

6-7-2016

1852, February 3 - Report of the Secretary of the Interior with copy of instructions to California land commissioners

Follow this and additional works at: https://digitalcommons.csumb.edu/hornbeck_usa_2_b



Part of the [Arts and Humanities Commons](#), [Education Commons](#), [Law Commons](#), and the [Social and Behavioral Sciences Commons](#)

Recommended Citation

"1852, February 3 - Report of the Secretary of the Interior with copy of instructions to California land commissioners" (2016). *US Government Treaties and Reports*. 4.
https://digitalcommons.csumb.edu/hornbeck_usa_2_b/4

This Article is brought to you for free and open access by the Federal Government Documents at Digital Commons @ CSUMB. It has been accepted for inclusion in US Government Treaties and Reports by an authorized administrator of Digital Commons @ CSUMB. For more information, please contact digitalcommons@csumb.edu.

REPORT
OF
THE SECRETARY OF THE INTERIOR,

COMMUNICATING

A copy of the instructions given to the commissioners appointed under the act to ascertain and settle the private land claims in California.

FEBRUARY 3, 1852.

Read, referred to the Committee on Public Lands, and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 31, 1852.

SIR: In obedience to the resolution of the Senate of the 26th instant, I have the honor to communicate, herewith, a copy of the instructions given by the department to the commissioners appointed pursuant to the act of Congress approved 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and also a copy of the instructions which have been transmitted to the surveyor general of California in connexion with the subject.

I am, sir, with great respect, your obedient servant,
ALEX H. H. STUART, *Secretary.*

HON. WILLIAM R. KING,
Senate of the United States.

GENERAL LAND OFFICE,
January 30, 1852.

SIR: Pursuant to the resolution of the Senate, adopted on the 26th inst., and referred by you to this office, I have the honor to transmit herewith a copy of the instructions, bearing date September 11, 1851, from the department to the commissioners who have been appointed pursuant to the act of Congress, approved 3d March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and also a copy of the instructions which have been transmitted to the surveyor general of California in connexion with the subject.

With great respect, your obedient servant,
J. BUTTERFIELD, *Commissioner.*

HON. A. H. H. STUART,
Secretary of the Interior.

GENERAL LAND OFFICE,
September 11, 1851.

GENTLEMEN: You have been appointed commissioners to discharge the important and responsible duties prescribed by the act of Congress, approved 3d March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," which authorizes the continuance of the commission for three years from the date of the law, unless sooner terminated by the President of the United States. The act charges you with the appointment of "a secretary skilled in the Spanish and English languages," to "act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission," and provides for the employment by you, not to exceed five, of such a number of clerks "as may be necessary." It further authorizes the appointment by the President (which will be duly made) of a law agent skilled in both the languages mentioned, "whose special duty it shall be to superintend the interests of the United States in the premises." This law has made ample provision for the accomplishment of the great object of the government, which is to ascertain, settle, and recognise all bona fide valid titles derived from the former sovereignties of the country, and to detect, and forever put to rest, all fabricated, fraudulent, or simulated grants. The growth and prosperity of California materially depends upon a speedy and just settlement of the claims to lands within her limits, and the separation of all private property from the public domain, so that the public lands in that State may be disposed of as Congress may hereafter direct, without danger of conflict in title, or interference with the rights of individuals.

You are, therefore, directed to proceed at once to San Francisco, in California.

Immediately upon your arrival, you will hold your first session at that place, agreeably to the orders of the President, giving due and public notice of the fact as required by law.

You will give timely advice to the department of such other places as you would recommend that your subsequent sessions should be held.

The eighth section of the said act of 3d March, 1851, declares as follows:

"That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim; and within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered."

This, in connexion with the fourteenth section, which relates to property under *corporate grants*, shows the classes of titles in which the claimants have authority for bringing their claims before the commissioners for adjudication; and in which, after obtaining a decision, both the claimants and the United States have a right, on petition, to have such decision reviewed

by the United States courts, with a right of appeal to the Supreme Court of the United States.

The eleventh section of the act points to the *data* which shall control in the adjudications, by direction as follows:

"That the commissioners herein provided for, and the district and supreme courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable."

