

The Elusive 'Four Corners' of Capitan Grande¹

Tanis C. Thorne

Older Indians feel that they never had a square deal -- promises have been made and broken. They talk about their 'four corners' -- lands promised to them with the 'four corners laid out exact.' The oldest ones say, 'Yes, we will have our four corners, the four corners of our graves.'

Judy Van Der Veer (in Peattie 1946)

Conflicts over reservation boundaries have a long and torrid history in the Mission Indian Agency of Southern California. Because the 1852 treaties of Santa Ysabel and Temecula were repudiated by the Senate, the federal government's oversight of Indian affairs in Southern California was weak. "Even when the government did attempt to aid the Indians, the efforts were ultimately undermined by political forces on the local, state, and national level," writes Glenn Farris (Hartnell 2004:14). Until the 1930s, only sporadic attempts to stabilize or defend executive order reservation boundaries were made. Rather, the political will was focused on the speedy dissolution of the reservations and the termination of federal responsibility. A detailed case study of the labyrinthine bureaucratic muddle over Capitan Grande reservation's boundaries is presented here as a microcosm of what was occurring on most of the Mission Indian Agency reservations in Southern California. This essay and its accompanying maps will document the numerous boundary changes from 1875 to 1934.

Twenty sections (12,800 acres) were set aside from public domain for Capitan Grande's population of 140 Indians by executive order on December 27, 1875 (Kappler 904, I: 820)² (Figure 25.1). This large tract for relatively few Indians was only prescriptive. The Department of the Interior presumed that large blocks of land from the public domain would embrace the

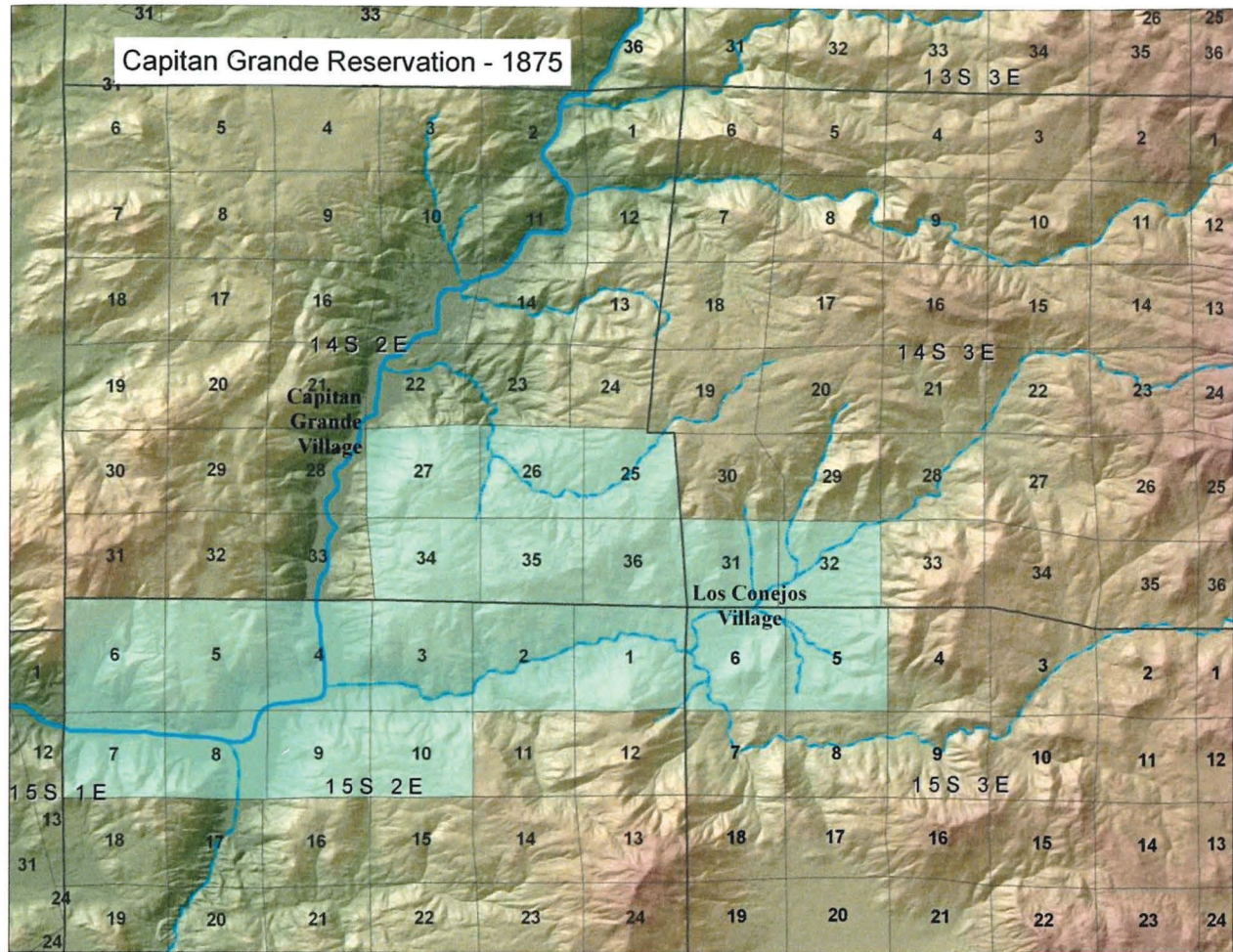


Figure 25.1. Capitan Grande Indian Reservation – 1875.

existing Indian Rancheria (i.e., village) locations and thus provide an immediate shield from white homesteader filings. The initial, hasty and crude surveys were later to be perfected and land not being used by Indians would be returned to the public domain. This initial effort to define reservation boundaries was temporary and expedient but the effort was also flawed in that it failed to accomplish its main objective. At Capitan Grande the area defined in the 1875 executive order *did* embrace the lands of the Los Conejos band's Rancheria, but the order *did not* include the lands the historic village site in the San Diego River valley (called Coapan) granted to them by federal official, Lieutenant John B. Magruder, in the 1850s. The majority of Capitan

Grande Indians were outside the boundaries, and several white homesteaders were already inside the boundaries.

