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Outline History of California Board of Land Commissioners

OUTLINE HISTORY
of
CALIFORNIA BOARD OF LAND COMMISSIONERS
1851-1856

Prepared by Philip B. Brower, Junior Archivist, Division of
Interior Department Archives; February 1943

I. Report on Calif. land situation prior to creation of Board

A. Henry Wager Halleck report (March 1849)

[for report see Senate Executive Document No. 18, 31st Cong.,
1st Sess., pp. 120-134.]

1. Indefiniteness of land boundaries.
2. Lack of confirmation of land titles by previous territorial legislatures.
3. Onerous conditions governing land sales exacted by former Mexican regime.
4. Custom of former authorities to have no surveys of lands made.
5. Tendency of some local officials to make improper grants of land.
6. Halleck recommended that "measures be taken without delay for the speedy and final settlement" of land titles upon principles of equity and justice.

[At time of report, Halleck was Secretary of State for the Territory of Calif. During Civil War he became General-in-Chief of the Union Armies. He was a landowner in Calif. and had to submit his claims to Board of Land Comm'rs. For nature of these claims, see Petition 270 in "Record of Petitions", 2 vols., vol. 1, p. 133; vol. 2, p. 76.]

B. William Carey Jones report (April 10, 1850)

[for report see Senate Executive Document No. 18, 31st Cong.,
2nd Sess., p. 1-136. The original report is in the
custody of the Division of Interior Dept Archives]

1. Lack of survey of land grants.
2. Land record-keeping faulty.
3. Yet, greater part of land grants were held by "perfect titles, which grants should be respected by the U. S. Govt."
4. There would be little trouble involved in distinguishing between private and public land.
5. Casting of doubt upon legality of land titles would do more harm than good.

6. Jones recommended that Federal Govt undertake surveys of the land grants. Whenever there was reason to believe that a land grant was invalid, the Govt could bring court action to nullify the grant.

[Jones had been appointed by the Interior Dept as a Special Agent to investigate land titles in Calif. & New Mexico. For the Dept of Interior's instructions to Jones, see Senate Executive Document No. 18, 31st Cong., 1st Sess., p. 113. Jones too owned land in Calif. See Petitions 348, 617, 686, 750 in "Record of Petitions", vols. 1 and 2.]

II. Proposals for solving Calif. land situation

- A. Sec. of Interior Ewing's proposal [See Annual Report of Sec. of Interior for 1849 in Senate Documents, 1st Sess., 31 Cong., vol II, 1849-50, Doc. 1.]

1. A judicial commission should be set up to examine and settle land claims
2. All claims which had been "regular and fair at their inception but which had not been perfected" and had been actually occupied should be accepted as valid.

- B. GLO Commissioner's proposal [See his Annual Report for 1850 in Senate Executive Document No. 2, 31st Cong., 2nd Sess.]

1. A Board of Commissioners should be appointed to examine all facts relating to the validity or invalidity of claims, and it should report its opinions on these claims to the Interior Dept.
2. A tribunal, consisting of the Secretary of the Interior, U. S. Attorney General and Commissioner of the General Land Office should review those opinions, affirming or denying these opinions.
3. From the decisions of this tribunal appeal could be had to the District or Circuit Court of the U. S. for the proper district in Calif, and further appeal could be made to the U. S. Supreme Court.

C. Legislative proposals (not enacted)

1. Proposal No. 1 [See Bill S-336, 30 Cong., 1st Sess., Deposited with Senate records of the Division of Legislative Archives, The National Archives]
 - a. Pres. of U. S. & Senate to appoint 3 commissioners to Adjudicate land titles.
 - b. Commissioners would hold session until Sept. 30, 1851.

- c. Commissioners could give final confirmation on claims involving less than 1000 acres, but they should submit their opinions only on claims for more than 1000 acres to the Secretary of the Treasury who in turn would lay them before Congress.
- 2. Proposal No. 2 [See Bill S-336, 30 Cong., 1st Sess., deposited with Senate records of the Division of Legislative Archives, The National Archives]
 - a. Pres. of U. S. & Senate to appoint a board of commissioners to settle land claims consisting of a Surveyor General, a Register of Lands and a Receiver of Public Moneys
 - b. This board would hold sessions until Sept. 30, 1851.
 - c. The board would submit to the Secretary of the Treasury a statement of their work (for his final approval, presumably).
- 5. Senator J. C. Fremont's proposal [See Bill S-337, 31st Cong., 1st Sess., deposited with Division of Legislative Archives]
 - a. A recorder of Land Titles would be appointed for Calif.
 - b. His sole task would consist of registering private land claims & preserve the evidences supporting these claims
 - c. When Congress finally appointed a tribunal to adjudicate land titles in Calif., the Recorder would have over all his records to the tribunal.