The treaty of *Guadalupe Hidalgo*, concluded at that city on the 2d of February, 1848, the ratifications of which were exchanged on the 30th of May, 1848, expressly stipulates, in the eighth and ninth articles, for the security and protection of the property of individuals, and in this respect not only employs, in substance, the language that is used in the treaty of 1803, by which the former province of Louisiana was ceded to the United States by the French republic, but conforms to the universally acknowledged principles of the law of nations, which interdict interference to the prejudice of private property upon a change of sovereignty. By the act of Congress, approved 26th May, 1824, (United States Statutes at Large, volume 4, page 52, chapter 173,) entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," the courts were opened for the adjudication of any title of a certain class in Missouri and Arkansas, which was claimed to be "protected or secured" by the treaty of 1803 with the French republic; "and which might have been perfected into a complete title under and in conformity to the laws, usages, and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States." This act of 1824, with certain modifications, was extended to Florida by the act of Congress, approved 23d May, 1828, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida." (United States Statutes at Large, vol. 4, page 284, chap. 70.)

Numerous cases on appeal under these laws, and other cases on writ of error, in which actions in the courts below had been instituted in the nature of ejectments, have been brought before the Supreme Court of the United States, where the rights of property under inchoate titles derived from the Spanish authorities have been examined, the principles of the laws of nations and the principles of equity under our own legislation have been asserted, expounded and applied to the species of property in question, and the whole subject most elaborately and ably discussed by that high tribunal, the most of the decisions of which, in land causes, will be found in Peters's and Howard's Reports of the Decisions of the Supreme Court of the United States. Besides the treaty of 1848 with Mexico, as found in the ninth volume of the United States Statutes at Large, the law of nations and the principles of equity as contained in works of authority, from which your own judgment will enable you to make a proper selection, and the aforesaid Decisions of the Supreme Court, in Peters's and Howard's Reports, in which the principles of public law and of equity are developed, the aforesaid 11th section of the act of 3d March, 1851, requires that in adjudicating, you

shall be governed "by the laws, usages, and customs of the government from which the claim is derived." There are claims in California derived from the authorities of Old Spain as well as from Mexico, and it will therefore be necessary for you to refer to, and consult the laws of Spain, the royal ordinances, the decrees and regulations, which may be found in White's New Recopilacion, in two volumes, relative to the disposal of the royal domain, in order to form a just idea of the policy and general principles which obtained and controlled in her land system. I refer you also to the report, dated March 1, 1849, of the Secretary of State for the Territory of California:

1. "On the laws and regulations governing grants or sales of public lands in California," not only during the government of Old Spain, but subsequently during the continuance of the Mexican power, and up to the period when the United States succeeded to the sovereignty.

2. "On the laws and regulations respecting the lands and other property belonging to the Missions of California."

3. "On the titles of land in California which may be required for fortifications, arsenals, or other military structures, for the use of the general government of the United States."

This report, with the accompanying appendix, 1 to 33, is printed in Executive document No. 17, House of Representatives, first session thirty-first Congress, pages 119 to 182, inclusive.

You are requested to obtain, for the use of the "commission," authentic copies, in the *original*, of the laws, regulations, &c., which are referred to in said report; also, a copy of the work therein mentioned, entitled "Ordenanzas de Tierras y aguas," by "Marianas Galuan, edition of 1844;" with such other official documents or papers as may have a material and useful bearing upon the matters which are to engage your attention in the duties devolved upon you by law—all of which, and such other books as you may require, you will have properly bound and labelled with the name of the "*Commission*," and as the "*property of the United States*."

You will find in Senate report committee No. 75, first session thirtieth Congress, testimony taken before a Committee of the Senate, touching grants in California illegally made and without the usual formalities, to which I would invite your careful consideration.

The United States surveyor general for California, whose office is at San Francisco, has obtained possession of the archives of the former sovereignties of California, and has engaged a competent person to arrange, classify, and index them in such a manner, as to be available in the examination of titles.

This work of arrangement, if not already finished, will be completed by the time you will be able to reach the country.

The surveyor general will be instructed to lay open to you those archives during your session at San Francisco, and to have prepared either a complete synopsis or summary of the contents of each of the archives, or fac simile copies of the whole, whichever you may prefer, so as to be in readiness for delivery to you when you shall find it necessary to leave that place to visit other points. With such materials to guide the commission you will enter upon the business of adjudication.