To explain this egregious error, the surveyor said that he received no pay and could not afford to go to much trouble in the matter. Helen Hunt Jackson said these survey mistakes could only be explained as "deliberate fraud, unpardonable carelessness or colossal stupidity."³ The Capitan Grande people made "much fuss" when the error was revealed to them; they demanded the surveyor come back and take "all the lands the Indians wanted on the river," an additional eight sections to which they had a legal right from Magruder. Guttled of its best river lands, the 1875 executive order was "nothing but a mountain of granite boulders where a goat could not live."⁴ In 1877, Section 36 was deleted from the reservation because this section in every township was reserved as state school land (Figure 25.2).

Despite the justice of the Capitan Grande Indian's cause and the support of their priest, Indian agents, and perhaps even a lawyer, the federal government balked at correcting the boundary error. The Indian Office's position was that "they had made one reservation and it would have to answer."⁵ The new Commissioner of Indian Affairs, Ezra Hayt, was adamantly opposed to expanding the Indian land base. More specifically, he opposed the perpetuation of Indian communally-held land bases. "Only by the adoption of private property," Hayt wrote in 1879, can "the race be led in a few years to a condition where they may be clothed with citizenship and left to their own resources to maintain themselves as citizens of the republic" (Annual Report of the CIA 1879; Meyer 1979: 179–192). The grand solution to the Indian "problem" in California and elsewhere was to secure private property for Indians in tandem with U.S. citizenship.

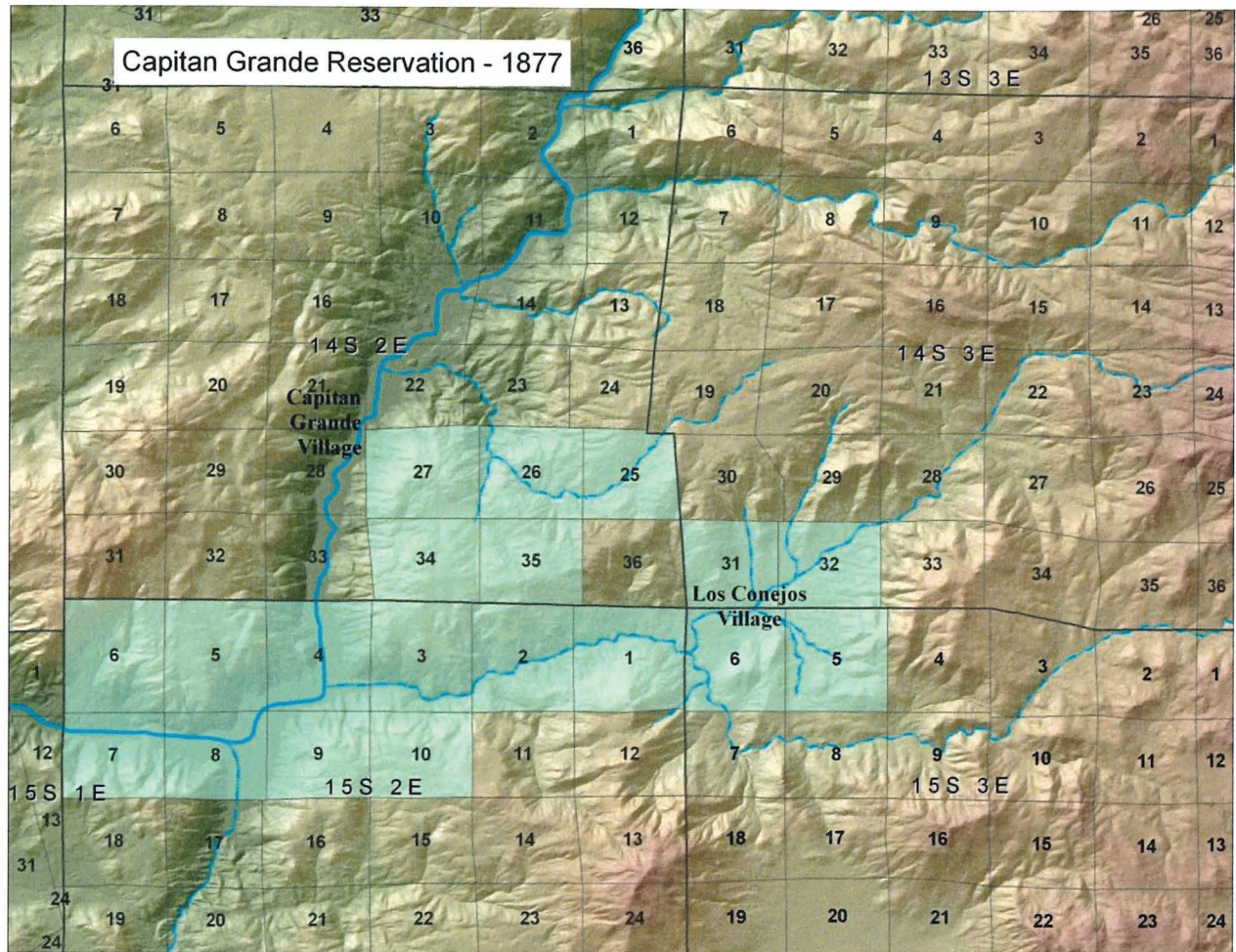


Figure 25.2. Capitan Grande Indian Reservation – 1877.

