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El Capitan Indian Reservation,
San Diego County, California.

To the President of the United States,
Secretary of the Interior and
Members of Congress,

Washington, D. C.

Sirs:

We, the undersigned members of the El Capitan Grande Indian Reservation, urgently protest against the granting to the City of San Diego the right to flood the lands of the El Capitan Reservation for the following reasons to-wit:

It will force us to leave the Reservation, flood our homes, school house, burial ground, and our tillable lands, together with all that is sacred to us, and it is in direct violation of the Act of Congress which set aside these lands for our use. These lands have been patented to us in trust and the Act of Congress itself provides that our land will be deeded to us free and clear of all encumbrance in 1919.

We want to live and die here, and feel that the greatest injustice that can be heaped upon us is to have the United States Government repudiate its written obligation in direct violation to the act which set aside this land for our use. We can not believe that any action will be taken by your honored sirs that will jeopardise our right to live on this Reservation or that will force us again to become wanderers on the face of the earth.

Respectfully,

**List of Executive Orders by which Capitan Grande Reservation
was established.**

T. 14 S., R. 2 E., S. B. M.

Secs. 25, 26, 27, 34, 35 & 36, set aside for Indians
(Executive Order 12/27/1875).

Sec. 36 restored (Exec. Order 5/3/1877)

Secs. 10, 11, 14, 15, 22, 23, 28 & 33 reserved for
Indians (Exec. Order 6/18/1883).

Secs. 10, 11, 14, 15, 22, $\frac{1}{2}$ Sec. 27; Secs. 28 & 33;
 $\frac{1}{2}$ Sec. 34 & Sec. 35 reserved for Indians (Exec.
Order 12/29/1891).

Secs. 21, 23, 25, 26, $\frac{1}{2}$ Sec. 27, $\frac{1}{2}$ Sec. 34 reserved
for Indians (Dept. Order 2/2/1907).

T. 15 S., R. 2 E., S. B. M.

Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10, set aside for
Indians (Exec. Order 12/27/1875).

Secs. 3, 4, $\frac{1}{2}$ Secs. 1 & 2 reserved for Indians
(Exec. Order 12/29/1891).

Secs. 8 & 9 restored (Exec. Proclamation 6/4/1901).

Sec. 7 restored (Exec. Proclamation 5/29/1902).

Secs. 5 & 6 restored (" " 5/15/1905).

$\frac{1}{2}$ Sec. 10, $\frac{1}{2}$ Secs. 1 & 2 reserved for Indians
(Dept. Order 2/2/1907).

T. 14 S., R. 5 E., S. B. M.

Secs. 31 & 32 set aside for Indians (Exec. Order 12/27/1873).

" 31 & 32 reserved for Indians (" " 12/29/1891).

$\frac{1}{2}$ Sec. 28, $\frac{1}{2}$ of $\frac{1}{2}$ and $\frac{1}{2}$ of $\frac{1}{2}$ Sec. 28, $\frac{1}{2}$ Sec. 33,
 $\frac{1}{2}$ of $\frac{1}{2}$, $\frac{1}{2}$ of $\frac{1}{2}$, $\frac{1}{2}$ of $\frac{1}{2}$ and $\frac{1}{2}$ of $\frac{1}{2}$ Sec. 33
reserved for Indians (Dept. Order 2/2/07).