You will require the claimant, in every case, to file a written notice, setting forth the name of "present claimant;" name of "original claimant;" nature of claim; its date: from whom the original title was derived, with

a reference to the evidence of the power and authority under which the granting officer may have acted; quantity claimed; locality; nature and extent of conflicting claim, if any; with a reference to the documentary evidence and testimony relied upon to establish the claim, and to show a transfer of right from the "original grantee" to "present claimant."

You will also require the claimant, in all cases, to file a duly authenticated plat of survey exhibiting the tract claimed, and showing the nature and extent of any claim interfering therewith.

This is deemed indispensable in order by such initiatory survey to fix, with precision and certainty, the limits of every tract claimed, thereby avoiding, in regard to location, all doubt or controversy hereafter, in case of confirmation, and furnishing at the same time to the commission, and to the courts, evidence of the existence and nature of conflicting claims.

There are, it is believed, no Spanish or Mexican plats of survey extant for lands in California, no actual surveys, so far as this office is advised, having been executed during the sovereignty over the country, of either Spain or Mexico.

The surveys, therefore, of all claims which may be brought before the commissioners, should be required to be executed at the *expense of the parties*, in accordance with such orders as you may deem necessary and proper in each case, and to be made *under the superintendence of the United States surveyor general*, by whom the surveys, and any interference which may exist, should be examined and certified.

The effect of this will be not only to save claimants from embarrassments and difficulties, inseparable from the presentation and adjudication of claims with indefinite limits, but it will promote the welfare of the country generally, by furnishing the surveyor general with evidence of what is claimed as private property, thus enabling him to ascertain what is undisputed public land, and to proceed with the public surveys accordingly, without awaiting the final action of the different tribunals upon private titles.

The papers, in every case, should be regularly numbered, and entered in the order of presentation, in a docket of the form herewith.

Your journal, to consist of a substantially bound volume, or volumes, and prefaced by a record of your commissions and oaths of office, should contain a full record of the notice and evidence in support of each claim, and of your decision, setting forth, as succinctly and concisely as possible, all the leading facts, particulars, and the principles applicable to the case, and upon which such decision may be founded.

As a case may be acted upon by you at different periods, before being finally decided, the connexion of your proceedings may be kept up by page references both in the journal and on the docket. All the original papers should of course be carefully numbered, filed and preserved, and should have an endorsement upon each of them of the volume and page of the record in which they may be entered.

The 8th section of the act, as hereinbefore indicated, requires you, "within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered."

This requirement will of course be strictly and uniformly observed by you, and the necessary entries of your action in the premises made in your record.

It will be observed that the 12th section of the act declares, "that to

entitle either party to a review of the proceedings and decision of the commissioners, notice of the intention of such party to file a petition, to the district court, shall be entered on the journal or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the district court within six months after such decision has been rendered." This provision of law renders it necessary that you shall regularly notify the claimants, also, of your decision, and this should always be done promptly; and in any case in which the requisite notice of the intention to file a petition in court shall not be given to you within sixty days from the time you may notify the parties of your decision, such decision will *ipso facto* become final and conclusive, and you will of course report any such case to the surveyor general, and to the department.

It is a matter of high public concern, and of the deepest interest to California, that the business of the commission should be pressed forward with all convenient despatch, and as much so as is compatible with the grave interest involved; and when your labors in regard to the classes of titles contemplated in the foregoing shall have terminated, you will give due notice of the fact to this office, and will turn over the records and papers to the surveyor general, subject to the orders of the department.

Besides the duties hereinbefore adverted to, the act of 3d March, 1851, requires, in its 16th section, that the commissioners shall "ascertain and report to the Secretary of the Interior the tenure by which the Mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians."

You are directed to make a separate and full report on the several subjects specified in this section of the act, at as early a period as may be consistent with your other duties under the law.

Your salaries, as stipulated in the 17th section of the act, will "commence from the day of the notification" by you "of the first meeting of the board."

Very respectfully, your obedient servant,

J. BUTTERFIELD,

Commissioner.

MESSRS. HILAND HALL,
HARRY J. THORNTON,
JAMES WILSON,

*United States Commissioners for the
adjudication of California land claims.*

The foregoing instructions are approved:

ALEX. H. H. STUART,
Secretary.