No sooner had the Mission Agency reservations been created than the federal government contemplated dissolving them and returning the land to the public domain. This equivocation played into the hands of white homesteaders. Pressured by East Coast Indian rights advocates, the federal government was compelled to do something for Southern California Indians, but was indecisive about what path to take. In the late 1870s and early 1880s Congress seriously debated a bill for relief of the Mission Indians. The Department of the Interior favored a homestead policy for California Indians, allowing landless families to acquire 160 acre allotments from the public domain.⁶ The homestead policy required no large Congressional appropriations of money to purchase private land and no commitment of federal trust responsibility for the numerous,

scattered bands of Mission Indians. Meanwhile, Mission Indian Agent S.S. Lawson lobbied hard for Congress to purchase one large reservation for all Mission Indians in the San Geronimo Pass. The House Public Lands Committee recommended the consolidation plan, but most Southern California Indians opposed it.⁷

In August 1880 at the Department of the Interior's directive, Captain Ignacio Curo applied for a homestead on Section 22, where Sand Creek flowed into the San Diego River canyon. This homestead was "the very center of the ancient and present Rancheria," where the best farming lands, the Indian cemetery, the adobe home claimed by Captain Curo, and many other dwellings and improvements were located.⁸ As Captain Curo and his people completed their application, white settlers realized Indians' historic use areas were open to homestead application as public domain land. One of the more irascible and tenacious settlers to arrive was Charles Hensley,⁹ who also filed for a homestead on section 22. Hensley showed Curo "a paper with a big red seal which he told Ignacio was his patent from Washington." He offered Curo \$160–200 for his house "if he would leave quietly[;] if not, he would have to leave and git nothing."¹⁰ The Capitan Grande people suffered abuse as well as costly and unnecessary expense to survey Section 22 because of the initial 1875 boundary error.

Helen Hunt Jackson put Capitan Grande's story of intrusion, dispossession, intimidation, and fraud into the national spotlight. She challenged the federal government to define precisely Mission Indian reservation boundaries through accurate surveys done by government officials, distinctly marking boundaries "plainly and conspicuously ... leaving no room for doubt."¹¹ Jackson's crusade against the Capitan Grande intruders met with immediate success. A month after the Jackson-Kinney report was forwarded to Washington, President Chester Arthur added eight sections to Capitan Grande on June 19, 1883 (Figure 25.3). Many applications, including

that of Charles Hensley, were canceled at the insistence of the Indian Office on January 8, 1884.¹²

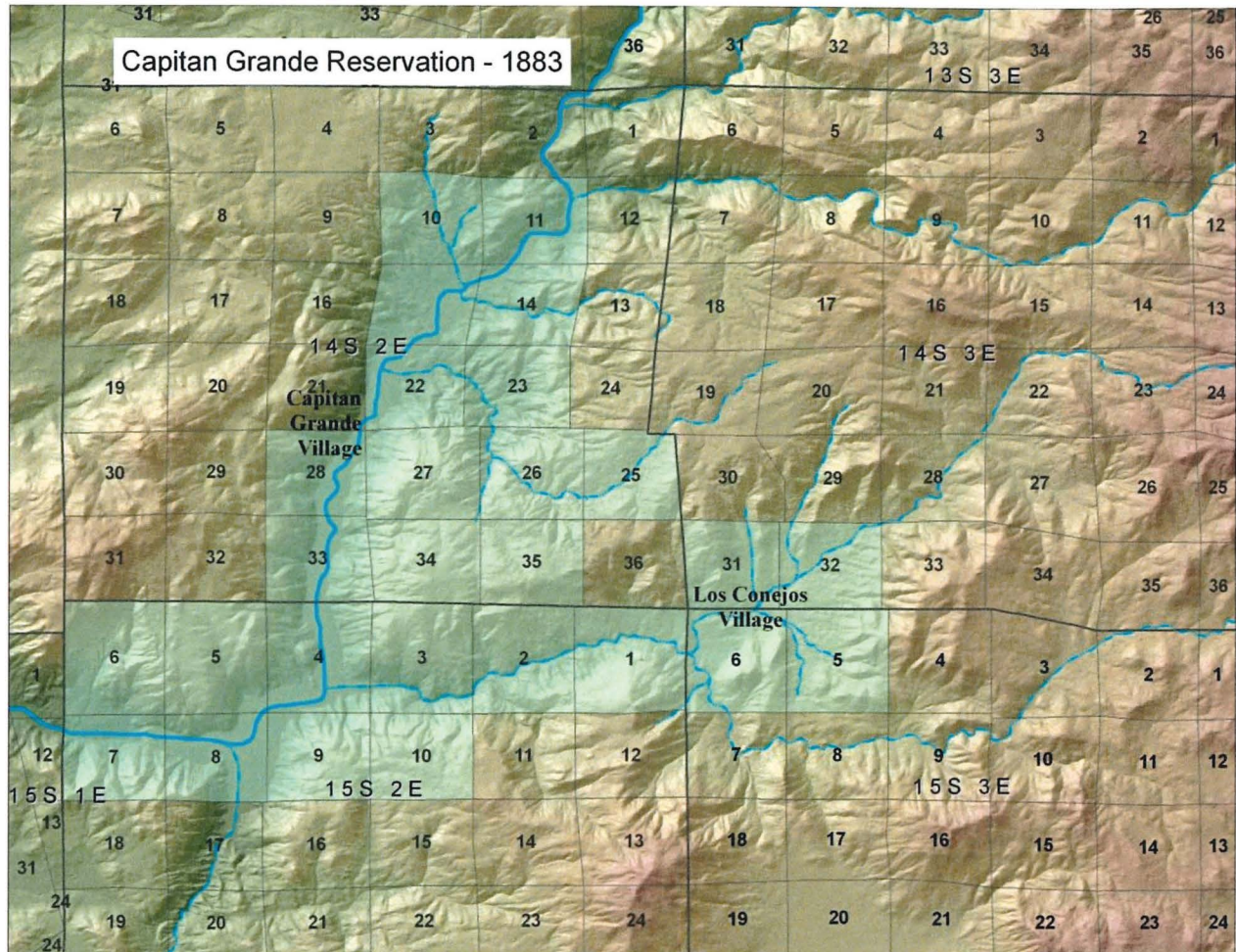


Figure 25.3. Capitan Grande Indian Reservation – 1883.

Ironically, President Arthur's action accomplished little. Trespass and resource theft intensified. In 1884 and 1885, 200 head of cattle belonging to San Diego residents were overrunning the Capitan Grande reservation. Wood products from Capitan Grande's forests were being marketed in San Diego. Indians were being prevented from planting their crops. Whiskey shops operated openly on the reservation. A prolonged and highly politicized legal struggle ensued over land titles, as many white homesteaders claimed they had filed before the land was withdrawn from public entry. Charles Hensley, garnering much political support from prominent

men of San Diego, refused to quit his claim on Capitan Grande. Hensley and his San Diego allies were convinced all the Capitan Grande lands would be returned to the public domain.

