANTS Tamara Martinez’ petition for intervention under 25 U.S.C. § 1911(c).

(10) The court clerk shall provide Ms. Martinez’ court-appointed counsel a complete copy of the court’s case file, and add her counsel to the service list.

(11) The court likewise GRANTS Ms. Martinez’ petition for invalidation of these child dependency proceedings concerning the minor Vanessa P., on grounds that relevant provisions of the Indian Child Welfare Act (at 25 U.S.C. § 1912) have been violated. (25 U.S.C. § 1914.)

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(12) Social Services is hereby ORDERED to return the minor, Vanessa P., to Ms.

Martinez immediately.

Dated: \_\_\_\_\_

IT IS SO ORDERED.

By: \_\_\_\_\_  
Judge/Referee \_\_\_\_\_

## APPENDIX A

The following is a comprehensive history of the hearings, reports and bills that preceded the passage of the Rancheria Act in 1958.

Discussion of terminating the trust responsibility between the United States and Indian tribes began in earnest after the resignation of Commissioner John Collier in 1945. At hearings held by the Senate Committee on Civil Service in 1947, the BIA's Acting Commissioner testified that, "Bureau services could be curtailed or eliminated as to certain tribes and reservations, by groups." The Commissioner outlined four criteria for measuring a tribe's readiness for withdrawal of federal services: (1) degree of acculturation; (2) economic resources and condition; (3) the tribe's willingness to be relieved of federal control; and (4) the State's willingness to take over. Tyler, *supra* note 18, at 163-164. Applying these criteria, he segregated tribes into three groups: Group I could be released at once from federal supervision; Group II could be released in 10 years; and Group III in the indefinite future.<sup>1</sup>

Sensitive to Congressional pressure for withdrawal of services to Indians and curtailment of the Indian Office's bureaucracy, the BIA in 1948 set up a series of conferences in its regional offices.<sup>2</sup> The goal of these conferences was to formulate a long-range program, the objective of which would be "eventual discharge of the Federal Government's obligation, legal, moral, or otherwise, and the discontinuance of Federal supervision and control at the earliest possible time compatible with the government's trusteeship function."<sup>3</sup> This policy emphasized a procedure which would withdraw trusteeship on a measured, step-by-step basis.

In 1951, the California Legislature joined in the call for termination. It urged the President and Congress "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 . . . ."<sup>4</sup>

The BIA's proposals for gradual withdrawal were unacceptable to forces in Congress. There was a suspicion that the BIA was only paying lip-service to termination goals, and that it had no desire to work itself out of a job. Accordingly, a resolution was passed in the House in 1952, which "authorized and directed" the Interior Committee to conduct a full and complete investigation and study of the activities and operations of the Bureau of Indian Affairs, with

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<sup>1</sup> W. Zimmerman, Jr., "The Role of the B.I.A. since 1933," 311 *The Annals, American Academy of Political Science* 31, 36 (May, 1957).

<sup>2</sup> *Id.* at 166.

<sup>3</sup> *Id.*

<sup>4</sup> S. J. Res. No. 29, May 18, 1951, as set forth in Progress Report to the Legislature, California Senate Interim Committee on Indian Affairs, (January, 1955) at p. 17.

particular reference to BIA's preparation for termination. The resolution further required the Committee to prepare "a list of tribes . . . qualified for full management of their own affairs," as well as "legislative proposals designed to promote the earliest practicable termination of all Federal supervision and control over Indians."<sup>5</sup>

A special subcommittee of the Interior Committee was appointed to carry out the mandate of H. Res. 698.<sup>6</sup> In response to inquiries posed by that Committee, the Bureau produced an exhaustive report (1500 pages with maps and exhibits), which was published as House Report No. 2503. The report treated all California tribes and groups as one entity, and slated all of them for termination.<sup>7</sup>

The first bills to terminate federal supervision over California Indians<sup>8</sup> were introduced in both the House and the Senate in 1952, with the support of the Interior Department and the California Legislature.<sup>9</sup> These bills did not pass, but would have terminated the status of all California Indian tribes, except for the Agua Caliente band.

In 1953 the California Legislature renewed its call for BIA withdrawal from California. It urged Congress "to take such steps as are necessary to effect a termination of the authority of the Bureau of Indian Affairs, particularly in the State of California."<sup>10</sup>

In that same year, Congress officially adopted a policy of termination.<sup>11</sup> The express goal of termination was

to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, [and] to end their status as wards of the United States . . .

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<sup>5</sup> H. Res. 698, 82<sup>nd</sup> Cong., 2d. Sess., July 1, 1952.

<sup>6</sup> See generally, Report with Respect to the House Resolution Authorizing the Committee on Interior and Insular Affairs to Conduct an Investigation of the Bureau of Indian Affairs, H.R. Rep. No. 2503, 82<sup>nd</sup> Cong., 2d. Sess., December 15, 1952.

<sup>7</sup> Id.

<sup>8</sup> S. 3005, H.R. 7490, H.R. 7491.

<sup>9</sup> 98 Cong. Rec. 3921-3923 (April 10, 1952); S. J. Res. No. 29, Cal. Stats. 1953, (April 30, 1953).

<sup>10</sup> Assem. J. Res. No. 38, Cal. Stats. 1953, reproduced in 1955 Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs (June 3, 1957).

<sup>11</sup> H. Con. Res. 108, 83<sup>rd</sup> Cong., 1st Sess., 67 Stat. B-132 (1953).

The Resolution further declared it "to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas . . . should be freed from Federal supervision and control . . .," and that the BIA should thereafter be abolished in those states. Congress slated at least five additional Tribes in other states for termination. Finally, the Resolution directed the Secretary to report his recommendations for terminal legislation to Congress before January 1, 1954.

In response, the Department of the Interior hastily prepared a legislative package to effect the termination of Indians and Indian Tribes mentioned in the Resolution.<sup>12</sup> These bills were introduced in January of 1954, and were the subject of lengthy joint hearings.

The draft legislation was mandatory in nature, giving California tribes no choice about whether or not they would be terminated. It applied to all California Indians, except for the Tribes along the Colorado River.

Although six other termination bills were enacted during the eighty-third Congress, neither of the California bills was enacted, probably because the State of California and California Tribes vigorously opposed them.<sup>13</sup> One of the principal concerns expressed by California officials and Indians was that the BIA lacked funds and staff to perform many of the tasks which the bills mandated prior to conveyance of Tribal assets, and that these duties would be thrust upon state agencies which were not adequately equipped to perform them. State officials also objected to provisions which would have maintained the tax-exempt status of certain lands for various lengths of time.<sup>14</sup>

Shelving of the 1954 bills did not end consideration of termination proposals for California. The California Senate had already created an Interim Committee on California Indian Affairs, which undertook an exhaustive study of the problems associated with withdrawal of federal supervision.<sup>15</sup> In the latter part of 1954, that Committee held hearings, compiled a significant body of data on the termination problem, and issued a lengthy "Progress Report to the Legislature" in January of 1955.<sup>16</sup> The report contained a set of conclusions and recommendations which, among other things, emphasized the need for completion of physical improvements on Indian properties before their distribution to individual Indians. These

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<sup>12</sup> Joint hearings on S. 2749 and H.r. 7322 Termination of Federal Supervision over Certain Tribes of Indians. 83<sup>rd</sup>. Cong., 2<sup>nd</sup> Sess., Senate and House Subcommittees on Interior and Insular Affairs, 1954, p. 42 (hereafter "Joint Hearings.")

<sup>13</sup> See, e.g., S. J. Res. No. 4, Cal. Stats. 1954; see also, Joint Hearings, p. 360.

<sup>14</sup> See Joint Hearings, p. 360.

<sup>15</sup> S. Res. No. 115, (June 10, 1953).

<sup>16</sup> Progress Report to the Legislature, *supra* note 10.

improvements were to include roads built "to such a standard as will make the same acceptable for maintenance by the counties," survey of the boundaries of trust lands (as well as individual parcels therein), and "the immediate completion of irrigation and other work projects deemed necessary on the trust properties in order that the same will be in reasonably usable condition at the time of termination."<sup>17</sup> Finally, the Committee recommended that any federal withdrawal legislation allow for separate consideration of each reservation or rancheria on a case-by-case basis.<sup>18</sup> The Senate Interim Committee gave extensive treatment to the withdrawal problem, and its report had a great impact on future termination legislation in Congress.

In 1957, four new "rancheria" bills were introduced in the House.<sup>19</sup> Later, another bill prepared by the California Senate Interim Committee on Indian Affairs was also introduced.<sup>20</sup>

These bills were referred to the House Subcommittee on Indian Affairs, which held hearings in May and June of 1957.<sup>21</sup> Nearly identical, each bill provided for the termination of several small rancherías, and directed the Secretary of the Interior to complete designated improvements prior to distributing any of a rancheria's assets. Each bill provided for the preparation of a plan for distributing the rancheria's lands and assets, whether by the Indians of the rancheria or by the Secretary, after "consultation" with them. Indians unhappy with the proposed distribution were given a right of appeal to the Secretary. After ruling on appeals and making revisions to the preliminary distribution plan, the Secretary was required to submit the plan to a referendum vote of the Indians named therein as distributees. The plan would be implemented only after it had been approved by a majority of the listed distributees.

During the hearings, each of the bills was amended by a provision that became §10(b) of the Rancheria Act, which provided that, upon distribution of each rancheria's assets, the distributees and their dependents would lose their status as Indians under federal law and would become ineligible for benefits and services provided by the United States "for Indians because of their status as Indians." This amendment was opposed by Congressman Sisk, sponsor of one of the draft bills, who thought that the addition of the termination language was unnecessary and betrayed his agreement with constituent Indians as to the bill's form.<sup>22</sup>

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<sup>17</sup> Id. p. 452.

<sup>18</sup> Id. pp. 458-459.

<sup>19</sup> H.R. 2576, H.R. 2824, H.R. 6364, and H.R. 2838.

<sup>20</sup> H.R. 9512: see also, Interim Committee on California Indian Affairs, "1957 Progress Report to the Legislature," 1957, at pp. 24-31.

<sup>21</sup> Hearings on H.R. 2576, 2824, 2838, and 6364, and those during the 85<sup>th</sup> Congress, 1st Session, appear in that Subcommittee's Serial 13, for 1957.

<sup>22</sup> Id. at pp. 97-100.

The bills were thereafter consolidated into one committee bill.<sup>23</sup> The consolidated bill named only 14 rancherias, rather than the 28 named in the four original bills. This reduction resulted from withdrawal of their bills by Congressmen Sisk and Engle because of their dissatisfaction with the Committee's amendments. The consolidated bill was passed by the House of Representatives on August 13, 1957.<sup>24</sup>

In the Senate, the California termination bill was passed on July 18, 1958,<sup>25</sup> with an amendment that increased the number of affected rancherias to 41.<sup>26</sup> The House concurred in the Senate amendments on August 7, 1958, and H.R. 2824 was signed by the President on August 18, 1958.<sup>27</sup>

The 1958 Act differed from the 1954 termination bills, in three significant ways: (1) it did not affect all California Indians, unlike the 1954 bills; (2) it was permissive in nature, while the 1954 bills would have been mandatory; and (3) it required the Interior Department to complete improvements on the rancheria before ending supervision, while the 1954 legislation contained no such feature.

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<sup>23</sup> H.R. 2824.

<sup>24</sup> 104 Cong. Rec. 15205 (1957).

<sup>25</sup> 104 Cong. Rec. 15232.

<sup>26</sup> S. Rep. No. 1874, 85<sup>th</sup> Cong., 2<sup>nd</sup> Sess., 1-2 (1958).

<sup>27</sup> 104 Cong. Rec. 16566; 104 Cong. Rec. 18234.

**APPENDIX B**  
The Rancheria Act  
Pub. Law 85-681  
August 18, 1958<sup>1</sup>

Tribes Listed in the Act	Current Status of Listed Tribe
1. Alexander Valley (Mishewal Wappo Tribe of Alexander Valley)	Remains terminated.
2. Auburn (United Auburn Indian Community)	Restored by legislation - Pub. L. No. 103-434, <i>codified at</i> 25 U.S.C. § 1300 <i>l et seq.</i>
3. Big Sandy (Big Sandy Rancheria of Mono Indians)	Restored by litigation - <u>Big Sandy Band v. Watt</u> , No. C-80-3787 MHP (N.D. Cal. 1989).
4. Big Valley (Big Valley Rancheria of Pomo and Pit River Indians)	Restored by litigation - <u>Tillie Hardwick v. United States</u> , No. C-79-1710 SW (N.D. Cal.) (Stipulation for Entry of Judgment, filed Aug. 2, 1983).
5. Blue Lake	Restored by litigation - <u>Tillie Hardwick</u> , <i>supra</i> .
6. Buena Vista (Buena Vista Rancheria of Me-Wuk Indians)	Restored by litigation - <u>Tillie Hardwick</u> , <i>supra</i> .
7. Cache Creek	Remains terminated.
8. Chicken Ranch (Chicken Ranch Rancheria of Me-Wuk Indians)	Restored by litigation - <u>Tillie Hardwick</u> , <i>supra</i> , (Stipulation for Entry of Judgment, filed 3/14/89).
9. Chico (Mechoopda Indian Tribe)	Restored by litigation - <u>Scotts Valley Band, et al. v. United States</u> , No. C-86-3660-VRW (N.D. Cal.) (Stipulation for Entry of Judgment, filed Jan. 6, 1992).