DEPARTMENT OF THE INTERIOR,
September 11, 1851.

GENERAL LAND OFFICE,
September 11, 1851.

SIR: By a letter of the 30th of June last you informed me of the course you proposed to pursue in regard to the ARCHIVES of the former governments of California, which you had not then obtained, but soon expected; and under date the 13th of August last I advised you of the approval of your suggestions, and requested you to cause an *abstract* of them, in duplicate, to be prepared, duly verified, one for your office and one to be sent here.

Since then I have received your communication of the 14th July last, informing me that the archives have been delivered over, and are in your office.

You further state that you have employed a competent person to arrange, classify, and index them, so as to render the archives available in the examination of titles, and at the same time suggest that they be kept "in *tin* boxes or trunks of convenient size, having a lock and key to each, and painted and numbered," stating that "by this plan they can be kept perfectly secure from accident or improper handling, and at the same time be always in that condition in which they can be most conveniently kept in the vault or removed therefrom, as circumstances would render necessary."

I approve of what you have done, and what you propose in the matter, both as to the employment of an individual for the purpose referred to, and as to the manner of securing and preserving the archives.

The arrangement and indexing of the papers, it is presumed, has been completed, and will render it easy for you to have the abstract of them prepared in duplicate as requested. It would be quite important, in fact, for the *department* to have a complete fac simile copy of all of the archives duly verified, and I request that you will report to me the probable cost of preparing such a transcript.

Herewith I enclose for your information a copy of the instructions, dated 11th September, 1851, from this office to the commissioners, appointed pursuant to the act of Congress, approved 3d March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California." You will see that the first session of the commissioners is to be held at St. Francisco, on the 8th December, 1851.

During their session at that place you will lay open to them the archives, and will have prepared and in readiness for them, by the time they leave St. Francisco to visit other points, either a complete synopsis or summary of the contents of those archives, or, if deemed by them indispensable in the discharge of their duties, a fac simile copy of the whole of them must be furnished, and in either case the service must be paid for out of "the commission" fund.

Whilst it is not desired to avoid any legitimate expense necessary to a proper and faithful discharge of duty, it is important that economy should be observed; and if the *synopsis* alluded to will answer every purpose for examination, and be a readier means of bringing titles to a test, why then the synopsis should be preferred; and should any special case of doubt arise, the commissioners can defer final action upon it until either a personal inspection can be made by them of the archives on their return to St. Francisco, or such examination may be made by the surveyor general, and the result officially reported to them by him upon their written request.

You will find from these instructions that the claimants will be required,

under the orders of the commissioners, to have *initiatory surveys* made under your superintendence, to be examined and certified by you.

You will not fail to appreciate the responsibility of seeing that these surveys are made in strict accordance with the plain intent of each grant, both as to locality and area, in order to fulfil in this particular the precise purpose of the granting power by fixing and limiting the location to the specific tract or parcel of land designed to be conceded by the proper authority, and separated from the national domain.

Returns of survey must exhibit the nature and extent of interference, if any such exist, and should be so made as will readily enable you to connect the same with the lines of the public surveys.

It is a matter of the highest concern, and demanded by the interests of the people of California, that the surveying of the public lands shall not be delayed until all these private land titles shall have been finally adjudicated. These "*initiatory*" surveys will avoid the necessity of such delay; and when all of them shall have been filed, it will enable the surveying department to push forward its business and run the lines of the public surveys just as well and as effectually, as if every private land title in California had in the first instance been finally adjudicated.

Besides this desideratum, private claimants by this measure will be saved from the difficulties incident to the adjudication of claims with indefinite and uncertain boundaries, and relieved from the danger of disputes and conflicts in location in the event of the final confirmation of their titles.

In any case in which a private title may be finally adjudged to be invalid, the surveyor general can hereafter easily represent the same as public land by the extension over the same of the lines of the public surveys. You are requested to acknowledge the receipt of this communication, and if any thing in addition to the enclosed instructions should occur to you as material to be communicated to the commissioners in order to facilitate their operations, I request that you will suggest it.

Very respectfully, your obedient servant,

J. BUTTERFIELD, *Commissioner*.

SAML. D. KING, Esq.,

Surveyor General, San Francisco, California.