Audaciously, the San Diego Flume Company began construction of a wooden flume along the banks of the San Diego without asking permission either from the Capitan Grande people, or from their federal guardian, for right to cross federal trust land.¹³ Though aware of the flagrant trespass and resource theft on Mission Indian lands, the Indian Office felt its hands were tied until Congress passed the bill for relief of the Mission Indians. Meanwhile, the Mission Indian agent recommended revoking the 1883 executive order and returning the land to the public domain. The Indians will never need or use the reservation land, Agent Joseph Preston said.¹⁴

The Department of the Interior took a hard line and refused the San Diego Flume Company's belated request for a right of way. On December 23, 1887 the Interior ordered the flume company to cease work immediately "unless satisfactory arrangements could be made whereby the Indians could be supplied with a sufficient quantity of water." An agreement was drawn up on January 16, 1888 in which the flume company would pay \$100 per mile for the right of way or \$1300 per annum. The work on the flume resumed.¹⁵ As a concession to the water companies of Southern California, the Department of the Interior recommended the addition of an amendment to the Mission Relief bill, authorizing the Secretary of the Interior to grant permission for flume, ditch, canal, and pipe construction for conveyance of water over, across or through the Mission Reservations (Article 6).¹⁶ The San Diego Flume Company legally acquired its right of way in 1892 under terms very similar to the 1888 agreement.

The "Act for Relief of the Mission Indians" empowered the Smiley Commission to fulfill Helen Hunt Jackson's dream of stabilizing boundaries. A most seriously detrimental consequence of the commission's work, however, was the radical reduction in size of several

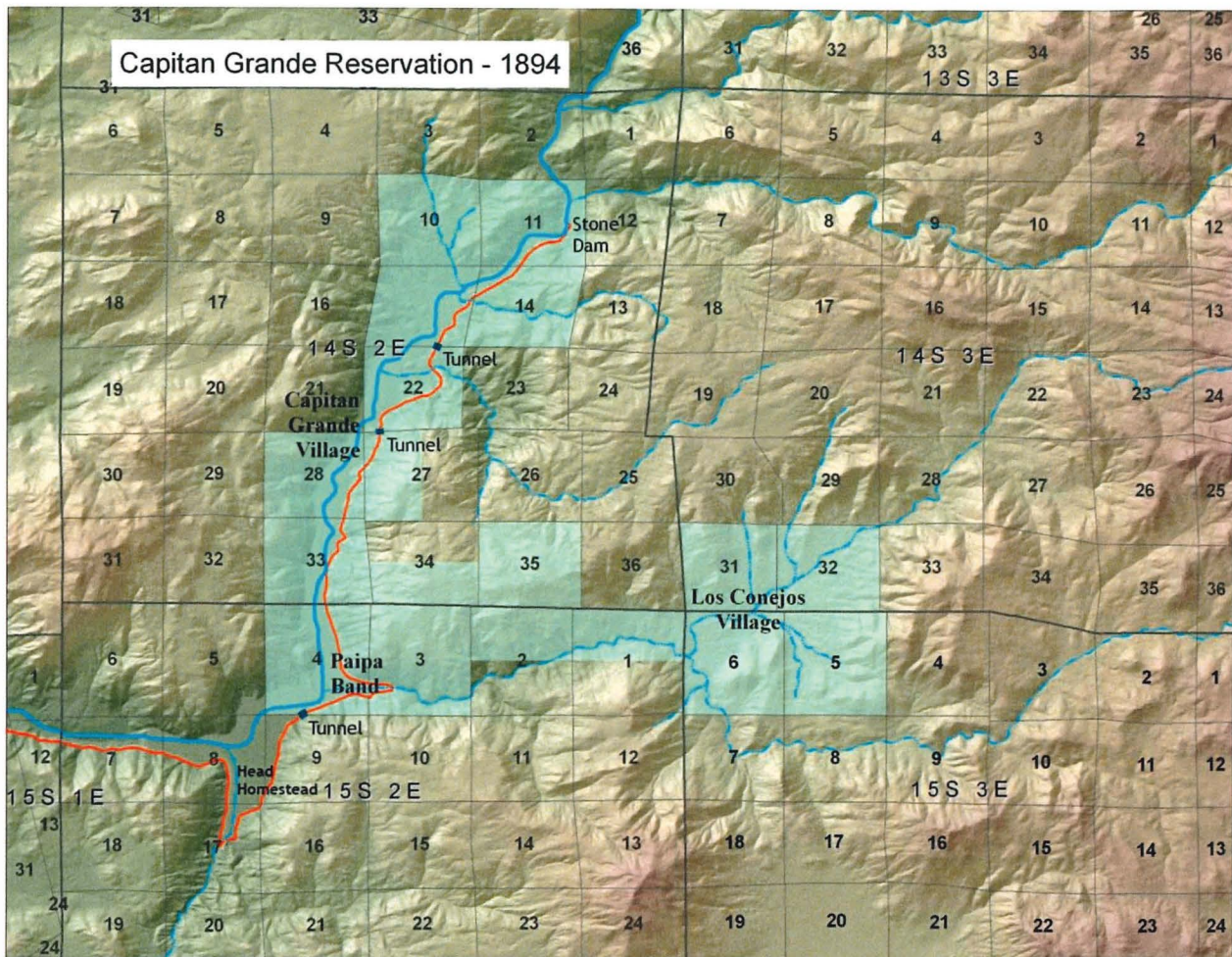


Figure 25.4. Capitan Grande Indian Reservation – 1894.

Mission reservations. Capitan Grande was reduced from a little more than twenty-seven sections (17,340.57 acres) to seventeen sections (10, 293 acres) (Figure 25.4). Professor C. C. Painter, one of the commission’s members, reported proudly that the lands trimmed were “utterly worthless.”¹⁷ Yet, five well-watered and desirable sections in the southwestern part of the original 1875 executive order reservation—Sections 5–9 in T15 S, R 2 E at the South Fork of the San Diego River and of easiest access and proximity to centers of white settlement -- were “intentionally omitted” along with “extraneous” rocky and useless lands. The Smiley Commission’s recommendations were formalized in the Capitan Grande trust patent of March 10, 1894. The Smiley Commission muddled boundaries by miscalculating the total acreage.