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<sup>1</sup> Tribes are listed as they appear in the Rancheria Act. If a tribe currently uses a different name, that name is included in parenthesis.

10. Cloverdale (Cloverdale Rancheria of Pomo Indians) Restored by litigation - Tillie Hardwick, supra.
11. Cold Springs (Cold Springs Rancheria of Mono Indians) Never terminated.
12. Elk Valley Restored by litigation - Tillie Hardwick, supra.
13. Guidiville Restored by litigation - Scotts Valley Band, et al. v. United States, No. C-86-3660-WWS (N.D. Cal.) (Stipulation for Entry of Judgment, filed Mar. 15, 1991).
14. Graton (Federated Indians of the Graton Rancheria) Remains terminated.
15. Greenville (Greenville Rancheria of Maidu Indians) Restored by litigation - Tillie Hardwick, supra.
16. Hopland (Hopland Band of Pomo Indians) Restored by litigation - Smith v. United States, 515 F.Supp. 56 (N.D. Cal. 1978).
17. Indian Ranch Remains terminated.
18. Lytton Restored by litigation - Scotts Valley Band, et al. v. United States, No. C-86-3660-WWS (N.D. Cal.) (Stipulation for Entry of Judgment, filed Mar. 22, 1991).
19. Mark West Remains terminated.
20. Middletown (Middletown Rancheria of Pomo Indians) Never terminated.
21. Montgomery Creek (one of the land bases of the Pit River Tribe) Never terminated.

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| 22. Mooretown (Mooretown Rancheria of Maidu Indians)           | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 23. Nevada City.   | Remains terminated.   |
| 24. North Fork (Northfork Rancheria of Mono Indians)           | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 25. Paskenta (Paskenta Band of Nomlaki Indians)                | Restored by legislation - Pub. L. No. 103-454, <i>codified at</i> 25 U.S.C. § 1300m <u>et seq.</u>  |
| 26. Picayune (Picayune Rancheria of Chukchansi Indians)        | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 27. Pinoleville (Pinoleville Rancheria of Pomo Indians)        | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 28. Potter Valley (Potter Valley Rancheria of Pomo Indians)    | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 29. Quartz Valley  | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 30. Redding  | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 31. Redwood Valley (Redwood Valley Rancheria of Pomo Indians)  | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 32. Robinson (Robinson Rancheria of Pomo Indians)              | Restored by litigation -<br><u>Duncan v. Andrus</u> , 517 F.Supp. 1 (N.D. Cal. 1977); <u>Duncan v. United States</u> , 667 F. 2d 36 (1981)(re: damages).    |
| 33. Rohnerville (Bear River Band of the Rohnerville Rancheria) | Restored by litigation -<br><u>Tillie Hardwick, supra.</u>  |
| 34. Ruffeys  | Remains terminated.   |
| 35. Scotts Valley (Scotts Valley Band of Pomo Indians)         | Restored by litigation -<br><u>Scotts Valley Band, et al. v. United States</u> , No. C-86-3660-WWS (N.D. Cal.)<br>(Stipulation for Entry of Judgment, filed |

- Mar. 15, 1991).
36. Smith River Restored by litigation -  
Tillie Hardwick, supra.
37. Strawberry Valley Remains terminated.
38. Table Bluff (Table Bluff Rancheria of  
Wiyot Indians) Restored by litigation -  
Table Bluff Band v. Andrus, 532 F.Supp.  
255 (N.D. Cal. 1981).
39. Table Mountain Restored by litigation -  
Table Mountain Rancheria Ass'n. v. Watt,  
No. C-80-4595 MHP (N.D. Cal. 1984).
40. Upper Lake (Upper Lake Band of Pomo  
Indians) Restored by litigation -  
Upper Lake Pomo Ass'n. v. Watt, No. C-75-  
0181 SW (N.D. Cal. 1979); See also Upper  
Lake Pomo Ass'n v. Andrus (1977).
41. Wilton (Wilton Miwok Indian  
Community) Remains terminated.

#### 1964 Amendments to the Rancheria Act

The El Dorado Rancheria and the Mission Creek Reservation were apparently terminated pursuant to the 1964 Amendments to the Rancheria Act. See 31 Fed. Reg. 9685 (1966) (El Dorado), and 35 Fed. Reg. 11272 (1970) (Mission Creek).

Several unoccupied Rancherias were sold following the 1964 Amendments: Colfax, Likely, Lookout, Strathmore, and Taylorsville. These sales did not affect the status of any tribe.

Aug 8, 1905 - 108

Hon. Commissioner of Indian Affairs,  
Washington, D. C.

Sir:

In the matter of the condition of the California Indians, I have the honor to report as follows: The Act of Congress approved June 30, 1905, contained the following provision:

That the Secretary of the Interior is hereby authorized to investigate, through an inspector, or otherwise, existing conditions of the California Indians, and to report to Congress at the next session some plan to improve the same.

Pursuant to the said provision the undersigned was duly appointed to make the investigation. The letter of instructions was received on the 6th day of August, 1905. Two days later the actual work in the field began and has been prosecuted uninterruptedly [sic] to the 8th of March.

The work necessary to secure complete and accurate data has proved to be much greater than was anticipated, and has required the services of your special agent practically day and night during the whole time. About December 25, 1905, your special agent received further instructions to investigate conditions pertaining to the Southern California reservations, a duty which was duly performed. As there are marked differences in the situation there and in Northern California, the Northern and Southern fields will be taken up separately in the order of official instructions.

Your special agent has visited and personally inspected almost every Indian settlement between the Oregon line and the Mexican Border, and has used every effort to make his inquiry complete and exhaustive.

California has sixty counties, fifty-five of which have Indian settlements. It has required a little less than 12,000 miles travel to visit these settlements, and as most of them are not near railroad lines, it proved impossible to hurry the inquiry beyond the speed of a horse.

The Act of Congress which provides for this investigation requires a report at the present session. This allows less than three days per county, and some of the counties have hundreds of Indians. It is therefore to be regretted that time was not available to make a hut to hut canvass, as that seems the best way to insure complete accuracy.

Your special agent has made a family census of the Indians north of Tshachapi, which he believes to be as complete as possible under the circumstances. Working under a great pressure as to time and being of necessity dependent upon third persons in a large measure for information, it is not expected that every Indian in the State has been enumerated.

Your special agent finds an Indian population in California of a little more than 16,500, of which 5,200 are reported as living upon reservations. Thirty-five hundred of these are in Southern California. There is thus a non-reservation population of about 11,300. Your special agent has examined their situation and cannot see that their condition is such as to be a matter of satisfaction either to the Government of the United States, or to the people of California. The Indian population of California a century ago cannot be stated accurately, as data for an accurate estimate are wanting. The census estimate of 1850 was 100,000. The estimates for 1800 vary all the way from 100,000 to 750,000. No well informed person estimates less than 150,000.

(Dr. C. Merriam)  
Dr. Hart Merriam of the Biological Survey, whose opportunities for examination have been exceptional, estimates 260,000. Every locality has its tale of hundreds of Indians fifty or even thirty years ago, where there is one now, and making due allowance for exaggeration, your special agent is inclined to believe Dr. Merriam's estimate well founded. A decrease in the Indian population of 94 per cent in a single century, and mostly within 40 or 50 years, is certainly exceptional and would seem to be a fact in which we can neither take pride nor escape responsibility.

In order to understand the present state of affairs, it is therefore necessary to go somewhat briefly into the history of Indian matters in this State. California is a very attractive land to us today, and it was equally attractive to our aboriginal predecessors. The food supply was abundant and the population probably larger than all of the rest of the United States. There was also a conglomeration of Indian races. More than 200 more or less distinct dialects were spoken, classified by ethnologists into 22 or 23 distinct linguistic stocks, as distinct from each other as the Chippewas are from the Sioux, or the Iroquois from the Narragansetts. Two of these distinct stocks disappeared prior to the American occupation, and one other is now confined to Oregon. Representatives of all of the remaining stocks survive to this day, as shown in the census schedule accompanying this report. The different stocks are almost without exception antagonistic and were formerly in a state of perpetual warfare. The California Indians were not very warlike, and their wars were very small affairs in comparison with those of the Indians of the plains. Indians speaking dialects of the same stock were usually friendly. Each California village was independent of all others, and there seems to have been but little idea of tribal organization.

The Mission period began in 1769, and ended with the secularization of the missions by the Mexican Government in 1834. The region covered by the missions extended from the Mexican line to Santa Rosa, and from the Pacific Ocean to the San Joaquin Valley. The completion of the great work done by the Franciscan Fathers in civilizing the Indians was not allowed by the Mexican Government. The Indians had complained bitterly of their state of dependence,

and yet when the dependence ceased they proved utterly unable to maintain themselves. Upon the spoliation of the missions a scramble took place for lands, and a feeble attempt was made to reserve some land for the Indians, which proved ineffective.

In the year before the secularization, 1834, the mission records showed some 34,000 converts in the mission strip. There were probably some unconverted Indians termed gentiles. Only about 5,000 descendants of these Mission Indians are alive today. Most of the decrease is understood to have taken place between 1834 and 1849. A few of the Indians who had come from the San Joaquin Valley returned there. In Southern California those who were able to return to the mountains thus saved themselves from extinction, but the great body of the Mission Indians undoubtedly perished where they had lived. Most of them died during the Mexican period, and not under that of the United States.

The Treaty of Guadalupe Hidalgo, which ceded California to the United States, guaranteed Mexican land titles in the ceded territory as they stood at the time of the transfer. Under Spanish and Mexican law Indians had certain rights to the lands they occupied and could not legally be evicted from them. It would (sic) seem that this right was an interest in land and one entitled to protection under the provisions of the Treaty of Guadalupe Hidalgo.

The Act of Congress which provided for the settlement of the titles to Spanish and Mexican grants imposed upon the commission appointed to make the settlement the duty of first setting apart for Indian use all lands occupied by them. It may therefore be assumed that Congress considered that the Indians had substantial rights. It was the duty of the commission to investigate and confirm the Indian title wherever Indians occupied lands included within the limits of a Spanish or Mexican grant.

Your special agent has found but two cases out of several hundred grants where this was done, Pauma and Santa Ynez, and in the latter case the terms of the settlement were so uncertain that an action is now pending in the state courts in regard to it. The new owners of the Spanish grants had to rely upon the Spanish law to sustain the validity of their titles, but were prompt to appeal to the American law to evict the Indians,--something they could not legally do under the terms of their grants. It is needless to say that the Indians were evicted, the most recent instance being Warner's Ranch.

Four-fifths of the California Indians, however, were not affected by Spanish grants, nor did they come under Spanish or Mexican influence, and their undoing began with the great gold excitement of 1849. When the United States came into full legal ownership of California in 1848, the Spanish or Mexican laws relating to Indians were not adopted, as has been erroneously stated. The policy of the United States adopted toward its new Indian wards

in all the ceded territory was exactly the same as everywhere else. The Indian ideas of land ownership are radically different from ours. Our Government has never acknowledged that the Indians owned their lands in fee simple, and in view of the Indian idea of land ownership, this is correct. But the United States has always recognized, and the Supreme Court has held, that the Indians have a right to occupy the land, which right is termed the Indian right of occupancy, a right which can be cancelled only by mutual agreement. All Indian lands in the United States, except in a portion of California, have been acquired by the Government of the United States, and acquired only by payment therefor. Even the land ceded by the Sioux after the great outbreak were paid for. The Indian right of occupancy was in the beginning recognized in California. The Government sent out a commission which made treaties with nearly all the Indian tribes in the State. Sixteen treaties were negotiated in Northern California and two in Southern California. These treaties were all very similar in text. The Indians agreed to cede their lands to the United States and to keep the peace, and to accept certain reservations described by notes and bounds in the treaties. The Government agreed to reserve forever for Indian use the lands described in the treaties, and to pay a certain specified price, payable in a great variety of things, such as provisions, live stock, and miscellaneous goods. The value of the goods thus promised the Indians in Northern California was about \$1,500,000, and the land reserved was about 5,500,000 acres, worth at the Government price of \$1.25 per acre, about \$7,000,000. In Southern California the goods promised were worth about \$500,000, and about 2,000,000 acres of land was reserved, worth at \$1.25 per acre, about \$2,500,000. Some of these reservations were laid out in the mining districts, and were strongly opposed by the miners. At that time, in 1851, Indian treaties were submitted to the Senate for ratification. As California had gathered men of influence from all over the land, the miner's protest carried such weight that the Senate rejected not only those treaties that affected the mining districts, but all the treaties. No effort seems ever to have been made to make new treaties, or in any way to acquire the Indian title from that day to this, nor have the California Indians ever received one cent for their rights in the lands which they have lost. The Osages, Cherokees, and other eastern tribes have received millions for precisely the same rights in land, not nearly so valuable, and no reason has been advanced why the California Indians alone, of all the Indians of America, should receive no compensation for their lands, except that as Spain did not acknowledge the land rights of any Indians who had not accepted the sovereignty of the King of Spain, and as we have come into the Spanish title through Mexico, therefore the United States is not bound to acknowledge the land rights. Though why the Indians should be bound by the laws of Spain now when they never were during the period of Spanish dominion is inexplicable to your special agent. The United States has, however, already acknowledged the Indian right of occupancy of nine-tenths of the Indians of the territory ceded by Mexico, and the Supreme Court seems to have settled the status for all Indians in the said territory in Pueblo cases. Moreover, the laws of Spain as to Indian land rights in the territory acquired via Mexico were precisely the same as in the territory of Louisiana in the lands acquired from Spain via France. The laws of France as to Indian lands in America did not differ essentially

from those of Spain, or for that matter of England though the English Colonists early discovered the practical advantages of buying the Indian rights. Just why this comparatively small band of Indians in California should be selected as the only one in the United States to be deprived of their land rights is still unexplained. The Indians did not understand the intricacies of our Governmental system, or the meaning of Senatorial ratification of a treaty. The Indians certainly understood that they had made a solemn agreement with the United States; and that they had sold their lands for a price. The Government has taken their lands and their reservations and paid nothing, and from an Indian standpoint, this constitutes a deliberate breach of faith, without palliation or excuse.