III. Establishment of the California Board

- A. Original Congressional Act creating the Board (March 3, 1851-9 U. S. Statutes 631)

[This act was mainly the work of Senator Wm M. Gwin of Calif.]

- 1. Pres. of U. S. & Senate to appoint a commission of 3 men for the purpose of "ascertaining and settling" private land claims, a task to be completed in 3 years or for a shorter space of time if the Pres. saw fit.
- 2. All land titles based on Spanish or Mexican grants were to be examined by the Board.
- 3. Its decisions were to be sent to the U. S. District Attorney for the district in which the decision was rendered.
- 4. Appeals for the board's decisions could be taken to the District Courts of Calif. and from these courts to the U. S. Supreme Court.
- 5. In their actions the commissioners were to be guided "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"

6. If any person failed to file a claim within a period of two years, his land became forfeited to the U. S. Govt.
7. Exempt from consideration by the commissioners was property granted by towns or similar corporations for use as farms or pastures. Also exempt were lands within a town, city or village which had been established prior to July 7, 1846.
8. In addition to its main task, the commissioners were also required to report to the Secretary of the Interior the nature of the tenure of the various types of mission lands in Calif.
9. Meetings of the Board would be held at places and at times determined by the Pres.
10. Commissioners had the authority to appoint a secretary to assist them in their work, who was to keep a record of the proceedings of the Board, these proceedings to be deposited finally with the Secretary of the Interior.
11. Upon proper application, the secretary could issue writs of subpoenas compelling attendance of witnesses.
12. The Board could also appoint not more than 5 clerks.
13. On the Board should also be a law agent appointed by the Pres. of U. S. to represent the U. S. Govt in all cases coming before the commissioners.

E. Later Congressional Acts affecting the Calif. Board

1. Act of Aug. 31, 1852 [See 9 U. S. Statutes 99]
 - a. Board to have use of only 3 clerks instead of 5 as stipulated in original Act.
 - b. Pres. of U. S. to appoint an associate law agent to assist the law agent [who was overburdened with work]
2. Act of January 18, 1854 [See 9 U. S. Statutes 265]
 - a. The legal existence of the Calif. Board is continued for one more year after March 3, 1854.
 - b. The Calif. Board is given the power to appoint 1 to 3 persons to act as commissioners for the taking of testimony to be used before the Board [The Calif. Board actually only 2 of these commissioners. The reason of providing for these commissioners was the overwhelming amount of work facing the Calif. commissioners.]
3. Act of January 10, 1855 [See 10 U. S. Statutes 603]
 - a. The legal existence of the Calif. Board is continued for one more year after March 3, 1855.
 - b. Calif. commissioners have the power to issue writs of subpoenas requiring attendance of witnesses and for contempt for their subpoenas the commissioners have the same power to inflict punishment as the U. S. District Court had.

IV. Composition of the Calif. Board, 1851-1856

A. Commissioners

1. Harry I. Thornton, June 7, 1851 to 1853
2. Hiland Hall, Aug. 8, 1851 to 1853, who was chairman.
3. James Wilson, ca. Sept. 1851 to 1853

[In 1855 a new set of commissioners were appointed]

4. Thompson Campbell, March 28, 1853 to about May 1854
5. Alpheus Felch, April 1853 to March 3, 1856, who was chairman
6. Robert A. Thompson, March 18, 1853 to March 3, 1856
7. Samuel E. Farwell, July 1, 1854 to March 3, 1856 [who took the place of Thompson Campbell].

[A commissioner's salary was \$8000]

B. Commissioners to take Testimony

1. Peter Lott, March 18, 1854 to April 1, 1855
2. George T. Burril, March 18 to July 5, 1854

[These Commissioners received \$10.00 per day]

C. Secretaries to the Board

1. John B. Carr, ca. Dec. 1851 to about Feb. 1852
2. George Fisher, who served until March 1856

[Secretary received \$4000 per year]

D. Law Agents

1. George Cooley, Oct. 10, 1851 to about March 1853
2. John H. McKune, Feb. 9 to March 1853
3. Volney E. Howard, March 29, to Sept. 15, 1853

[No other law agents seemed to have been appointed. The associate law agents seemed to replace them. Law agents received a salary of \$5000]

E. Associate Law Agents

1. Robert Greenhow, about October 1852 to March 27, 1854
2. Louis Blanding July 15, 1854 to probably March 1856

F. Clerks

In time, under Secretary George Fisher a fairly large group of clerks were assembled. At one time there were probably a total of 25 clerks [See "Letter Book", p. 128] The clerks were divided into 2 groups, recording and transcribing. Fisher probably appointed a chief over each group, since there is a record of his having appointed a chief over the "Transcript Clerks" [See "Letter Book", p. 112]