Moreover, the deleted sections were not formally returned to the public domain. Homesteaders on the southern sections could not perfect their titles for years. Finally, after years of lobbying, Presidents William McKinley and Teddy Roosevelt formally deleted these sections from the reserve by executive orders.¹⁸

In 1907, following the recommendations of Special Investigator C.E. Kelsey, 6,720 acres were added to Capitan Grande to promote agricultural self-sufficiency and to protect the Conejos village watershed (Figure 25.5). Acreage was added from public domain land on which no

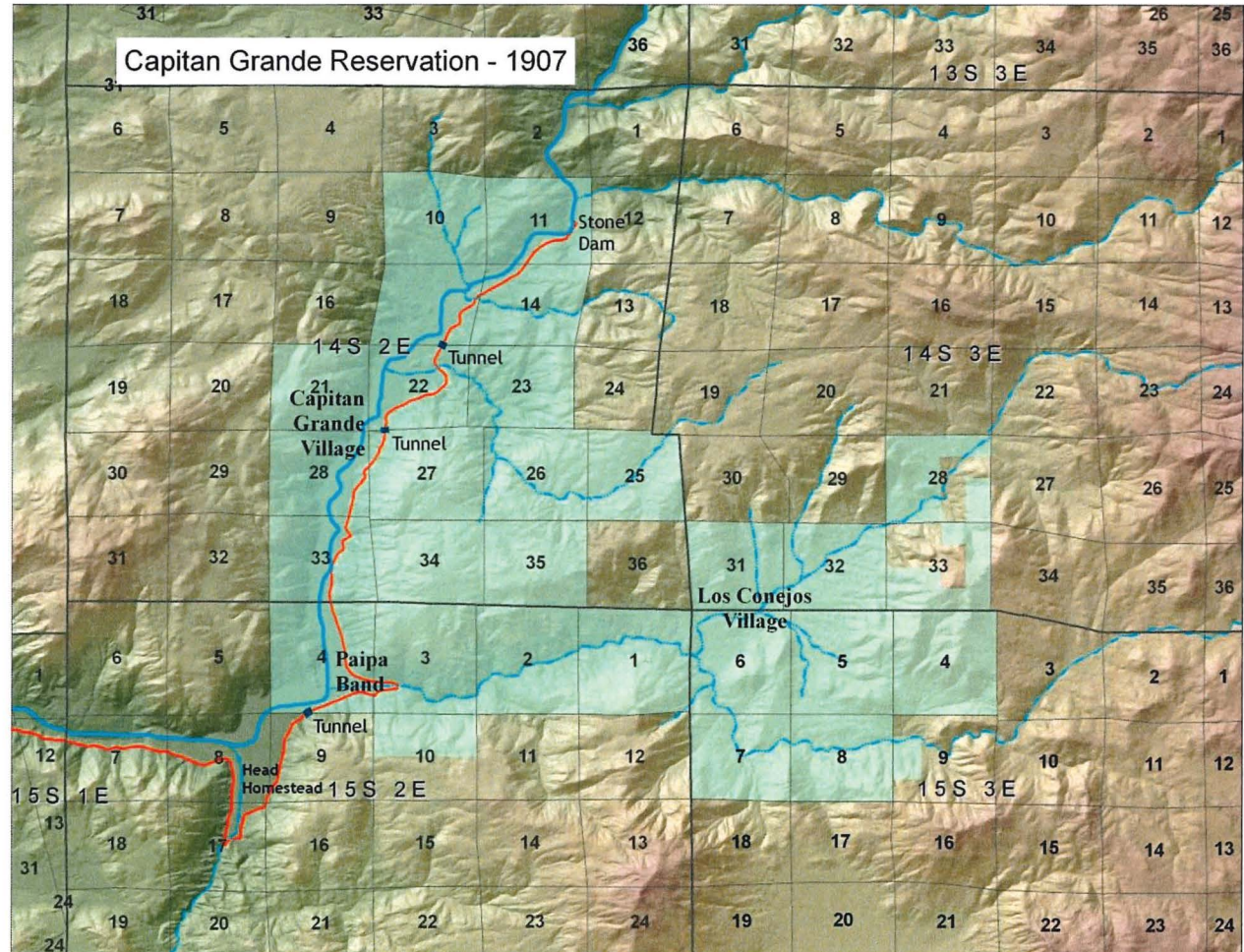


Figure 25.5. Capitan Grande Indian Reservation – 1907.

filings had been made. The reservation was nearly restored to its size in 1883 (17,013 acres or roughly 26 ½ sections). The most important change was the addition of parts of sections 33 and 28 in T 15 S, R 3 E in the northeastern part of the reservation. Valuable sections in 7, 8, and 9 had been lost forever.¹⁹

So many boundary changes in a thirty-two year period left a pronounced legacy of confusion and distrust. In 1909 the Capitan Grande Indians complained that the lands assigned to them by executive order did not conform to the township plats sent by the Indian Office, and neither agreed with the township plats in the office of the County Surveyor of San Diego County.²⁰ In 1911, the Captain of Torres-Martinez Reservation inspected the Indian Office records and remarked, "The government has not entered in our name [for] some sections which we always thought belonged to our reservation."²¹ Without clear, well-established boundaries, Indians had difficulty defending themselves against those that took water, timber, or rights of way across Indian land. With a chorus of complaints coming from the captains of the Mission Indian agency, the Indian Office reviewed the historic boundary changes. Not surprisingly, this review uncovered inconsistencies and mistakes that needed correction.

In another egregious example of equivocation, the Indian Office considered rejecting the Kelsey additions. Its reading of the Congressional mandate of the Act of March 1, 1907 (34 *Stat.* 1022) led to interpretations that the land Kelsey successfully withdrew from public entry on February 2, 1907, should *not* be included, because these rocky and steep lands were not worth the "cost in the future of patrolling and possibly fencing and surveying." Countermanding C. E. Kelsey's intelligent work, the Indian Office made the recommendation that all "unoccupied lands" be omitted from the patents. "This is not a cattle reservation."²² Expansion and contraction of executive order Mission Agency reservations was subject to the fickle political will, reflecting

ethnocentric ideas about what Indians needed as well as non-Indians' economic and political demands.