The consequences of this violation of faith have been disastrous to the Indians. The reservation system of today is an evil which we trust will be eliminated in time, but which had the merit of protecting the Indians from the first fierce on-rush of a frontier population. Deprived of such protection in California, the Indians were at a serious disadvantage, greatly increased by the fact that there was no legal way in which an Indian could acquire title to the land he occupied. For nearly forty years after the American conquest of California, that is from 1846 to 1884, an Indian could not acquire land under the Federal land laws. He was not a citizen and therefore could not take up land. He was not an alien and therefore he could not be naturalized and become a citizen. Hence the settlers had what might be termed a "cinch" on the Indian, and by the time the Indian allotment act was passed in 1887, there was no land left to allot, except in the extreme northern and eastern parts of the State. Something concerning Indian allotments will be said hereafter in this report.

In 1849, the great gold rush began. Within a year or two a considerable portion of the State was overrun by probably two hundred thousand miners. They were mostly men of the strongest and most vigorous type, well armed and masterful. A majority of them had inherited the prejudices and the stories of two hundred years of border warfare with the Indians. A large number of the Argonauts had come over land and had had desperate conflicts with the warlike Indians of the plains. They were, therefore, in no mood to acknowledge that Indians had any rights whatever, and as a rule acted consistently upon this theory. Opposed to the miners was a practically defenseless people (they had no fire-arms), and the entire Indian population of the mining regions could not have mustered 30,000 warriors. Under the circumstances, it is not strange that one of the most shameful chapters of American History ensued. Among the Argonauts there were some desperate characters, who were as willing to commit an outrage upon an Indian as upon any one else. The Indians would retaliate in the aboriginal fashion by killing the first white man they met, then followed swift and sure retribution. The miners would organize and the offending village would be "wiped out." Sometimes, especially east of the Sierras, conflict would arise from attacks upon caravans. The most frequent cause of these conflicts was the accusation that the Indians had stolen stock. The accusation was not always proved, but the nearest band of Indians usually suffered for it. Sometimes the charge was well founded and the Indians had made away with the stock. The Indians had no conception of private ownership of domestic animals or of private ownership of food and did not realize at first that different rules prevailed among the whites. In time the Indians learned to let the white man's effects alone, and the miners began to understand the comparatively harmless character of the California Indian.

The modus operandi of these affairs was very much the same. The Indian camp would be surrounded and rushed, usually at dawn, and men in ambush would shoot every Indian that appeared. At first few were spared, but as no one wished to kill the children, they were usually sold into slavery. Quite a number of raids are reported, especially into the Coast Range, their sole object, it seems, having been to secure slaves. Some Indians are reported to have been so held even after the legal extinction of slavery in the United States. More than 100 of these affairs between whites and Indians have been reported, and there is scarcely a locality from Tuna to Yontocket that has not its story of an Indian "battle." If all the stories told could be believed, they would indicate that more than 15,000 Indians were killed in these affairs, but the suspicion is strong that the white participants in telling the tale afterwards may have exaggerated the number of Indians involved as they did the dangerous character of the clubs and bows and arrows which constituted about the only weapons the Indians at that time possessed.

This state of affairs was not wholly unknown to the National Government. At first there were Government agents who made due reports to headquarters, and one of them issued a strong appeal to the people of California, but the agents were soon legislated out of office, and thereafter the Federal Government had little knowledge of the California Indians. The State Government also disclaimed any responsibility for them. An Indian could not sue in the state courts and his evidence was not admissible in a court of justice until 1872. As might be expected, the Indian spirit was soon crushed, and no Indian now dreams of attempting to protect his own rights in any way. There are no legal discriminations today against the Indians in California, but the temper of white juries in many counties is such that an Indian can seldom obtain justice.

One noticeable effect of the white settlement of California has been the introduction of many diseases theretofore unknown to Indians, and from the effects of which they are not free to this day. Smallpox has been very destructive to them in the past, and tuberculosis is prevalent among them now. Thousands of Indians have died of all sorts of these imported diseases, and the sanitary and other conditions under which Indians live, and which will be referred to hereafter, are such that death usually follows closely upon the attack of disease.

Another feature of civilization unknown among Indians prior to their acquaintance with the white race is the use of intoxicating liquors, and as the thirst for liquor seems innate among Indians, the problem of handling the liquor traffic among them is difficult.

The State of California has an excellent law against selling liquor to Indians, which law was enforced in some counties and disregarded in others. It is to be regretted that the recent decision of the Supreme Court of the United States has removed practically all the Indians in Northern California from the scope of the Federal laws. A large increase in open liquor selling is noticed, and the remnants of some bands seem to be trying to drink themselves to death before the law is changed. It is a pleasure to find that a majority of the California Indians are sober. The Indians who are addicted to liquor are apt

to hang around the towns, and thus fill a much larger place in the public eye than the sober Indians, who usually stay at home and are seldom seen. If a recommendation upon this subject is allowable, your special agent would earnestly recommend that the act be amended so as to meet the suggestions raised by the Supreme Court. It may also be feasible to provide for the summary cancellation of the Federal liquor license when the holder thereof shall be convicted of the offense of selling liquor to Indians, in any court of the United States, or of any state or territory. It is not expected that this would put an end to illicit liquor selling, but it would tend to throw the traffic out of the hands of the saloon-keepers who have friends on juries and political influences, into the hands of go-betweens who are not usually so circumstanced. It is not fair to say that a majority of the California saloon-keepers obey the law, but there are usually one or two in each locality who are willing to take the risk.

But neither the open slaughter of the California Indians in the period of "war," nor the ravages of disease, nor the effects of drunkenness, considerable as they all are, can explain the tremendous decrease of 84 per cent in the number of California Indians in but a little over one generation. We are so familiar with the idea that the Indian race is fading away before our own that inquiry is seldom made into the details of the process by which we fade them. In the case of the California Indians, the most potent factor has been, in the opinion of your special agent, the gradual and sure aggression on the part of the whites, the progressive absorption of the Indian's every means of existence. Perhaps this requires some explanation. In aboriginal days the California Indians were more nearly sedentary than any other Indians of the United States, other than the Pueblo Indians. Each tribe was restricted within narrow limits. Usually each band had a strip of territory reaching from the mountain tops down to some fish-bearing stream, or the ocean, and they seldom or never went beyond these limits. Game was abundant, but did not hold a very great part in their bill of fare, as they had no fire arms, and were restricted to what they could kill by means of bows and arrows and pit-falls. Fish formed a much greater share of their diet, and all the California tribes were large fish eaters. Hardly a band was without its source of fish supply. The Indians also made a large use of edible roots. Grass seeds and larvae and pupae of some insects, and also grasshoppers were often on the bill of fare, and angle worms were resorted to in times of scarcity sig, as they are occasionally today. The largest single item in their menu was composed of acorns and other nuts. The Indians grind the acorns, leach out the bitter principle and make various forms of wash and bread, both nutritious and palatable. These sources of food supply may be averaged about as follows: Acorns and other nuts 35 per cent; fish 25 per cent; game 15 per cent; roots, etc., 20 per cent; and grass seed and miscellaneous 5 per cent. Of course, the proportion varies in different parts of the State, and the figures given are only approximate.

The first effect of the occupation of the land by the miners was the muddying of the streams by the mining operations and the killing or frightening away of the game, thus cutting off the Indians' fish and game supply. The mining population soon needed gardens, and about the only land suitable was that where the edible roots grew. The stock industry followed very soon, and even the oak trees were fenced in and forbidden to the Indians, as the acorns were needed for hogs. Later the era of wheat came and arable lands passed into

private ownership. The Indians were thus reduced from a state of comparative comfort to one of destitution. Very few white families would not feel the pinch of poverty if they lost one-half or three-quarters of their subsistence, and it is not strange that the Indians suffered. This absorption of the Indian's means of making his living did not take place simultaneously all over the State, but everywhere there has been the same steady, sure occupation by whites of everything that will yield a living to a human being. It is not to be expected that a savage people could at once adapt themselves to such changed conditions, or that they should at once see the necessity or reason for any change at all. There was little or nothing available to take the place of what the Indian had lost. Very few people in those days wanted Indian labor on any terms, and there was very little work to be done at that time which an Indian fresh from barbarism was competent to do. Generally speaking, the California Indians have been not far from the line of destitution ever since, and few have been able to rise above their environment.

All this could not have occurred had the promises made by the Government in rejected treaties been given effect in any form, however modified. Why the Government never made any further attempt to require the Indian right of occupancy has not been stated. It is suspected that interested parties had more influence at Washington than the Indians did. The Indian Bureau did, it is true, attempt for a time to protect the Indians and several small reservations were set aside by Executive Order. Some of these were decided to be within the limits of Spanish grants and thus not available for reservations. Others were occupied by settlers who had political influence enough to have the reservations cancelled. One or two were abolished by Act of Congress, apparently because they contained timber which was desired by some lumber concerns. Only three reservations in Northern California were finally saved to the Indians. The Mupa Reservation and the Klamath strip became Indian land as a result of an expensive Indian war brought on by encroachments on their lands. The Round Valley Reserve was confirmed to the Indians as a result of similar trouble hardly important enough to be called a war. These three reservations have a total population of about 1,550 Indians. The Tule River Reserve and the reserve near Jackson, formed subsequently, have about 170 Indians. The rest of the Northern California Indians who have kept the peace and killed nobody have received nothing but writs of eviction.

At first, and before the country was thickly settled, if a land-owner objected to the presence of Indians he could move to some adjacent tract, but very soon the land in the greater part of the State was practically all taken up. Then as the lands became more valuable there was less tolerance of Indian occupancy. Had it been possible for Indians to take up Government land, much misery would have been saved them. In many instances the Indian arranged with some white friend to take up the land, upon the promise that the Indian should remain there as long as he desired. This promise was usually kept by the white man as long as he lived. When he died his successors were very apt to evict the Indian. Some of the evictions were from Spanish grants, and some distressing occurrences of this kind in Southern California attracted the attention of Helen Hunt Jackson and others, and as a result of their agitation reservations were assigned to the Indians of Southern California. Since that time the situation in Southern California and the problems arising there have been different from those arising in Northern California, and will be discussed hereafter in this report.

At first the Indians occupied pretty fair land and had usually neat little gardens and orchards, especially of peach trees. These tiny little places would attract the attention of some frontiersman who would then file on the place and summarily kick the Indian out. Several hundreds of these cases have been reported. One man still in middle life has been evicted seven times in this matter. It is not strange that the Northern California Indians have ceased to try to have gardens, when any appearance of thrift isarrant for their ejection from the premises. Indeed, most of them at the present time are living on land where, for lack of water or worthlessness of the soil, gardens are impossible. Most of the Indians have now been crowded out of anything like good soil and are found in waste places not having value enough to attract anyone else. It is now a matter of difficulty for an evicted Indian to find any place of refuge, except in other Indian settlements already overcrowded.

The Indian Allotment Act did not come in time to be of much use to the greater number of California Indians, though its value has been great in the Northern and eastern part of the State, notwithstanding some defects in the application. There have been issued in California 2,058 Indian allotments, of which 261 have been cancelled for one cause or another, leaving 1,797 now valid and outstanding. Of these 1,797 allotments now outstanding, 1,439 are in the counties of Modoc, Lassen, Plumas, Shasta, and Siskiyou in the northeastern corner of the State, leaving but 358 for the rest of the State. Every allotting agent sent out by the Department seems to have visited this corner of the State and hardly any other. Two or three visited Humboldt County, and one is reported in the Southern Sierras, but almost their entire attention seems to have been concentrated on this one section of the State.

The allotting agents first sent out were from the east, and to them California conditions were an insolvable enigma. Some seem to have come expecting a soft snap. When it became evident that allotting the lands to Indians required arduous labor in the mountains in all sorts of weather (there was suspicion that some of them did not know how to run a section line), they preferred the much easier plan of making the allotments from the map.

