

= Aboriginal title in California =

Aboriginal title in California refers to the aboriginal title land rights of the indigenous peoples of California . The state is unique in that no Native American tribe in California is the counterparty to a ratified federal treaty . Therefore , all the Indian reservations in the state were created by federal statute or executive order .

California has experienced less possessory land claim litigation than other states . This is primarily the result of the Land Claims Act of 1851 ( following the Treaty of Guadalupe Hidalgo ) that required all claims deriving from the Spanish and Mexican governments to be filed within two years . Three U.S. Supreme Court decisions and one Ninth Circuit ruling have held that the Land Claims Act applied to aboriginal title , and thus extinguished all aboriginal title in the state ( as no tribes filed claims under the Act ) . Two Deputy Attorneys General of California have advocated this view .

= = History = =

= = = Spanish rule = = =

Spain established twenty @-@ one missions , indigenous peoples ( the so @-@ called Mission Indians ) lived and worked under the supervision of missionaries . However , approximately 80 % of the approximately 100 @,@ 000 to 300 @,@ 000 indigenous population of California remained outside the Missions . Spanish law fully recognized the customary title of indigenous peoples . Spanish @-@ era land grants are referred to as the Ranchos of California .

= = = Mexican rule = = =

Mexico declared independence from Spain in 1824 . Mexico secularized the Mission system , and granted some of these tribes their land in fee simple .

= = = U.S. territory = = =

Mexico ceded California to the US in 1848 pursuant to the Treaty of Guadalupe Hidalgo . Under Article Eight of that treaty , the United States agreed to respect the hundreds of land grants , many quite substantial , granted by the Spanish and Mexican governments to private landowners . Articles Nine and Ten guaranteed the property rights of Mexican nationals . The United States established procedures to review the validity of such land grants .

That same year gold was discovered in California , rapidly accelerating migration to California . Reports commissioned by the federal government during this period uniformly downplayed the extent of indigenous land rights under Spanish and Mexican rule .

= = = Statehood = = =

= = = = The eighteen unratified treaties = = = =

California was admitted as a U.S. state on September 9 , 1850 . The admission act made no reference to Native American land rights . On their second day in office as California 's first Senators , John Fremont and William M. Gwin introduced bills to extinguish all aboriginal title in California . On September 30 , 1850 , Congress passed an amended version of Fremont 's bill appropriating \$ 25 @,@ 000 and authorizing the President to appoint three commissioners to negotiate treaties with the tribes of California . By January 1852 , eighteen treaties had been negotiated , representing about one @-@ third of the tribes and bands in the state . The state legislature strongly opposed the Indian reservation policy pursued by the treaty and lobbied the federal government to instead

remove the Indians from the state entirely . Because Fremont and Gwin represented the key swing votes between the Whig and Democratic parties , none of the treaties were ever ratified and all were classified .

Federal agents had already persuaded nearly all of the Indians to remove to their would @-@ be reservations while the treaties were pending ; soon , " starvation , disease , and murder " reduced their population to 17 @,@ 000 .

= = = = The Land Claims Act = = = =

On March 3 , 1851 , Congress enacted the Land Claims Act , requiring " each and every person claiming lands in California by virtue of any right or title derived by the Mexican government " to file their claim with a three @-@ member Board of Land Commissioners within two years . The Commissioners were to issue patents to the claims they found meritorious and the other lands were to pass into the public domain at the end of the two years . Two years later , Congress passed an act to survey those lands that had passed into the public domain under the first statute , but exempted " land in the occupation or possession of any Indian tribe . " That act also authorized the President to create five military reservations in California for Indian purposes .

The effect of these acts on aboriginal title in California has been a subject of litigation for 150 years . Regardless , the United States never again pursued treaty negotiations with California Indians , instead favoring legislation and executive orders . By statute , Congress created several Indian reservations . Congress gave the executive the discretion to create further reservations . By 1986 , Presidents had used this discretion to create 117 reservations totalling 632 @,@ 000 acres .

= = = = Claims Court litigation = = = =

In 1927 , the California legislature passed a statute authorizing the California Attorney General to bring claims on behalf of the tribes in the Court of Claims . The next year , Congress passed a statute granting that court jurisdiction for such claims . California Attorney General Earl Warren ( future Chief Justice ) finally argued the case in 1941 . The court found liability but indicated it would not award pre @-@ judgment interest , and the Supreme Court declined to grant certiorari . Warren negotiated a \$ 5M settlement . After the passage of the Indian Claims Commission Act , the same group of tribes struggled to bring a single action for recovery under the broader claims allowed under the ICCA , which settled for \$ 29M .

= = Effect of the Land Claims Act of 1851 = =

= = = Early California Supreme Court decisions = = =

The earliest cases heard by the Supreme Court under the Land Claims Act involved non @-@ Indians . Therefore , in Thompson v. Doaksum ( 1886 ) , the California Supreme Court considered the application of the Act to Indians as a matter of first impression . The court upheld a quiet title judgment for the plaintiff , holding : " If defendants [ Indians belonging to the Big Meadows tribe ] had any right to the land , it should have been asserted in the land department pending the application for patent , or by direct proceeding on the part of the government to set aside the patent . "

Two years later , Byrne v. Alas ( 1888 ) , the court distinguished its holding by reversing a quiet title judgment against a group of Mission Indians . Byrne , in distinguishing Doaksum , held that the fact of a third party validating title to certain lands was conclusive of the fact that those lands were not in the public domain , and thus , that the aboriginal title was not extinguished .