Having resurveyed the external boundaries of the Mission Agency trust patent reservations in 1894 and again in 1897, Congress again funded the resurveying of Capitan Grande and a number of other Mission Reservations in 1910. The motivation for the new surveys was allotment: the sparse tillable acreage at Capitan Grande would be divided among its population in anticipation of dissolving the federal trust reservation and awarding individual fee patents to the allottees (Figure 25.6). Although the Capitan Grande people were assigned 10–20

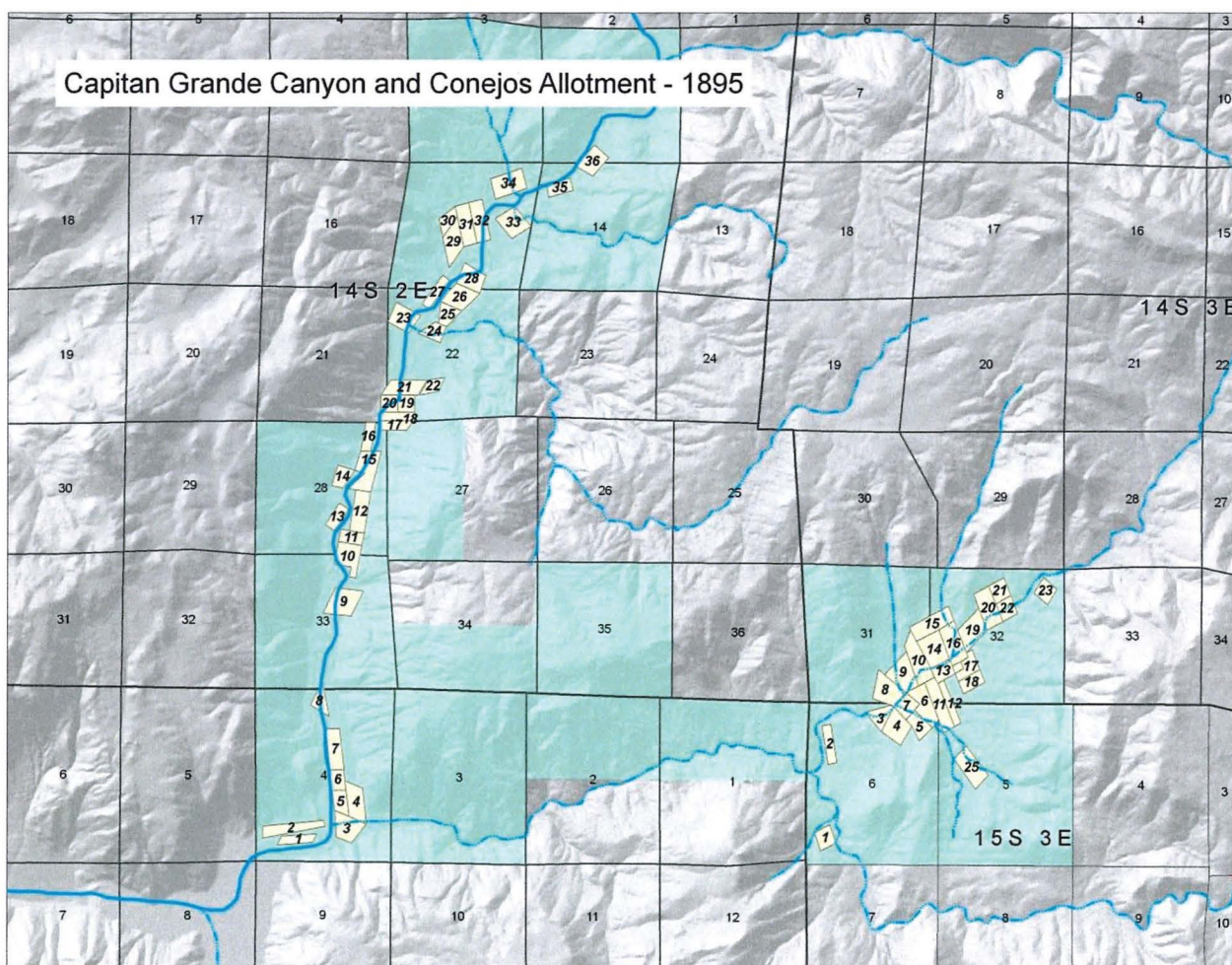


Figure 25.6. Allotments in Capitan Grande Canyon and Canejos – 1895.

acre plots along the San Diego River and in the Conejos Valley, the fee patents were not delivered because of a Catch-22: the Capitan Grande people would lose their irrigation water from the flume if federal trust status was lifted, because the contract with the San Diego Flume Company would no longer be valid. By the 1920s, federal administrators could not agree on the total acreage at Capitan Grande.²³

Having narrowly dodged one bullet, the Capitan Grande people soon faced cannon when the City of San Diego appealed to the Department of the Interior to condemn the prime acreage along the San Diego River in order that the area could be flooded for a reservoir. In 1919 the El Capitan Act (40 *Stat* 1206) legalized the transfer of 1,904 acres of the Capitan Grande Reservation in the San Diego River Valley to the City of San Diego. The construction was delayed for several years because of litigation, by which time the mandate of the 1919 Act to acquire a new reservation and to move the Capitan Grande Indians as a group was disregarded and another attempt was made to terminate the Capitan Grande Indians by encouraging families to select private homes close to work in urban areas. In 1931 the City of San Diego realized that an additional 920 acres would be needed on the reservation to raise the level of the dam from 160 to 197 feet (Figure 25.7). This additional transfer was secured with the passage in 1932 of an amendment to the 1919 El Capitan Act. A quirky, yet just, provision was that while the Indians could no longer live at Capitan Grande because this accommodation might pollute the City's drinking water, they would continue to own the land and run cattle on this land. In 1932, most of the inhabited land along the San Diego River was inundated, and the reservation's members relocated to Viejas and Barona using funds provided by the City of San Diego.