The Golden State is widely known as a land of fruit and flowers and mild climate. It does not seem to be well understood that a considerable portion of the State of California, larger than most eastern states, has a severe winter climate with heavy snow-falls, and that there are also extensive deserts. The allotments referred to are in this portion of the State. Over 300 allotments are absolute desert, being sage brush plains without water or the hope of water. Six hundred more allotments are located in the Sierra Nevada Mountains where the land, or rather rocks, incline up at an angle of 45 degrees or more, and the snow falls often 30 or 40 feet deep, and lies from October to June. It would seem that even a special agent from the Atlantic Littoral ought to have known better than to allot either kind of land to anyone for a home, and yet that is just what was done. More than three-fourths of the allotments in that section are absolutely unfit for human habitation, and it is not strange that the Indians have been unable to do anything with them. The small number of allotments which are fit to live upon have been the salvation of the Indians there, and the distress, disease and death which follows in the wake of eviction has been unknown among them. If the Allotment Act had nothing more to its credit than the saving of these Indians, its enactment would be justified. This, however, does not help those Indians who have received the worthless allotments. The present allotting agents

in the field are competent, but they cannot create land or undo the mistakes of their predecessors. The desert allotments have some scanty pasturage and could probably be sold to sheep or goat men. Five acres of good land with water (land without water is worth very little), is worth more than an entire quarter section of desert land. I would recommend that the Government buy enough land with adequate water supply to give each family five acres of land, and exchange these five-acre tracts for the quarter section allotments of desert land. This would require a nominal appropriation of from \$25,000 to \$30,000, but it would be only nominal, as the value of the land received in return at the Government price of \$1.25 per acre would probably exceed the value of the land purchased.

The mountain allotments referred to, some 500 in number, are in such the same situation as the desert allotments, except that most of them have more or less timber, and some of them very good timber, indeed. This fact has kept the Indian allottees in hot water most of the time. There is a constant succession of squabbles over the efforts of claim-jumpers and timber syndicates to get hold of the timber. All sorts of schemes have been devised, with as yet no very great success. The Allotment Act specifically provides that an Indian may select his allotment "upon any surveyed or unsurveyed lands of the United States, not otherwise appropriated." Hence there seems little doubt but that the Indians are entitled to hold the land. If these allotments were fit for human habitation, your special agent would be inclined to stand by the Indians at all cost as against the timber speculators, who are usually eastern gentlemen with large experience in absorbing timber land, or their California agents who sometimes seem to be selected for their supposed unfamiliarity with the ten commandments.

The time has gone by when either the desert allottees or the mountain allottees can secure other allotments from the public domain. Hence, your special agent would recommend action in favor of the mountain allottees similar to that proposed for those on desert lands. The Government has held these lands at \$2.50 per acre. Those with timber on are worth much more. The Government would be a large gainer in exchanging the allotments in question for the small allotments. Land can be had in the mountain valleys much cheaper than in most of California. It would also require a nominal appropriation of an amount which cannot be stated exactly without further examination, though probably not to exceed \$40,000. Of the mountain allotments referred to, about one-third are within the limits of the forest reserves, and none of the others are more than three or four miles from the reserve boundaries. Most of these lie in the territory between the Diamond Mountain and the Flumas Forest Reserve, which should, apparently, be included in these reserves. There would therefore seem to be no good reason why all the allotments over which so much controversy has arisen should not be put into the forest reserves and the Indians given something in exchange which they can use, or at least live upon more than three months in the year.

There is a defect, apparently, in the allotment system as developed in California in that no provision seems to be made for protecting an allottee after he has received the allotment either in the use of the land itself, or what is more important, the water supply when there is one. As it stands now, anyone can jump an Indian's allotment, and there seems no practical remedy, or anyone can move the fence over onto the Indian's land, or divert his water, and it is not even a misdemeanor. Theoretically, the Indian can appeal to the State Courts. Practically, such remedy is illusory. The Indian would have to pay court and attorney fees, often jury fees, and would have to put up a bond for costs, all beyond the power of most Indians. The same is true of encroachments

upon an Indian's water supply. Many cases have been reported to your special agent where white men have deliberately diverted a stream of water from the Indian with full knowledge of the Indian's priority of right, but secure in the knowledge that the Indian was helpless, and that the offence could be committed with impunity. The Indian could do nothing but watch his trees die and his garden dry up, and be forced to abandon his holding.

There is very little use in giving an Indian an allotment if anyone who is a little loose in morals can deprive him of the use of it. The Indian has no confidence in the white man's courts, and it must be confessed that in times past he has had little reason to have any. The title to the land in these allotments is still in the United States, and it is the United States that is technically the party interested. It therefore seems entirely within the province of the Federal Government to interfere and to see that its interests are not wantonly injured.

Your special agent would therefore recommend additional legislation for the protection of Indian allottees; that trespassing or encroaching upon an Indian allotment be made a misdemeanor; and that it shall be made the duty of the United States Attorney for the district to appear whenever the boundaries, title, or possession of the land or water appertaining to an Indian allotment is in question.

Very few Indians have been able to rise above the distressing conditions they live under and to acquire land by purchase. Still there are a number of Indian communities owning land in common. Indianola, Humboldt County, Upper Lake, Lake County, Potter Valley, Coyote Valley, Pinoleville, Gridville, Carroll, in Mendocino County are all inhabited by Indians who own their own land, though it was purchased by white friends in most cases. The conditions in these settlements are far from satisfactory. They are sadly overcrowded, and are becoming more so as the Indians evicted elsewhere join the communities. At Potter Valley, 52 Indians are living upon 14 acres of land that would not support a single white family. At Coyote Valley 36 live upon seven acres, and at Gridville 59 live upon five acres. At Upper Lake they have 160 acres of land, of which but 25 is level enough to build a house on. The hill land is good grazing land, but the whole place would not be large enough for more than one white family. One hundred and seventy-seven Indians live there, and there are more than 250 in the band. There are also three communities living upon land owned by religious or private associations; one near Chico owned by the Presbyterian Board of Missions; one near Kelseyville owned by the Roman Catholic Church; and one near Manchester owned by the Northern California Indian Association. In these three settlements conditions are much better, as they are not so overcrowded, and there is some attention paid to the welfare of the Indians themselves.

An interesting experiment has been under way at Fort Independence, Inyo County, which seems to be giving much better satisfaction than the allotments under the General Allotment Act. The old military reservation at Fort Independence has been turned over to the Indian Bureau, and has been allotted, or rather apportioned among the Indians of that settlement. There are 20 tracts, of from 2-1/2 to 5 acres per family, and 43 families, or 122 souls, have homes on the tract. The land is of good quality and the water supply ample. The Indians are making good use of the land and the conditions among them seem excellent. In fact, the experiment is so successful that your special agent suggests it for consideration as a model in the proposed relief of the Northern California Indians.

There are also quite a number of Indians located within the boundaries of the forest reserves. According to the figures of your special agent, they number 1,194. They have, of course, no title to the land they occupy, and since the establishment of the forest reserves, it is uncertain whether the lands within the boundaries can legally be allotted to them. These lands have mostly been in their present location from time immemorial, and there seems to be no occasion for any action in respect to any of them. The Forest Reserve Officials do not seem to object to the Indians, though some of them desire to extend their hold by means of leases or permits which it is proposed to have the Indians secure to entitle them to reside upon the reserve. This seems hardly necessary, and any rules or regulations for Indians alone are objectionable. There is no apparent reason why the Indians should be upon any different basis from other people, and any attempt to enforce arbitrary rules is sure to result in friction. Your special agent would therefore recommend that no action be taken in respect to Indians on the forest reserves until action seems more necessary than at present.

In the matter of schooling for their children, the Indians in California have not been much favored. For many years all Indian children were refused admission to public schools, and today, in a majority of school districts where Indians live, public sentiment is against their admission. About the only districts in which Indian children are welcome are those small ones which are likely to lapse if the Indians do not attend. It is impossible to give exact figures as to the number of Indian children attending the public schools, as the school registers do not distinguish them and only partial statistics could be obtained. As near as can be estimated, the number is about 500 out of a possible school population of 2,700. The laws of California in regard to school matters make no distinction as to race or color. The trouble has been in local public sentiment. All counties have for years drawn the full quota from the State School Fund for the education of the non-reservation Indian children, but most of the counties have refused the Indian children admission to the schools, seemingly with no conception of the morals involved in drawing money from the State Treasury for one purpose and using it for another. The method of school apportionment has, however, been changed recently, and hereafter no money can be drawn for Indian children unless they actually attend the district school. The National Government has to a limited extent entered the educational field, and is now maintaining reservation boarding schools at Hupa and Round Valley, training schools at Greenville and Fort Bidwell, and day schools at Bishop, Big Pine, Independence, Ukiah, and Manchester. These have a capacity of about 560, and the attendance of non-reservation children has not exceeded 350. Private schools have about 50 more non-reservation children. There are thus at least 1800 Indian children without opportunity of any schooling whatever.

In endeavoring to ascertain the present condition of the Indians of Northern California, your special agent has availed himself of all information offered from any and every source, but he has preferred to rely chiefly upon his own investigations, and for that purpose has visited almost every Indian settlement in Northern California. He feels in a position to speak with some degree of assurance in regard to what he has seen. The most surprising feature of the situation is the absolute ignorance of 99 per cent of the inhabitants of California in regard to the Indians in their own neighborhoods. Very few persons really know much about Indians in their person or in their circumstances, or in their manner of living. Those who are best informed are usually the store-keepers with whom the Indians trade, and whose information is usually accurate.

Your special agent finds considerable diversity in the Indian condition in different localities, they being usually in better condition in the Northern part of the section, and worst off in the Central Valleys and along the southwest flanks of the Sierras. The Indians are for the most part settled in little villages called in California rancherias. These little settlements contain all the way from 20 souls up to 250, the usual size being about 50. A schedule or census accompanying this report gives the location of each such settlement and the names of each head of a family and the number dependent upon him. These Indian settlements are for the most part located upon waste or worthless land as near as possible to their ancestral home. These remnants of each stock or tribe or band occupy today almost exactly the same territory their ancestors did a century ago.

In the native religion of the Indians a sort of shamanism, inter-communication with the spirit of the dead is one of the chief features. The Indians continually make offerings to the names of their deceased ancestors and friends, especially at the annual feast of the dead, and they expect to receive in return protection from all manner of spiritual and earthly terrors. The desire of the Indian to remain by the bones of his ancestor is therefore much more than a mere sentiment, and the feeling is still strong, even among those who have been Christians for a generation or so. An Indian will endure great extremities rather than abandon his locality, a trait that has not always been given proper weight in attempting to handle Indians.

The sanitary condition of the Indian rancherias is bad, but the feeling of helplessness and despair is worse. Most of the Indians seem to have lost all hope of escape from their present situation and have become familiar with the idea that they will all die off soon any way. It is evident that if the Indian is to keep alive he must have some means of making his living. He must do so by his own labor, either for himself or for others. Most of the Northern California Indians being landless, the opportunity to work for themselves is wanting, and they must of necessity work for others. If the supply of labor for Indians was sufficient in all localities and well distributed during the year, the problem would be light, but in many localities the labor is not to be had in sufficient amounts, and the Indians thus suffer great straits in endeavoring to keep alive.

Your special agent estimates that 1,700 families with nearly 6,000 souls are dangerously near the famine line. This does not mean that they are all suffering at the same time, or all times, or every year, but each of the landless bands is liable to suffer a time of famine, and during such a season the old people and children die. The healthy and able-bodied can survive a period of starvation, but in the weakened state caused by insufficient nutrition, almost any disease, even common colds, will carry off most of the children in the settlement. North of Tehachapi there are hardly any of the old people left, and the proportion of children is small, although births are numerous. The people of almost any locality who do not know the Indians well are apt to deny that their Indians ever suffer. Other Indians do, but their's do not, and it is a striking fact that the less work there is for an Indian in a locality, the more firmly convinced his white neighbors are that he has all the work that any well regulated Indian could desire. The store-keepers, however, generally know better, and quite a number have told me that in employing an Indian it was necessary to feed him up for two or three days before he was able to work satisfactorily; and that the Indian scale of living was so low that the Indians were often weak <sup>and</sup> from lack of proper food. The Indian is not competent for all kinds of work and usually is

restricted to the roughest labor. The need of industrial instruction is great, and the need of field matrons to teach ordinary household economy and common sanitation is even greater.

Your special agent will take pleasure in recommending 25 or 30 places as proper locations for industrial instructors or field matrons. It can hardly be expected, however, that either can teach very much while the Indians are subject to eviction at any time or are being harassed from place to place. It can hardly be claimed that the non-reservation Indians are advancing very much, or that any very effective steps are being taken to improve their condition or to teach them anything that an Indian must know if he is to take any part in our civilization. There are missions at Fall River, Chico, North Fork, Kelseyville, and Carroll. These with the Government work at the schools, altogether do not reach 20 per cent of the non-reservation Indians. The reservation Indians are all fairly well cared for. Your special agent would therefore recommend an increase in the number of day schools in Northern California, and especially an increase in the number of field matrons and industrial instructors. He will, if desired, submit reports hereafter specifying locations and giving more details than seen proper in this report.

The California Indian both north and south has a good reputation as a hard working, trust-worthy, honest laborer. His greatest defect is that he will sometimes leave his work without regard to the position in which it leaves his employer. In some localities the Indians have all the work they can do. In more localities a very curious race prejudice, different from that against Asiatics, militates against their employment. In other places there is very little work of any kind to be had, and the Indian often has to go 50 or 100 miles to work. Then he can work but a short time, picking fruit or hops. This is often all the work they get in the year, and how these bands live is a mystery to their neighbors.