There , the Mission Indians did not claim fee simple by any Mexican grant , but rather " by virtue of their possession , and the continuous , open , and exclusive use and occupancy by their predecessors and ancestors ever since the year 1815 . " Further , the court interpreted the language

in the Land Claims Act requiring the Commissioner to investigate the status of indigenous tenure as evidence that " Congress did not intend that the rights of the Indians should be cut off by a failure on their part to present their claims . "

= = = Barker v. Harvey ( 1901 ) = = =

In Barker v. Harvey ( 1901 ) , the Supreme Court heard the consolidated appeals of a group of Mission Indians who had lost a quiet title action by several non @-@ Indians . The appeal to the Supreme Court was brought by the federal government in its trustee capacity . Justice Brewer , for a unanimous Court ( White recused ) , affirmed .

Barker has two independent holdings . First , the Court reaffirmed its holding from Botiller v. Dominguez ( 1889 ) that even perfect title was subject to the requirements of the Land Claims Act . Barker rejected in part the reasoning of the California Supreme Court from Byrne , noting : " Surely a claimant would have little reason for presenting to the land commission his claim to land , and securing a confirmation of that claim , if the only result was to transfer the naked fee to him , burdened by an Indian right of permanent occupancy . " Thus , Barker has since been cited by the Court as the source of the rule that the Land Claims Act itself extinguished aboriginal title .

Second , the Court held that the plaintiff 's title had been extinguished before the Mexican Cession . To determine this , the Court examined and quoted extensively the specific text of the plaintiff 's grants . From this , the Court concluded that the aboriginal title had long been extinguished by abandonment :

It thus appears that prior to the cession the Mexican authorities , upon examination , found that the Indians had abandoned the land ; that the only adverse claim was vested in the mission of San Diego and made an absolute grant , subject only to the condition of satisfying whatever claims the mission might have . How can it be said therefore that when the cession was made by Mexico to the United States there was a present recognition by the Mexican government of the occupancy of these Indians ? On the contrary , so far as any official action is disclosed , it was distinctly to the contrary , and carried with it an affirmation that they had abandoned their occupancy , and that whatever of title there was outside of the Mexican nation was in the mission , and an absolute grant was made subject only to the rights of such mission .

= = = United States v. Title Ins . & Trust Co . ( 1923 ) = = =

More than two decades later , the Court reconsidered the meaning and propriety of its Barker decision in United States v. Title Ins . & Trust Co . ( 1923 ) . There , the federal government sued on behalf of a group of Mission Indians holding an 1842 Mexican grant . The court cited reliance considerations of stare decisis in declining the government 's request to overrule Barker :

The decision was given 23 years ago , and affected many tracts of land in California , particularly in the southern part of the state . In the meantime there has been a continuous growth and development in that section , land values have enhanced , and there have been many transfers . Naturally there has been reliance on the decision . The defendants in this case purchased 15 years after it was made . It has become a rule of property , and to disturb it now would be fraught with many injurious results . Besides , the government and the scattered Mission Indians have adjusted their situation to it in several instances .

= = = Super v. Work ( 1926 ) = = =

Super v. Work ( 1926 ) involved a challenge in the Supreme Court of the District of Columbia ( now known as the United States District Court for the District of Columbia ) to the construction of federal hydroelectric dams in California . The plaintiffs , members of the Karuk and Peh @-@ tsick tribes , alleged both that the dams would violate their aboriginal title rights and their rights under the Treaty of Guadalupe Hidalgo . The United States Court of Appeals for the District of Columbia held that both rights ( if they existed ) were extinguished by the 1851 statute . Unlike the plaintiffs in Barker ,

who were Mission Indians , the plaintiffs here were nomadic at the time of the relevant times .

In a one @-@ sentence per curiam opinion , the Court affirmed the D.C. Circuit , citing Barker , Title Insurance , Lone Wolf v. Hitchcock ( 1903 ) , and Conley v. Ballinger ( 1910 ) . The Karuk attempt to re @-@ assert their claims decades later based upon the federal government 's general trust relationship and other statutes were unsuccessful . Since Super , the Court has twice interpreted the Land Claims Act to also have imposed the requirement to file upon the state of California itself .

= = = United States ex rel . Chunie v. Ringrose ( 1986 ) = = =

In United States ex rel . Chunie v. Ringrose ( 1986 ) , the United States Court of Appeals for the Ninth Circuit considered the trespass and conversion claims of Chumash tribe ( joined by the federal government ) over the ownership of the Channel Islands of California ( and the channel beds surrounding the Santa Cruz and Santa Rosa islands ) in California . The Ninth Circuit held that , although the Chumash 's aboriginal title survived the issuance of Mexican land grants to the same islands , the tribe 's title was extinguished by its failure to file under the Land Claims Act .