Today, the Capitan Grande Reservation in San Diego County, California is a reservation without Indians. Even now, some boundaries are vague and ambiguity persists. The rugged

eastern boundary of Capitan Grande has not been surveyed, and the Viejas people are sensitive about anyone who trespasses.²⁴ As Imre Sutton noted, “innumerable” conflicts existed over boundaries in the Mission Indian Agency (Sutton 1964: 60, 64–65, 106–116, 278). Even the most dedicated government sleuth would be hard pressed to say exactly how much acreage is now in the Capitan Grande reservation. The two leading experts on Southern California Indian land tenure, Imre Sutton and Florence Shippek, held estimates of mid-twentieth century Capitan Grande acreage that varied by 1,420 acres!²⁵

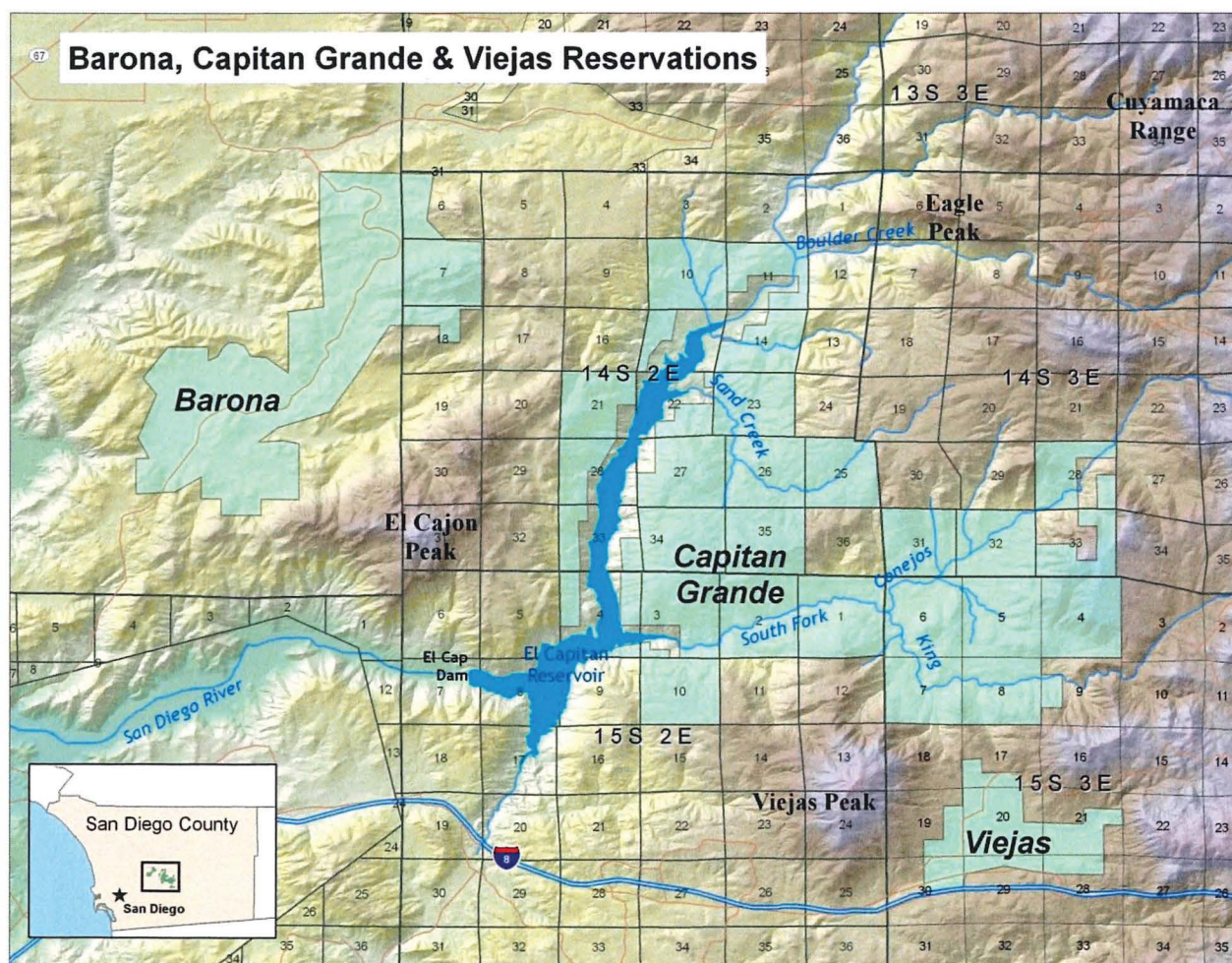


Figure 25.7. Current Barona, Capitan Grande, and Viejas reservations showing inundation from the El Capitan Reservoir.