In making the family census of the Indians of Northern California, a very puzzling question was the status of the half-breeds or mixed-bloods. The number recorded by the census is much fewer than had been expected. It has been found impossible to classify them strictly according to blood. With those half-breeds who are brought up, educated and acknowledged by their white fathers, little trouble is experienced, but the majority of the mixed-bloods never knew their white ancestors, and have grown up in the Indian camps. They are more intensely Indian in sentiment than the Indians themselves. They consider themselves Indians, and it is difficult to deal with them upon any other basis. About two-thirds of the half breed men marry full-blood Indian women, and 20 per cent of the half-breed women marry Indian men who are full-bloods. Where the children are thus three-fourths Indian, they are Indians to all intents and purposes, and are so recorded in the census. A considerable number of half-breeds intermarry among themselves. These form a class apart, not being recognized by whites and looked upon with suspicion by the Indians. The mere statement of mixed-blood therefore, does not indicate whether or not they are to be considered Indians, and a separate list has been made for mixed-bloods, status undetermined. Just what ought to be done with them your special agent is not able to decide, as it will take a more minute examination of each individual case than he has had time to give. People of mixed blood, more than half white, are not usually enumerated at all.

The responsibility of the National Government for the present condition of the non-reservation Indians of California seems clear. Had the Government given these Indians the same treatment as it did other Indians in the United States, their condition today would be very different. Those Indians of California who have received land, if not increasing in numbers, are at least not decreasing very fast. Most of the landed bands are about stationary in numbers. The entire Indian population of Northern California has decreased as closely as your special agent can estimate by about 1,100 in the last three years, most of the decrease being in the landless bands.

It should be remembered that the Government still owes these people considerable sums of money, morally at least, but the Government owes more than money. No amount of money can repay these Indians for the years of misery, despair, and death which the Governmental policy has inflicted upon them. No reason suggests itself to your special agent why these Indians should not be placed in the same situation as all other Indians in the United States; why they should not receive a minute portion of the lands which they have not as yet ceded to the United States. It seems clear to your special agent that the Northern California Indians have not had a "square deal," and that it is not too late to do belated justice. The landless Indians cannot be placed in status quo ante, but they can be given what is sometimes expressed as "a white man's chance," and it ought to be possible to put an end to the periodical wiping out of Indian children. It seems that we are under the necessity of civilizing the Indian whether we like the job or not, or whether the Indian wants to be civilized or not. We are therefore under obligation to make at least a decent effort to accomplish the task without injury to the Indian.

Your special agent is inclined to object strongly to anything in the nature of reservations for these people. The day has gone by in California when it is wise to hard the Indians away from civilization, or to subject them to the stunting influences of reservation life. Some of the past reservation experiences in California have been so harrowing that the Indians fear reservations above all things. Moreover, the expense of establishing reservations, and more especially maintaining them, would be enormous. Reservations, therefore, seem out of the question. It should, however, be feasible and comparatively inexpensive to give these Indians allotments, and there would be no expense connected with the allotments after they are once made. It would, however, be necessary to buy a considerable amount of the land, as there is very little land in the public domain left to allot them. Almost everything relied upon for this purpose has been included in the forest reserves. The expense of buying land to allot these Indians is not so great as would appear at first sight. Your special agent is not in favor of giving them farms. They would be unable to use farms. Small tracts, not exceeding ten or fifteen acres, if the land is good land, will be ample, and in many places five acres per family, or less, will be sufficient. It is not necessary that the Indians should be made rich. All that is proposed is that they shall have mere footholds with fixity of tenure. This will not change their present status as laborers, but will give opportunity to teach them some of the common every-day lessons which they need so much. I would therefore recommend the appropriation of a sufficient sum for the purchase of land in the immediate localities where the Indians live, to be allotted or assigned to them in small tracts under such rules as the Secretary

of the Interior may prescribe. It may take several years to complete the work. Hence it is not necessary that the entire appropriation shall be available the first year.

The Indian Appropriation Bill for the fiscal year 1906, contained an item providing for this investigation, and appropriating the sum of \$10,000 to cover the expenses, and for the support and civilization of the Northern Indians of California, for 1906. Your special agent would recommend that the unexpended portion of this appropriation be re-appropriated in such form that it can be applied to the purchase of land.

It seems to be the belief of many persons that there has existed in California a considerable body of "Citizen" Indians. This is an illusion. Until allotment times there never were any Citizen Indians in California. There are none now except of comparatively recent make. The Indians who are supposed to be Citizens, or most of them, were so neither in law nor in fact and were for all these years unable by reason of legal restrictions to appeal to the courts of either state or Nation. Their rights and their citizenship were denied by both state and nation, and to speak of anyone in such position as a Citizen is absurd.

There are, however, some really Citizen Indians in California. At the present time about 1,250 Indian men are, by virtue of the Allotment Act, entitled to vote, or would be if they could pass the educational qualifications imposed by the constitution of California. Comparatively few of them have ever voted, and those few are usually educated mixed bloods. The 1,250 men may be said to represent an Indian population of about 4,000. These may fairly be considered citizens. It should be understood that for these Citizen Indians no relief is asked and in the opinion of your special agent none is needed other than some re-adjustment of allotments mentioned heretofore in this report.

#### Southern California.

Although the troubles of the Indians of Southern California arise from the same initial wrong as those of the Northern part of the State, yet, the Government has here attempted to repair the wrong, and has assigned more or less barren reservations to substantially all the Indians in the southern section of the State. This action came late, as usual, and there was very little land of any value remaining in the public domain which could be given to the Indians. The unsatisfactory condition on some of the reservations arises from the character of the reservation, and therefore requires remedies different from those to be applied in Northern California.

Your special agent has visited nearly all of the reservations in Southern California, and has had a bird's-eye view of some of the others, and has made a careful investigation of the situation there. Those reservations which seem to require attention will be considered in order:

Campo has occupied a considerable place in the public mind for the past 18 months by reason of reports current as to conditions there. It is to be regretted that the sensational press has exploited the matter in such shape as to give the

idea that all Indians in Southern California were in the last stages of starvation. The situation at Campo was bad enough without exaggeration. There is no question as to the extremity to which the Indians of the Campo reservation were reduced. Your special agent has no doubt as to the fact that the Indians were in great straits, and that only the timely relief saved them, or most of them from death by starvation.

There are five reservations usually known as the Campo reservations, as follows: Campo Proper, area 240 acres, population 25, elevation about 2,500 feet; Manzanita, area 640 acres, population 59, elevation 3,000 feet; La Posta, area 259 acres, population 19, elevation about 3,200 feet; Cuyapipe, area 830 acres, population 44, elevation about 3,500 feet; and Laguna, area 320 acres, population 5, elevation about 4,500 feet. The areas given are their areas on paper. Most of the land is the most barren description. The actual areas of arable lands are as follows:

Campo,	40 acres
Manzanita,	55 "
La Posta,	30 "
Cuyapipe,	30 "
Laguna,	70 "

There are about 20 of these Indians not living on any reservation. The rainfall is scanty, and grain and hay are about the only crops that can be raised without irrigation. There is no water for irrigation on any of the reservations, and barely enough water for household use. The entire five reservations would not support more than one or two white families, and yet 40 Indian families are expected to make their living there. The surrounding country for fifty miles in every direction is thinly settled, and mostly a cattle country where there is very little work for Indians outside of the reservations.

Now Indians require some means of making a living the same as anyone else. To place Indians upon a reservation where they cannot make a living, either by working for themselves or for others, is to invite exactly what occurred at Campo, starvation. The immediate cause of the hard times at Campo was a succession of three or four bad years when crops failed.

Your special agent saw no evidences of present suffering at Campo. The relief extended by the people of Southern California was timely and generous. Since the Government has taken charge of the situation there has been no occasion for suffering. Last year was a favorable one, and the present promises to be likewise, but so far no remedial steps have been taken to prevent a recurrence of the troubles which any bad year may bring forth.

In relieving the distress, the people of Southern California have contributed two four-horse wagon loads of supplies, the value of which cannot be less than \$2,000. There was also contributed in cash, through the Sequoyah League, which also handled the contribution of goods, the sum of \$3,075, and through other persons, \$333.17. The Government has itself spent \$748.80 in cash, a total of \$4,156.97 in cash, and at least \$2000 in goods. This for 165 Indians. Starving our Indians seems to be quite expensive both for the Government and the surrounding people. The amount of cash alone spent in the last 18 months is the interest on \$83,219 at 5 per cent, and at the rates the Government pays, the principal would be much larger.

All humanitarian questions aside, it would seem to be cheaper as a business proposition to put these Indians in a position where they can earn their

own living than to allow present conditions to continue and have a scandal of this kind every few years. Your special agent estimates that a proper place can be secured in a neighborhood with a proper water supply, and would recommend an appropriation to provide more and better land for the Indians of the five Campo reservations. It is not expected that all the Indians will wish to remove from the old reservations, and I therefore recommend that the present reservations be retained and used in connection with the proposed new tracts.

The amount contributed by the people of Southern California and by the United States seems a large one for the purpose, and yet it is not quite as large as it appears at first sight. \$4,155.97 is only \$1.40 per month per head for the 18 months. A report has gained considerable currency in the public press that the Campo Indians are being supported in idleness and luxury. \$1.40 per month per head will not buy many luxuries for anyone, nor will it buy an undue quantity of necessaries. The relief was not all doled out by the month to be sure, but was given in the nick of time when needed. Yet it is still evident that the Campo Indians, notwithstanding the considerable assistance received, have themselves, by their own labor, furnished the major portion of their subsistence.

The new reservation at Pala is undoubtedly the best in Southern California. There is a large area of good land and a fine water supply. Some 450 or 500 acres are now being irrigated. The land under the new ditch, about 400 acres, is sub-irrigated, well drained, free from alkali, and with the surface irrigation from the new ditch ought to be very productive. The situation is certainly much better than that formerly occupied by the Indians on Warner's Ranch. It is not to be expected that the old people will ever be satisfied with any other place than Warner's Ranch, but the able-bodied young men are finding the value of the new location. They probably would not be so willing to return to the old site, if it were possible. Your special agent has no desire to criticize severely those Government officials at Pala who did the best they could in a time of great stress, yet, there are certain things in connection with the making of the Pala reservation that are valuable in showing some things to be avoided in trying to improve the situation at Campo and other places. There seems to have been a considerable waste of Government funds, and, as usual, no one is willing to shoulder the responsibility.

The new irrigation ditch has cost nearly \$18,000, or about \$45 per acre of land irrigated. It cannot be used to irrigate any other land anywhere. The ditch is well built, with a proper grade and fine curves. About three-quarters of a mile of it is cemented. There are some criticisms that might be made as to money spent in a diverting dam of which very little is to be seen now and to other expenses necessitated by locating the upper end of the ditch parallel to the torrent. The capacity of the ditch is given as 1,700 inches of water, and the land to be irrigated about 400 acres. The duty of water under the San Diego Ditch and Flume Company, the largest irrigation enterprise in that part of San Diego County, is 1 to 6, that is, 67 inches of water would irrigate 400 acres of land. If we take the lower duty of 1 to 4, 100 inches of water would be sufficient. Or to put it another way, the ditch of 1,700 inches capacity would irrigate from 6,800 to 10,200

acres of land. These are minima figures, however. It would be perfectly proper to make the ditch larger than necessary for the minimum amount of water. Four times the minima or from 300 to 400 inches would have been ample as the capacity of the ditch.

Your special agent has in former years visited Pala in the summer time, and he has seen the amount of water in the San Luis Rey River at that point. He doubts very much if the said river ever carries one-fourth of the capacity of the ditch in question during the irrigation season. The commission which examined the various sites prior to the purchase of Pala, state in their official report to the Secretary of the Interior that they measured the San Luis Rey River at the point of diversion and found a flow of 142 inches. Just why it should have been necessary to build the ditch a dozen times larger than there is land to irrigate, or water to irrigate with, is a query which an inspection of the premises does not enable one to answer. This big ditch contrasts strongly with the ditch recently completed on the Rincon reservation under the direction of the agent, planned to irrigate 200 acres of land, and which cost a little less than \$800.

The matter of houses for the Indians who removed from Warner's Ranch to Pala was a vexed question of the times immediately after the removal. The suggestion was made that the Indians be at once set to work building adobe houses. This particular band had been making adobe, building adobe houses, and living in adobe houses for more than 100 years, and the adobe house was the one kind of house they knew all about. Adobe as a building material has some defects, but it also has some excellent qualities. It is suited to the climate, being warm in winter and cool in summer. It is wind proof, just proof, and even when the roof was of thatch, the Indian houses were usually water proof. But for some reason the adobe idea did not meet with favor. It was said to take too much time. This objection was also made against the project of buying rough lumber for the Indians to build into houses, and things were rather at a standstill until the brilliant idea was evolved of getting temporary houses for the Indians to live in permanently. The Indians were inclined to be mutinous and openly threatened to return to Warner's Ranch. There was evident need for haste, so fifty portable houses were ordered by telegraph—from New York. The order seems to have been filled in due course of business, and the delay in coming by freight, more than 4,000 miles, were no greater than usual with transcontinental freight, but as a time-saving device, it was hardly a success. It was nearly six months before the Indians got into the houses. The expense was double that wooden cabins built on the spot would have been, and about four times the cost of adobes. There would be less room to cavil at this purchase if the houses were fairly adapted to the purpose for which they were bought. The houses are well enough constructed for the purpose for which they are advertised and sold, that is for a temporary house, or wooden tent. As a permanent dwelling place for human beings they are far from satisfactory. Being composed of but a single thickness of board three-quarters of an inch thick, they are hot in summer and cold in winter. The California sun has sprung the narrow strips composing the panels and made cracks in about every panel. The sun has also warped the roof panels and injured the tarred paper which constitutes the rain-shedding part. The houses are neither dust-proof, wind-proof, nor water-proof, and are far inferior to the despised adobes.