V. Organizing the Board

- A. GLO instructions to the Board [See Senate Executive Document No. 26, 32nd Cong., 1st Sess. See also Calif. Board of Land Comm'r's, "Journal", vol. 1, pp. 12-20]

1. In arriving at their decisions they have as a guide (a) the treaty of Guadalupe-Hidalgo (b) certain specified acts of Congress (c) certain U. S. Supreme Court decisions (d) laws, usages and customs of the govt under which Calif. land claims were derived.
2. GLO comm'r refers commissioners to Halleck's report of 1849. They should obtain copies of documents accompanying this report.
3. For the benefit of the Board the Calif. Surveyor-Gen. is arranging & indexing the archives of the former govts of Calif.
4. Each claimant is to file (a) written notice of his claim (b) an authenticated plot of survey of land claimed.
5. Comm'rs are to keep certain records: (a) Docket, (b) Journal, etc.
6. They should carry out their business as promptly as possible.
7. At the end of their labors, they are to turn over their records and papers to the Calif. Surveyor-General.
8. They should report on the tenure of mission lands in Calif. and on all subjects specified in these instructions.

- B. Two of the commissioners held a meeting in Washington, D. C., on Sept. 10, 1851 and set Dec. 3, 1851 as the day for the Board to meet in San Francisco (a date which the Pres. also set by proclamation)

1. The first meeting of the Board was held on Dec. 3, 1851. It was adjourned for lack of a quorum.

2. The second meeting took place on Dec. 31, 1851, and meetings were held thereafter at more or less regular intervals.
3. Until Aug. 16, 1852, the Board held meetings at San Francisco. From Aug. 31, 1852 thru Nov. 15, 1852 meetings were held at Los Angeles. Thereafter the Board met in San Francisco. Attempts to have the Board meet at Monterey and Santa Barbara failed.

VI. Work of the Board—as it concerned land titles.

A. Adoption of administrative procedures

1. The meeting of January 12, 1852 adopted regulations governing filing of claims, petitions and other procedures [See "Journal", vol. 1, p. 24]. One of the three commissioners was designated chairman, who should make public notice of the decisions of the Board "unless there is too much dissidence".
2. Meeting of January 26, 1852 promulgated rules relative to office hours and use of books in the Board's library [See "Journal", vol. 1, p. 47].
3. Meeting of Feb. 9, 1852 issued regulations concerning "Intervening Claims" [See "Journal", vol. 1, p. 47].
4. Meeting of March 6, 1852 adopted rules of office [See "Journal", vol. 1, p. 328].

B. The business of the Board moved slowly during the tenure of the first group of commissioners. Under the second group of commissioners, who took office by the middle of the year 1853, the work of the board moved faster. By October 1854 a total of 397 cases had been decided by the Board.

C. A total of 813 cases were presented to the Calif. Board. It had been expected that between 1500 and 2000 cases would be presented [See letter of March 31, 1852 of law agent George W. Cooley to Sec. of Interior in House Executive Document No. 131, 32nd Cong., 1st Sess.]. Doubtless the main factor in the falling off of number of cases presented was the overpowering cost of the litigation involved.

D. Some outstanding decisions of the Board

1. The commissioners deemed it their right to pass judgment on "perfect" titles as well as imperfect titles. [See "Journal", vol. 2, p. 359; vol. 3, p. 6].
2. The commissioners considered themselves outside the jurisdiction and authority of the General Land Office and also the Dept of Interior in general when passing upon claims. Whatever instructions the Dept or GLO Comm'r would issue would be considered by the Board as advisory and not mandatory. The views of the Dept would, however, get "respectful consideration". [See "Journal", vol. 2, p. 343].

VII. Work of the Board--as it concerned "Mission Tenure".

A. This minor phase of the Calif. Board was dealt with in a minor way. At the completion of its main job on March 3, 1856, the Board rendered a report as to the tenure by which the mission lands in Calif. were held. [See "Letter Book", pp. 207-214. This report has been published as "Report of the Commissioners on Missions", Appendix to Case No. 92, The U. S. vs. Cruz Cervantes (Supreme Court of the U. S.), 1-3.]

1. Mission lands consist of two types

- a. What is known as "church property", which includes church buildings, cemeteries, certain gardens, etc. Such property was usually confirmed to the Bishop of the Catholic Church by the Board.
- b. What is more correctly designated "mission lands", which included large tracts of land surrounding the above "church property" and usually cultivated by the converted Indians, who also lived on these lands. After 1833 the Mexican govt gave grants of these lands outright to some of these Indians and to other individuals. Such grants have been confirmed by the Board. On the other hand, there are Indians living at present on these mission lands who never received an official grant. The land they are cultivating is small in amount. If no other persons can prove ownership of these lands on which these Indians live illegally, the Board recommends the U. S. govt confirm to these Indians ownership of the land or else recompense the Indians some other way

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