Notes

1. This essay is excerpted from *El Capitan: Adaptation and Agency on a Southern California Indian Reservation* (Maliki Press, 2012). Credit goes to Tony Soellers of UC Irvine NACS for map production.
2. Kappler is available online from an excellent University of Oklahoma website at <http://digital.library.okstate.edu/kappler/>. Lands were also set aside at over a dozen other communities in Southern California at this time.
3. Letter from HHJ to CIA H. Price Nov. 25, 1883. Mathes 1998: 302–303; Jackson and Kinney 1964.
4. Affidavits re: Pala and Capitan Grande, 8650L–1883, 5 May 1883, Special Cases–31, RG75, National Archives 1, Washington, D.C. RG 75; Mathes, 260-263; Jackson-Kinney. In an 24 Aug. 1877 letter from CIA Smith to Agent Colburn, diagrams are transmitted of lands set apart for Indians and surveyed by M. G. Wheeler in 1876 and prepared by Mr. Dryden, dated 25 April 1876; Father Ubach to CIA Atkins, 14 Dec. 1886, 33902–1886, SC31; Letter from Ignacio Cuero [Cuero] (probably written for him by F. K. Sawday as written in third person referring "the Captain" not "I") to S.S. Lawson July 1881. SC31, 12362–1881.
5. D.W. Strong to Anthony Ubach, Dec. 4, 1886, enclosure in letter of Ubach to CIA Atkins, Dec. 14, 1886 in , SC31, 33902–1886.
6. Congress gave Indians the right to apply for homesteads in the Indian Appropriations Act of March 3, 1875 (18 *Stat.*, 402, sect. 15). Male heads of family, twenty-one years of age or older, were qualified, but only if they abandoned tribal relations. The land would be inalienable for five years; thereafter the Indian would have fee simple title, expenses of filing to be borne by the applicant. Helen Hunt Jackson lobbied for a reform. On 4 April 1884 (23 *Stat.* 76 [or 96]) the policy was revised: Indian homesteads would be held in federal trust for 25 years, thereafter to be conveyed to the holder in fee simple title. All fees or commissions for homestead applications were to be waived, and \$1000 was allocated to aid Indians in the process of filing homesteads.
7. S. S. Lawson to CIA Hayt, 17 Dec. 1878, 863–1878, SC31 and Thorne, 2005: 150-153; Lawson to Price, 28 Dec. 1881, SC31, 198–1882.
8. Ubach to Atkins, 8 Oct. 1886, SC31, 27553–1886.
9. Lawson to Price, 24 Dec. 1881, SC31, 12–1882.
10. Strong to Ubach, 4 Dec. 1886, SC31, 27553-1886. Ward report to CIA, filed late 1886, SC31, 2392–1887; cf. SC31, 8650-1883.
11. Letter from HHJ to CIA H. Price Nov. 25, 1883. Mathes, 302–303. Jackson-Kinney "Report of Conditions."

12. Section 36 (school lands) was restored to the public domain by President Rutherford B. Hayes May 3, 1877. Kappler, I, 821; Chester Arthur withdrew the additional 8 sections in township 14 on June 19, 1883, *ibid*, I, 823.

13. The Big Ditch (or “Cuyamaca ditch”), was a stupendous engineering feat for its time. Forty-five miles in length, it stretched from the Cuyamaca Mountains to the City of San Diego. It promised to reclaim 60,000 acres for prospective farmers and ranchers.

14. Preston to Atkins, 1 Dec. 1887, SC31, 32612–1887.

15. *Ibid.*, a copy of the contracts is in the Register of Cuyamaca Water Co., UCSD Special Collections; Preston agreement with the Flume Company is dated Jan. 16, 1888 and a copy of the handwritten minutes of the organization of the flume company, 14 May 1886, SC31, 2753–1888.

16. Agreement 22 Aug, 1892 and 16 Sept, 1892. Hon. Wm. Vandever, House of Reps, 31 Dec.1888, SC31, 187–1889; Senate Resolution, April 21, 1890, SC31, 12554-1890, regards occupation of Capitan Grande and La Jolla by water companies (missing).

17. U.S. Board of Indian Commissioners, Annual Report, 1891, p. 140, 142, Reel 2 Reports 22–63, 1890–1932, Microfilm. Section 5 and 6 had an excess of 1280 acres according to the Estudillo correspondence; perhaps a partial section bounded by a river was included from Sec. 4, 7, or 8 from 15SR3E.

18. Proclamations, 34 *Stat.*, Part 3, 3036, Kappler, III, 675. T.R. Proclamation 29 May 1902 re: section 7 for Jacob Kuhner and others; I, 1018. William McKinley returned sections 8 and 9 to the public domain 16 April 1901 for Arthur F. Head and others. Kappler I: 1008. For the Smiley Commission computation error, the patent says the 10,293. GLO Comm. G. W. Lusuorcup to CIA, 10 March 1894, SC31, 10168–94; Estudillo’s corrections, SC31, 12364–1894. Marginalia, 1894 patent 1068069; trust patent in 14SR2E microfiche, BLM office, Sacramento, CA.

19. Cave Coutts to W.S. Green, U.S. Surveyor General [n.d.]; 27624-1895. Green to CIA 17 July 1897, SC 31, 31590–1897; cf. 53615–1897; 16716–1898; Proclamations, 34 *Stat.*, Part 3, 3036, Kappler, III: 675. In 1913 some documents erroneously report another thousand acres were added to the Capitan Grande reservation.

20. In April 1908 a new survey was begun on the external boundaries of Capitan Grande. Wm. R. Layne, Acting Chief Land Division, 21 Sept.1909; Proudfil to CIA, 6 April 1911; Edmundson to CIA, 2 Sept.,1909, 72590–1909 CG–304.2, NAI. The issuance of a fee patent 17, Dec. 17, 1910 based on Kelsey’s additions awaiting the resurvey. New surveys were filed at the General Land Office 27 Sept. 1911.

21. "Indians Search Books for Land." *Los Angeles Times*, 13 Jan. 1911 quoted in Barnard, “Fighting the Conspiracy,” 36; W. Morris Chubb to Commissioner of Indian Affairs, Jun 16, 1911 re: surveying CG and other Mission Agency reservations because corners were gone. \$3000 allowed. Asst. CIA to CIA Sells, May 7, 1914, 5413 1911 CG 304, NAI; Shipek, 1988:70.

22. 2nd Asst. CIA, C.F. Hawke to Virtue 22 Oct. 1910, (#536), 72590–1909 CG 304.2; RG75, NAI. Asst. CIA Hawke 22 Oct. 1910 in 72590–1909 CG 304.2. Hawke to D/I 15 Dec. 1910.
23. Superintendent Ellis estimated 17,785.01 in 1927, Assistant CIA Meritt, 18,777.11 in 1929.
24. Personal communication, Steven O’Neil to author, June 5, 2007; O’Neil works for an archaeological firm that was doing work along the reservation’s boundary; Gerald Clarke interview with Tanis Thorne, June 9, 2008, Cahuilla Indian Reservation.
25. Sutton’s 1962 estimate is 14,273.59, “Land Tenure,” 318; Shipek’s 1973 estimate was 15,753 acres, *Pushed into the Rocks*, 188.

Mapping Native America

Cartographic Interactions between

Indigenous Peoples,

Government, and Academia

Volume II

Cartography and the Academy

Daniel G. Cole and Imre Sutton

Editors

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ISBN-10: 1500572209

ISBN-13: 978-1500572204

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