California has no winds comparable to the eastern cyclones, and yet not long ago a stiff breeze unroofed 14 houses and made kindling wood of another. Nearly every house in the settlement is more or less wracked and twisted.

In moving the Indians to Pala, one mistake was made which, though of small dimensions, is illustrative of a class. The Indians of Agua Caliente Village speak a dialect of Shoshonian stock. The little village at San Felipe, also evicted at the same time and moved to Pala, are of Yuman stock. Not a single word is alike in the two languages. Between these two diverse races of Indians there are generations of warfare and hatred, and though there has been no open war between them for a long time, a great deal of the old animosity still survives. The San Felipe removed to Pala number but 34, a mere hand-full, surrounded by an overwhelming number of their hereditary enemies, and among whom they are unwelcome. The San Felipe are outraged in their feelings, or possibly in their prejudices, and will never be satisfied at Pala. They have said little on the subject for they have all of a child's helplessness of making anyone understand. The Government seems to learn very slowly that Indians are not all alike, and that different stocks or races of Indians ordinarily cannot be put together. We may consider their ideas or antipathies to be childish, yet, if we wish to be successful in dealing with them we must necessarily take some account of the human characteristics of the Indian. I would therefore recommend that the San Felipe Indians be allowed to remove to Santa Ysabel where most of their friends and relatives are. More than half have left Pala already.

#### Pachanga.

The Pachanga reservation is one of the poorest in Southern California. On paper it has 3,360 acres, which looks large. Actually, there is less than 300 acres that can be plowed, and this is so dry and sandy that the grain crop, about all that can be raised, is very scanty and often a failure. There is no water supply even for domestic purposes. At the Government school there is a well which furnishes some water for two or three months during the rainy season. The rest of the year all water has to be hauled from three to five miles, and at the school they have not even water enough to wash the children's faces. The contrast is strong between Pachanga and Pala with its good land, abundant supply of water for irrigation, and water for household purposes piped to each Indian house. There is a fine spring two or three miles up the cañon from Pachanga which can be brought down in pipes at an expense estimated by the agent as \$4,000. The land the spring is on is Government land, and that and the land between it and the reservation should be added to the reservation. The Pachanga Indians really ought to have some land that is good enough for gardens. The expense would not be great, probably less than \$5,000. I would therefore recommend the purchase of such land.

#### San Pascual.

The maps show an Indian reservation named San Pascual, but actually there is no such reservation. A reservation was selected for these Indians comprising certain descriptions of land in township 12 south, range 1 west, in San Diego County. By some inexcusable error, the land was actually reserved in township 11 south, range 1 west. None of the San Pascual Indians ever lived on the land actually reserved, as that was considered to be Shoshonian territory, and the San Pascual are Yuman. Both pieces of land are barren and of little value. The Indians actually occupied the land in township 12. In the years that have past,

all the land in the intended reservation worth filing on has been taken up in the usual manner, - it being open to settlement. The result is that the San Pascual Indians have no reservation, and all through errors not of their own making. I would therefore recommend an appropriation to buy a small tract of land for the San Pascual band.

#### Los Coyotes.

Los Coyotes is a large reservation on paper, being nearly a township of land. It is quite elevated, being from 4,500 up to 8,000 feet. The reservation is nearly all barren mountain tops, and the agricultural land is confined to narrow strips in the San Isidro and San Ignacio canons, about 275 acres in all. A large part of this is owned by a white man and was patented before the reservation was established. There are also two valleys or hallows in the mountains which have some feed for cattle, and are also patented land. The Indians say that the Government promised them to buy this patented land. Whether such a promise was made your special agent does not know. It is a fact that the Government did buy out one white homesteader in the San Isidro canon. These Indians are the only ones I have found in California who are inclined to be belligerent. They have been frightened by the fate of their neighbors on Warner's Ranch, and have determined to allow no white man on their reservation. They have occupied the patented lands, and show a disposition to hold them by force. If the owners insist upon their rights, a small sized Indian war is likely to result. It seems to your special agent that the Indians' demand for this land is just. It was a rancharia site, and as such could not be filed upon without something closely approaching perjury. The patents are now issued; however, and the title has passed to parties who acquired it in a legitimate manner—I believe upon a mortgage. I would therefore recommend an appropriation to buy this land.

This reservation of 640 acres is about the most absolutely worthless that I have seen anywhere in California, being steep, barren dry hills, and yet it immediately adjoins one of the most fertile pieces of land in Southern California. The Indians should have a little land fit for gardens.

The little reservation of Puma has the use of a fine stream of water from the Puma Creek, but the stream is apt to be very scanty in summer when it is mostly needed. Some means of conserving the supply is much needed. The reservoir site is so gravelly and sandy that cementing is necessary. The Indians have promised to do all the work if the Government will furnish the cement. I would recommend that they receive the cement.

On the Coahuilla reservation a storage reservoir and irrigation system is about half completed. It is estimated that \$1,000 will complete it. Without the irrigation system the Indians can raise very little, as their reservation is mountains, and contains of very little agricultural land, and that little needs water to produce anything.

### Morengo.

The Morengo reservation, near Sanning, has quite an area of arable land, but the land is desert and without water will raise nothing. There is also a fair water supply if it were developed and brought to the land. The water comes from two cienegas, or spring spots, the sources of which are upon the reservation. But one of these cienegas, as is at present used. It is likely the flow from these cienegas could be increased. The water brought from this, the upper one, has sufficient fall to pump water from the lower cienega into the ditch for irrigation. The water supply could thus be largely increased and the area of land cultivated, it is believed, could be more than doubled. I recommend an appropriation for this improvement.

### Desert Reservations.

On the Colorado Desert are several small reservations known as Torres, Martinez, Alamo Bonito, San Augustine, Agua Dulce, 29 Palms, and Cabazon, the latter being near Indio.

On two or three of these reservations artesian wells have been bored by the Government, the water from which is used by the Indians for irrigation. They make good use of the water. I would recommend the boring of more wells. The cost is from \$300 to \$500 per well, and the benefit is great. With the water the Indians are self-sustaining, and without it they are perpetually menaced by famine. I recommend an appropriation for this purpose.

At the Palms Springs reservation, sometimes called Aguacientes number 2, there is a small stream of water, the right to which is claimed by outside parties. It would seem that the Indian rights are prior and should be supported. If the white contestants are willing to sell for a reasonable price, it would probably be cheaper to buy them out. I would recommend an appropriation to determine the water rights, or buy out the contestants, as may be found the more advisable.

### Rincon.

The Rincon reservation, 14 miles from Pale, has four or five hundred acres of arable land, more than there is water to irrigate. A ditch has recently been constructed taking its water from the San Louis Rey River and expected to irrigate about 200 acres. A syndicate is making preparations to build a large dam across the San Louis Rey River a few miles above the Rincon for a storage reservoir and power plant. Steps should be taken to protect the Indian rights to their water. It is believed that if the matter is attended to now the matter can be amicably arranged without in any manner embarrassing the great enterprise.

One of the most troublesome questions in regard to Southern California reservations arises from the looseness with which the reservation boundaries are laid down. From every reservation comes a complaint as to the boundaries and of encroachments upon the boundaries of Indian reservations. One reservation line is said to have been moved in over 1,100 feet. Another is said to have been moved over onto the reservation three separate times. It seems as if each successive owner of land adjoining a reservation is unable to resist the temptation to grab a little Indian land, and they seem able to work this kind of a graft with impunity.

The farcical character of some of the California surveys plays directly into the hands of this class of landgrabbers. If a man steals \$50, it is a penal offence. If he steals \$5,000 worth of Indian land he gets the land as a reward for his nerve. Encroachments upon Indian lands are likely to continue until it is made a penal offence for anyone to establish the boundary line of an Indian reservation except in conjunction with a duly appointed officer of the Government. There is one thing which, in the opinion of your special agent, should be done, and at once: A commission of competent surveyors should establish the boundaries of every California reservation, and mark the boundaries so as to endure for all time. Fence them if necessary. Your special agent would earnestly recommend an appropriation to determine and mark the various reservation boundaries.

The reservations, Inyaha and the Conejos division of Capitan Grande, should, in the opinion of your special agent, be enlarged by the addition of certain adjoining tracts of Government land. This is advisable chiefly to protect their water rights. The little reservation called Cosmit I found fenced in and used as part of a cattle ranch. There is said to be a deed extant from a senile old man belonging to the tribe, purporting to convey the property to a white man. The deed is worthless, of course, but such attempted transfers are met with in various places in California. The Indians do not care to live on the Cosmit reservation, as the village of Cosmit was, by one of the usual mistakes, not located upon the description set aside as the reservation. The Cosmit Indians can be taken care of on the Inyaha reservation.

The Indians on the remaining reservations in Southern California are in fair condition. At least no facts were observed which require special attention in this report. No other Southern California Indians have been shown to your special agent as having been in as bad a state as those at Campo, but several other bands must have been very close to the line as a result of the bad years. The present year is a favorable one, and no Indians are reported to be destitute, other than a few old people who are without relatives to support them and for whose support the Government makes a small contribution.

The plan of relief for the Indians of California which your special agent ventures to recommend is briefly:

Southern California.

That those Indians who have been placed by the Government in such position that they cannot earn their own living shall receive such pecuniary aid as to put them in shape so that they can do so; that this aid take the form of land of good quality with ample water supply, the same to be held in the same manner as their present lands; that this land shall be purchased by a commission appointed by the Honorable Secretary of the Interior, and a majority of which shall be experienced in Southern California land conditions; and that provision be made to extend the irrigation facilities of the reservations mentioned in the body of this report.

That those Indians who are landless through past acts of omissions of the National Government, shall receive land in lieu of any claims they may have against the Government, moral or otherwise; that the land shall be of good quality

with proper water supply, and shall be located in the neighborhoods in which the Indians wish to live; that this land shall be given under some such plan as that pursued at Fort Independence, each family being assigned not exceeding ten acres of land, or such smaller tract as the conditions may warrant; and that this land be purchased and assigned by a commission appointed by the Honorable Secretary of the Interior, a majority of whom are expert in Northern California land conditions.

That these Indians who have received worthless desert allotments shall have the privilege of exchanging them for allotments of the same size and character as proposed for the landless Indians of Northern California, and that the allotments surrendered shall be restored to the public domain; that those Indians who have received mountain or timber allotments shall have the privilege of exchanging them for allotments of the same size and character as those proposed for the landless Indians of Northern California, and that the allotments so surrendered be added to the forest reserves; that the exchange of allotments and the purchase of the land for exchange where necessary be placed in charge of the same commission as that which handles the other proposed Northern California allotments; and that the unexpended portion of the appropriation for the support and civilization of the Northern Indians of California, 1906, be re-appropriated in such form that it may be used in the purchase of land.

Recommendations common to both Northern  
and Southern California.

That further legislation be passed for the protection of the land and water rights of Indian allottees; that provision be made for an increase in the number of field stations and industrial instructors; that the number of day schools be increased; that additional legislation be passed placing Indian allottees within the scope of the laws against selling liquor to Indians; and that the boundaries of the various reservations of California be determined and marked.

The appropriations recommended are as follows:

Purchase of land at Campo,	\$30,000.00
Purchase of land for Pachanga,	5,000.00
Water supply for Pachanga,	4,000.00
Purchase of land for San Pascual,	5,000.00
Purchase of land for Los Coyotes,	3,000.00
Purchase of land for San Manuel,	3,500.00
Water system at Morongo,	5,000.00
Water system at Coahuilla,	1,000.00
Water system at Pauma,	500.00
Artesian wells for Torres, San Augustine, Cabazon, etc.,	3,000.00
For determining rights at Agua- Caliente or purchase of land,	
Determining rights at Rincon, For determining and making re- servation boundaries,	10,000.00

Respectfully submitted,

(Signed) C. E. Kelsey

Special Agent for California Indians.

IN THE UNITED STATES COURT OF CLAIMS

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MABEL DUNCAN, et al.,  
Petitioners,  
vs.  
THE UNITED STATES,  
Respondent.

CASE NO. 10-75

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MABEL DUNCAN, et al.,  
Plaintiffs,  
vs.  
ROGERS C. B. MORTON,  
et al.,  
Defendants.

Consolidated Actions:  
CASE NO. C-71-1572 RFP  
CASE NO. C-71-1713 RFP

DEPOSITION OF LEONARD M. HILL,

taken pursuant to notice and stipulation entered into by and  
between the parties, by and through their respective counsel,  
in Room E-2753, Federal Building, 2800 Cottage Way, City and  
County of Sacramento, on Tuesday, the 2nd day of September,  
1975, A.D., commencing at the hour of 10:05 o'clock a.m.  
thereof, before C. RONALD DAY, Notary Public in and for the  
County of Sacramento, State of California.

1 Q Now, in developing tentative plans, pre-1958, for  
2 rancherias in California, when did this activity begin, how  
3 early would you start actually doing that?

4 And by you I mean the Sacramento Area Office.

5 A Well, I can't recall specifically.

6 Q I understand. I am just trying to get a general  
7 idea of how many years before the act was actually passed  
8 whether the Bureau of Indian Affairs had been meeting with  
9 groups and attempting to come up with a terminal plan for each  
10 rancheria.

11 A I think it was about 2 years.

12 Q So somewhere in '55, '56, in that general period of  
13 time?

14 A Yes, I believe so.

15 Q And was it the approach of the Bureau of Indian  
16 Affairs to say that the Indians would get improvement on their  
17 property if they terminated, but if they did not terminate they  
18 would not get these things?