First , the Ninth Circuit disagreed with the District Court 's holding that Mexican land grants had extinguished the Chumash 's title . Instead , the court applied the same standards to Mexican land grants as would have been applied to federal land grants : the grants were presumed to grant an interest subject to the tribe 's aboriginal title . Next , the Ninth Circuit rejected the tribe 's arguments that the islands were not within the land ceded by the Treaty of Guadalupe Hidalgo . Third , the court rejected the Chumash 's argument that the Treaty converted the tribe 's aboriginal title into recognized title .

Finally , the court reached the question of the Land Claims Act . The Ninth Circuit examined the rule of Barker , Title Insurance , and Super . As for Barker , the court conceded that " the precise basis for this holding is not clear . " With respect to Title Insurance , the court noted that it is " not entirely clear in the opinion " that the case involved aboriginal title , but inferred such from subsequent interpretations of that decision .

The Chumash attempted to distinguish these cases by relying on Cramer v. United States ( 1923 ) , the case that established the existence of " individual aboriginal title " ( as opposed to tribal ) ; Cramer , after all , had distinguished Barker . Thus , " [ g ] iven the line of Supreme Court decisions recognizing the extensive reach of the Act of 1851 , " the Ninth Circuit stated that Cramer could only avail those whose individual aboriginal title post @-@ dated 1851 . The court also rejected the Chumash 's attempt to interpret the Act according to canons of international law .

The Supreme Court denied certiorari .

= = Individual aboriginal title = =

= = = Cramer v. United States ( 1923 ) = = =

Cramer v. United States ( 1923 ) involved would @-@ be Indian reservations ( as provided for in the aforementioned unratified treaties ) that had subsequently been granted to railroads by the federal government . The United States District Court for the Northern District of California canceled the railroad 's land patents based upon the actual use and occupation of the Indians since 1855 . The Ninth Circuit agreed with the District Court , but cancelled the entirety of the patents at issue .

The Supreme Court considered six arguments by the railroad . First , it rejected the railroad 's argument that the exceptions to the grant did not specifically mention Indians ; instead , the court held that all land grants are presumed to be granted subject to aboriginal title .

Next , the Court considered the Act of 1851 . The Court held that it was irrelevant :

The act plainly has no application . The Indians here concerned do not belong to any of the classes described therein and their claims were in no way derived from the Spanish or Mexican governments . Moreover , it does not appear that these Indians were occupying the lands in question when the act was passed .

Third , the Court rejected the argument that the federal government could not bring suit on behalf of the tribe . Fourth , the Court rejected the statute limiting the time in which the government could challenge the validity of its land patents , holding that did not apply to suits on behalf of Indians . Fifth , the Court rejected estoppel : " Since these Indians with the implied consent of the government had acquired such rights of occupancy as entitled them to retain possession as against the defendants , no officer or agent of the government had authority to deal with the land upon any other theory . " Finally , however , the Court reversed the Ninth Circuit 's voiding of the entire patents , holding that only the portions possessed by the Indians should be void .

The holding in Cramer lay dormant for many years . Decade later , Justice Douglas dissented to the denial of certiorari where the lower court had denied a California Indian defendant the ability to defend a criminal prosecution for illegal logging on the basis of individual aboriginal title as recognized in Cramer . The Court has since elaborated on the basis for its holding in Cramer :

This holding was based upon the well @-@ understood governmental policy of encouraging the Indian to forgo his wandering habits and adopt those of civilized life ; and it was said that to hold that by so doing he acquired no possessory rights to the lands occupied , to which the government would accord protection , would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation . The fact that such right of occupancy finds no recognition in any statute or other formal governmental action is not conclusive .

= = = United States v. Dann ( 1989 ) = = =

United States v. Dann ( 1989 ) is the most in @-@ depth consideration of individual aboriginal title since Cramer . There , although the relevant tribal aboriginal title had been extinguished , and an ordinance prohibited entry onto the federal lands in question , the Court found that the defendants could and did establish individual aboriginal title based on their use of the lands before the ordinance . The Ninth Circuit ( in an appeal from Nevada , not California ) held :

[ An individual ] establish [ es ] aboriginal title in much the same manner that a tribe does . An individual might be able to show that his or her lineal ancestors held and occupied , as individuals , a particular tract of land , to the exclusion of all others , from time immemorial , and that this title had never been extinguished .

However , the Ninth Circuit concluded that the federal policies in place at the time of Cramer had changed and thus :

In short , an Indian cannot today gain a right of occupancy simply by occupying public land , as the Indians did in Cramer . Under current law , that occupancy could not be viewed as undertaken with the implied consent of the government , as was the occupancy in Cramer . We therefore conclude that any individual occupancy rights acquired by the Danns must have had their inception prior to November 26 , 1934 , the date that the lands in question were withdrawn from entry by Executive Order No. 6910 .

Individual aboriginal title is a fact @-@ specific and fact @-@ intensive defense , which is difficult to raise as a criminal affirmative defense , for which the defendant has the burden of proof .