19 A No, it was never any such negotiation.

20 Q It wasn't put to them that way?

21 A Written down, I think we put it down on the positive  
22 basis that this was one way to get some of these improvements,  
23 and in the likelihood that they would get them without it was  
24 not very good. For years the budget was very stringent here  
25 in California, and there just wasn't much money available to do  
26 anything for these people, and we thought that this would be  
27 an incentive for the Indians as well as Congress to get some of  
28 these improvements made.

1 Q Okay. It's somewhere along the line, and correct  
2 me if I am wrong, that it had been the plan at least by 1958  
3 when the Rancheria Act was passed, it had been the intent and  
4 the plan of the Bureau of Indian Affairs to completely pull  
5 out of California in a very short period of time, maybe 5 or 6  
6 years, is that more or less correct?

7 A Yes. That was the hope of the Commissioner. At that  
8 time I think the estimate was 5 years, or I have forgotten  
9 what, there may have been some time limit in the concurrent  
10 resolution 108, I am not sure.

11 Q And by the time the 1958 Act was passed, was that  
12 still the plan of the Commissioner's Office that they pull out  
13 of California and completely, the Bureau would pull out of  
14 California completely within a very fairly short period of  
15 time?

16 A Well, I can't say that was the plan of the  
17 Commissioner. I think that he had concluded that this was the  
18 proper direction and that he still had hopes of pulling out  
19 of California completely.

20 Q So when they named only 41 rancherias in the 1958  
21 Act, it was not the plan or the desire of the Bureau of Indian  
22 Affairs at that time in 1958, that 10 years later or so we  
23 would end up with the situation where some California Indians  
24 were terminated and others were not?

25 A No. There was no deliberate plan in that regard  
26 I believe that the proceeding with the terminal action on the  
27 41 rancherias was something that was in keeping with the idea  
28 of pulling out of California completely, and it was an effort

1 get a deputization as a U. S. Marshal, is that correct?

2 A Yes.

3 Q So they could go on reservations and enforce federal  
4 laws on the reservations? A That's right.

5 Q Now, in 1958, Rancheria Act, Public Law 85671-D,  
6 this Act as I recall had an appropriation authorization in it,  
7 did it not? 25-671  
✓

8 A No, it did not. That was one of the problems.

9 Q I am talking about an appropriation authorization as  
10 opposed to an appropriation itself.

11 A There was never any authorization for appropriations  
12 made to my knowledge.

13 MR. KING: Okay. Off the record.

14 (Whereupon, counsel recessed the deposition briefly  
15 and conferred off the record.)

16 MR. KING: Back on the record.

17 A I am a little hazy, I know that there was never any  
18 money appropriated specifically to carry out this terminal act.

19 Q Would it refresh your recollection if I told you that  
20 there was in the 1958 Act an appropriation authorization for  
21 approximately 509,000 dollars to carry out the provisions of  
22 the Rancheria Act?

23 A Yes, that is correct, I suspect.

24 Q But your testimony is that Congress never actually  
25 appropriated the money under this authorization found in the  
26 Act? A That's right.

27 Q Did they give you any additional money in your budget,  
28 in your ordinary Sacramento area office budget, to carry out

1 the Rancheria Act?

2 A Well, yes, we were given a few -- some money from  
3 the various sources, and I can recall that there was a special  
4 section in the Commissioner's Office that was set up that was  
5 referred to, I can't recall the exact title, but it was a  
6 planning group, and a lot of funds that we used were those that  
7 would be diverted from that office or from that appropriation.  
8 Although those were just some rather small amounts for things  
9 other than water programs, for example, and land, we used some  
10 of those funds I believe for land surveys rather than using  
11 our regularly appropriated realty fund.

12 Q Did you ever go to Congress with the request that  
13 it appropriate money under the 1958 Act?

14 A No, we did not, and the reason was that I understood  
15 from our associate commissioner at that time that there was an  
16 agreement between the Bureau and Congress that we would not  
17 ask for a special fund for this purpose.

18 Q Now, you mentioned an agreement between the Bureau?

19 A Well, it was just an informal handshake sort of thing.

20 Q Who entered into it, who were the personnel involved?

21 A Well, I don't know. I know -- I think that one of  
22 the Congressmen that was involved was Congressman Sisk, I think.

23 Q B. F. Sisk? A. Yes.

24 Q Well, what did the Bureau get in exchange for enter-  
25 ing into that agreement?

26 A Well, they didn't enter into an agreement. Congress  
27 says we will go along with it provided you don't ask for any  
28 money. That's all there was to it.

1 Q In other words, Congress put the appropriation  
2 authorization into the bill, then strongly discouraged the  
3 Bureau of Indian Affairs from actually coming to Congress and  
4 asking for money? A Yes.

5 Q The answer to that question was yes?

6 A Yes. I think that's correct.

7 Q Do you know approximately when this arrangement or  
8 agreement, whatever you want to call it, was made?

9 A No, I don't know, and I don't know under what  
10 situations. All I have is a statement from Mr. Lee saying,  
11 well, we can't get you any special money for this because we  
12 agreed that we wouldn't ask for any.

13 Q Mr. Lee, the Associate Commissioner, told you that  
14 in so many words? A Yes.

15 Q And was that shortly after the Act was passed or  
16 some years after it, do you have a recollection of approxi-  
17 mately when?

18 A No, I think that was a condition preceding the  
19 passage of the Act. In other words, the Indian Subcommittee  
20 said we will go ahead and approve this provided we don't have  
21 to give you any more money.

22 Q Okay.

23 A I believe that's right. I don't know, I can't say  
24 for sure.

25 Q I don't want to get into a position of asking you an  
26 argumentative question, and asking you to make a conclusion,  
27 but it seems kind of funny to me that Congress could have made  
28 an authorization for the money, then on the sly entered into

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26 argumentative question, and asking you to make a conclusion,  
27 but it seems kind of funny to me that Congress could have made  
28 an authorization for the money, then on the sly entered into

1 haul water up to 5 miles, they were awfully lucky. So you  
2 can see what kind of progress has been made in the thinking  
3 of people concerned with the Indian affairs. There was no  
4 concern about domestic water, with few exceptions, with  
5 Indian housing and Indian health.

6 They maintained hospitals and clinics, but the ser-  
7 vice was very poor, and we in this rancheria program, we  
8 started out with standards that were acceptable for domestic  
9 water, that had been acceptable over the years, and then the  
10 Public Health Service came in with an improved water supply  
11 standard and sanitation facilities, and whatnot.

12 So we were a little hard put to come up to some of  
13 those new standards, and so some of the jobs that we had  
14 thought were adequate actually by subsequent standards were  
15 not adequate.

16 Q Okay. I have got one final area that I want to ask  
17 you some questions about, and that is all of these distribu-  
18 tion plans. As I understand it, the plan always contained a  
19 list of the people who were going to get land and those people  
20 were called distributees?

21 A Yes.

22 Q And in addition to that, under the name of each  
23 distributee you listed the people who were dependents of the  
24 immediate family, is that true?

25 A Yes.

26 Q And in determining who was dependent, immediate  
27 dependent members of the immediate family, was there some  
28 regulation that you were following; is that correct, that

1 which we used for domestic water purposes.

2 So I think that's how that irrigation term got in  
3 there, and there were very few of these.

4 Q Now, as this assessing, the need for any rancheria  
5 for water, did the Bureau look at the need for the Indians  
6 for maintaining home gardens in addition to flushing their  
7 toilets and washing their dishes and taking showers?

8 A No, I don't think that that was something that we  
9 made special provisions for.

10 Q And in the early '60s, before the Rancheria Act was  
11 amended, provide for the performance of sanitation services  
12 by the Indian Health Service, did the Bureau assess water  
13 in any given rancheria in light of the need for interior  
14 plumbing?

15 A No, I don't think that we went that far.

16 Q In other words, you were mainly concerned with just  
17 having a water source there at the house which people could  
18 draw off of and use?

19 A Yes. Sometimes it was adequate for sanitation  
20 facilities and sometimes it wasn't.

21 Q I see. Do you have any specific recollection about  
22 whether you considered the adequacy of the Robinson Ranch  
23 water system with respect for the need of interior plumbing?

24 A I can't recall what the plan provided for on the  
25 Robinson rancheria, or what the ultimate improvement was, or  
26 what the water system did supply, I just can't recall those  
27 facts.

28 Q But there were occasions when the BIA terminated a

1 you defined what dependent member meant?

2 A Well, I think we have some kind of a definition, I  
3 don't recall any specifics on it.

4 Q Now, how did the Bureau personnel people that work  
5 under you in the area office go about checking the accuracy  
6 of information given to them by, say, Indians on the rancheria  
7 regarding who was related to whom in putting them into the  
8 distribution plan?

9 A I don't think we did much checking. We took the  
10 word of the adult members.

11 Q Wasn't any kind of a detailed form that had to be  
12 filled out by each individual who was an adult member who was  
13 living in their household and that kind of thing?

14 A I think it was mostly an informal inquiry thing.  
15 We just wrote down what they told us.

16 Q Before the land was deeded on any rancheria, it is  
17 my understanding that the Bureau appraised the value of the  
18 property as of the time that the deeds were to go out, is that  
19 true?

20 A Yes.

21 Q Did you have a practice routinely of hiring quali-  
22 fied appraisers to do this?

23 A No, we didn't hire them. We had them on our staff.

24 Q I see. You actually staffed people that knew how  
25 to appraise real property?

26 A That was their business.

27 Q In the case of each rancheria, would it be fair to  
28 say that a written appraisal report was prepared and submitted

1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 TILLIE HARDWICK, et al., )  
4 Plaintiffs, )  
5 vs. )  
6 UNITED STATES OF AMERICA, )  
7 Defendant. )

CIVIL NO. C-79-1710 SW

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14 Deposition of  
15 MAURICE W. BABBY  
16 January 18, 1982  
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27 Reported by SANDY GILMAN KOSTER - CSR No. 3325  
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1 the Hoopa agency disclosed the fact that no work was done on  
2 the water system prior to the termination of that rancheria,  
3 and that basically the same wells that existed in 1953 were  
4 there when the rancheria was terminated, would you understand  
5 that set of facts would go along with the request on the part  
6 of those Indians up there to have their deeds right away  
7 without the development of a distribution plan that called for  
8 adequate wells?

9 A Well, that's kind of hard to say. I don't know what  
10 I might have done. I think that we attempted to throughout  
11 this termination activity, to comply with the wishes of the  
12 people as nearly as we could, and we weren't anxious to spend  
13 money just for the sake of spending it or to undertake  
14 programs that we thought the people didn't want.

15 And then, of course, most of the plans were in rural  
16 areas, and we didn't check in with the local requirements.

17 Q You did not?

18 A Except in a general way so that, in other words, we  
19 didn't attempt to go out of our way to do anything that the  
20 people didn't want, so long as there was no public pressure or  
21 so long as the Indian people were in general conformity with  
22 the surrounding rural areas, as far as the water supply and  
23 whatnot.

24 Q Well, would it be fair to say, then, that you  
25 regarded the discretion under Section 3, subdivision C of the  
26 1958 Rancheria Act, as being fairly broad in cases where the  
27 people weren't terribly concerned about having a long-lasting  
28 water supply, you would accede to their request and not put one

1 in?

2 A Well, I would have to say it would depend on the  
3 situations, I couldn't say yes or no to that.

4 Q Okay. Did the Bureau have a policy, while you were  
5 the area director, of kind of looking at the water situation  
6 for a period of time beyond the actual deeding of the land?  
7 What I am trying to ask you is whether you showed any concern  
8 for what the situation would be say 5 years after the land  
9 was deeded in terms of water?

10 A Well, I couldn't say what period we had in mind, but  
11 we attempted to provide a system that would supply sufficient  
12 water for I don't know how long, 5 or 10 years, something like  
13 that perhaps.

14 Q Now, was it your practice in the case of the  
15 rancheria to go to the county authorities and ascertain from  
16 them what a private development, a private developer would have  
17 to do in terms of putting in a water system for a piece of land  
18 that he was splitting up into parcels?

19 A No, we did not have that policy. In fact, that  
20 became an issue at a couple of places, and our stand was that  
21 it was, this was a federal matter, and that we did not have to  
22 comply with the subdivision standards. In fact, we said that  
23 this was not a subdivision in the usual sense.

24 Q Under the kind of laws of the State of California,  
25 you felt you were not bound by these laws?

26 A That's right.

27 Q Did you give any consideration in taking this posi-  
28 tion to what would happen after the rancheria would be

1 terminated and these people had to live under the County  
2 ordinances and the State laws?

3 A Well, yes, we did give consideration to the fact  
4 that they would be out there on their own, but the fact is  
5 that the County generally in these rural areas had no rules  
6 and regulations. At least for the private homes out in the  
7 country they didn't go out and inspect their water systems.

8 Q Your feeling is that at that time, let's say in the  
9 early '60s, the counties were pretty lax in requiring any  
10 specific type of water development before a subdivision was  
11 made. Now, you mentioned having a couple of situations where  
12 this became an issue within the government and the County,  
13 can you recall what the instances were?

14 A Well, there was one up at Auburn, there is a little  
15 rancheria there that was adjacent to the City of Auburn, and  
16 we had completed our plan as we interpreted it, and we had  
17 surveyed the land, and in order to facilitate the granting  
18 title, facilitate the land descriptions, we prepared a map by  
19 a subdivision map, but not under the subdivision requirements  
20 of the County, and issued the deed by lot numbers specified on  
21 that map, which map was filed in the County records.

22 After this was done, I guess it was the County Board  
23 of Supervisors that made an issue of it, and they called,  
24 asked Congressman Johnson, I think it was Congressman Johnson,  
25 to hold a hearing up there, and they were insisting that this  
26 was a subdivision, and as a regular subdivision that they  
27 would have to approve it, and if they did approve it that  
28 they would require water to the vacant lots and fire

1 protection facilities, and a lot of other things that we didn't  
2 feel were appropriate.

3 And we maintained that this was not a subdivision  
4 in the usual sense. Now, I don't think anything happened as  
5 a result of that hearing, but there was the Congressman present.

6 Q Well, was this hearing before the County Board of  
7 Supervisors or what entity was the hearing presented before?

8 A Well, it was not a formal hearing. I think it was  
9 just a request to Congressman Johnson to listen to them and  
10 to listen to us, and I don't think it was to be considered  
11 a hearing.

12 Really, it was just an informal information  
13 session I think.

14 Q Well, at this informal information session -- by the  
15 way, about what time did that happen, what year, are you able  
16 to say?

17 A I don't recall.

18 Q Was it early in the chain of events or was it some-  
19 what later?

20 A No, it was later.

21 Q In the mid-60s or thereabouts?

22 A I don't know the date. It was after we had made the  
23 surveys, and I don't know whether it was after the issue --  
24 probably wasn't after we issued the deeds, but it was after  
25 we were about prepared to.

26 Q Well, did the County bring to your attention at that  
27 time in your discussions with them the possibility of the  
28 people that wanted say to build on a vacant lot on a

1 rancheria that they might have trouble getting a building  
2 permit after the deed had been issued because of the fact that  
3 there was not a water supply on the vacant lot?

4 A I don't recall whether they made that point or not.  
5 That was included, I think, in the general statement that the  
6 subdivision wasn't in accordance with the county requirements.  
7 And, of course, naturally it followed that if they concluded  
8 that it was a regular subdivision, there would be no building  
9 permits issued.

10 Q Did they take that position after the deeds were  
11 issued, do you know? A I don't know.

12 Q Now, I would assume from what you have already said  
13 that you did not attempt to comply with, say, lot size stan-  
14 dards set by the County under their subdivision ordinances  
15 in determining how this rancheria land was to be broken up?

16 A We didn't think it was any concern of the counties,  
17 that they had any authority to dictate the manner in which we  
18 subdivided the land or issued the deed.

19 Q What I am trying to get at, Mr. Hill, is how did the  
20 Government think the Indians would be able to use their land  
21 after the trust relationship had been terminated unless there  
22 was some attempt to comply with county ordinances, or was this  
23 problem ever considered?

24 A Well, we assumed that they would do the same as they  
25 they had in the past. They had been building homes out there,  
26 and then, of course, the counties did not exercise their  
27 authority on the Indian reservations.

28 Q That is when they were reservations, but after

1 termination when they were no longer reservations, but void of  
2 the state status as everybody else's land in the county, how  
3 did the Bureau expect the people on these rancherias to use  
4 their property if they didn't comply with the laws that were  
5 then in effect regarding say the lot size?

6 A Well, I don't think that we had that as one of our  
7 standards that these reservations or that the Indian proper-  
8 ties would be in compliance with all of the county ordinances.  
9 We knew that the water supply in some of these places did not  
10 come up to what was required in a municipality for instance  
11 or in a formal subdivision, we knew that there wasn't  
12 sufficient water, there was no facility for protection from  
13 fire, just as there weren't on a lot of other places that were  
14 not Indian land, and were not informal subdivisions, and the  
15 county doesn't ordinarily go in and kick people off their  
16 property because they are not in complete compliance.

17 Q What I am referring to here is the case of unimproved  
18 lots where there wasn't an existing structure at the time of  
19 the termination, how did the Bureau of Indian Affairs expect  
20 the Indian who got pieces of unimproved property to utilize  
21 their land without complying with the county ordinances  
22 regarding lot size, water, size of leach field, and so on?

23 A Well, we didn't follow that through. We didn't  
24 intend that we should make these properties or improve these  
25 properties to the point where there would be no problem  
26 involved.

27 Now, a lot of the counties in the state had no  
28 codes for rural water supply or fire protection or, in fact, I



IN REPLY REFER TO,  
Office of the Area  
Director

UNITED STATES  
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS  
Sacramento Area Office  
2800 Cottage Way  
Sacramento, California 95825

October 8, 1976

**Memorandum**

**To:** Area Indian Advisory Board

**From:** Area Director

**Subject:** August 26th Meeting regarding Area Office Funding

The Area Indian Advisory Board met on August 26th to determine what might be the best approach to follow in petitioning the Bureau of Indian Affairs for an increase in the Sacramento Area Budget.

A plan outline consisting of the following five major points was agreed to:

- I. Historical background of California Indians to the Federal Government.
- II. Financial comparison of California with other areas with starting date to be established.
- III. The following four points will be developed in the request for additional funding:
  - A. No increases in the Sacramento Area Budget occurred until 1970. The impact of the reverse termination decision was not felt until 1970;
  - B. Money spent in completing distribution plans of rancherias being terminated came from the area's regular annual budget, even though Congress authorized appropriations for termination costs under the Rancheria Act of 1958 and the amendment in 1964.
  - C. The first dollar from another Federal agency identified for California Indians came in 1967 when the Inter-Tribal Council of California was funded.

D. An increase occurred in the California service population due to the court decision in the consolidated cases of Knight v. Kleppe and Duncan v. Kleppe which un-terminated all the dependent members of the terminated rancherias. That decision added another 2,000 to 4,000 Indians to the California service population.

#### IV. Define Service Population

#### V. Summary

The meeting concluded with the intent expressed to contract with an individual capable of completing such a study. Since the meeting, Bill Oliver, former Area Administrative Officer, has agreed to complete the work.

Please review the above plan as outlined and let us know your comments with any suggestions or changes you think would be helpful. Also, please advise if you agree with the selection of Bill Oliver to complete the plan. Please try to respond by October 20. After your comments have been received this same mailing will be sent to all tribal officials.

The following attended the meeting: Joseph Saulque, Emmett St. Marie, Peter Masten, William Scott, Dorothy Stanley, Mary Norton, Donna Ducky, Harold Dixon, James Whipple, William Finale, Jerry Tomhave, Bob Hostler, Toni Stoliby and Pat McCormick.

The discussion was taped and attached is a typed account of what was said.

/SGD/ C. L. HENSON

FOR William E. Finale

#### Attachment

cc: Superintendent, Central California Agency  
 " Hoopa Agency  
 " Southern California Agency  
 Director, Palm Springs Office

*Wilton*

This rancheria consists of three lots totaling 38.90 acres, purchased in July 1928 from the Central California Traction Co. for \$5000. It is situated north of the Wilton Post Office and general store, about 24 miles from Sacramento via Elk Grove. The general area is agricultural with the land partially utilized for grazing of dairy cattle and for crops.

*24 acres } approx. by Council  
22 acres }  
46*

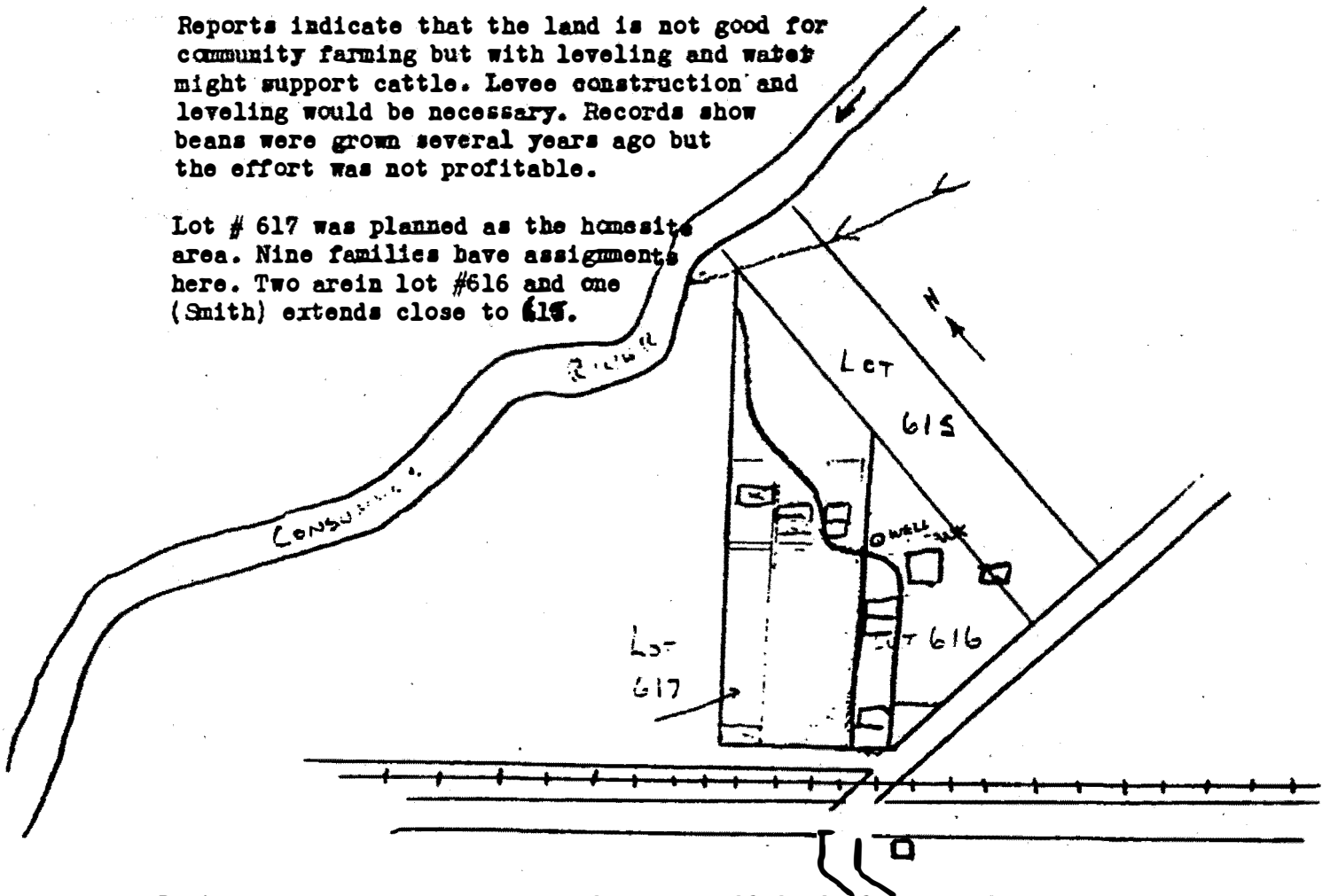
LAND

The lots are #615- 12.90 acres, #616- 10.02 acres, #617- 15.98 acres for a total of 38.90 more or less.

The land is on a shelf sloping to the river from a line about at the north end of lot # 616. Drainage is westward from the private land to the east. The Consumnes River floods the bottom land to the north frequently. There is a levee protecting the adjoining land on the east. Drainage is into the river at a point near the NW corner.

Reports indicate that the land is not good for community farming but with leveling and water might support cattle. Levee construction and leveling would be necessary. Records show beans were grown several years ago but the effort was not profitable.

Lot # 617 was planned as the homesite area. Nine families have assignments here. Two are in lot #616 and one (Smith) extends close to 615.



It is suggested that the Council retain all land, leasing that not necessary for homesites. There have been offers for long term leases with part of the rental for tenant improvement such as levee construction and leveling.

WATER

The domestic water system consists of a well, tank and automatic pump maintained by the Council. The well tested to 710 GPM at the time of construction. The system is not designed for irrigation. The river does not lend itself to irrigation as the flow is controlled by dams at higher levels and is known to run dry in the summer and fall. Wells should furnish ample water for farming or grazing land work.

The State Attorney for the Div. of Water Resources advises that a Mutual Water Co. could be organized to operate and maintain the existing system for the benefit of the council members. Further study of the future operation by this or some other plan would depend on the plans of the Area Director and the Council regarding the land disposition at Withdrawal.

ROADS

The basic layout of Lot #617 shows 39 lots for homesites about 60' X 170' served by two streets running north east, two alleys the same and one cross street. There is also a homesite at the SW corner of lot # 616. The road on the SE side exists to the well site, about 550' from the main road. This street then turns NW and meanders through the alley to the junction of 617 and 615 at the river. The other streets and alleys exist only on paper.

Decision will have to be reached on the plat of the homesite area prior to any development of the road system.

GENERAL

The population consists of 12 families some related. The last report shows a total population of 40 resident Indians. Cooperation of recent years seems to be good tho all income is from work off the rancheria. No attempt has been made to start community Farming. Home consumption gardens are maintained by several of the families. Most have chicken flocks for home consumption, and eggs. Two families are settled outside of the planned home area, McKean Jr. and Smith. They are in lot 616.

Charles McKean Jr. was elected Chairman for 1953 and appears to be an active leader of the group, with the overall interest of the community in mind. He will be easy to work with in withdrawal planning as he is open minded and intelligent. I do not feel that any internal conflict will develop under his leadership except in membership of non-resident Indians. The roll is supposed to be corrected to include only those who meet the requirements of the Council

*McC*  
11/22/52