CUYAMACA WATER CO.
FILE NO. 84
DO NOT REMOVE
ANY LETTER
FROM THIS FILE

T. 16 S., R. 3 E., S. B. M.

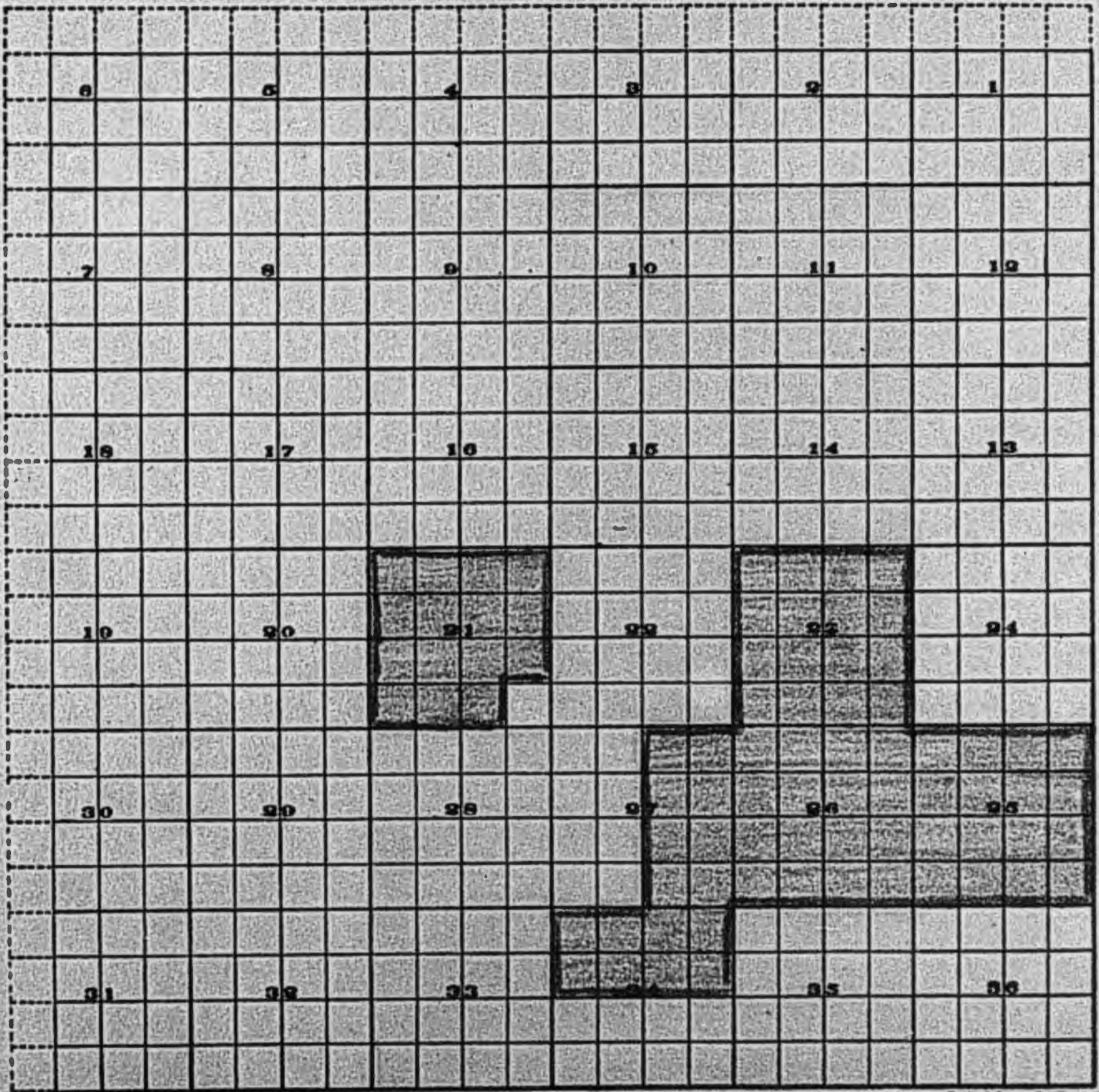
Secs. 5 & 6 set aside for Indians (Exec. Order 12/27/1875).

Secs. 5 & 6 reserved for Indians (" " 12/29/1891).

Secs. 4, 7, 8, and SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec 9
reserved for Indians (Dept. Order 2/2/1907).

4 SHEETS
SHEET #1

County _____
Township No. 145 Range 2E of S.B. Principal Meridian



EXECUTIVE ORDER DEC. 29, 1891.

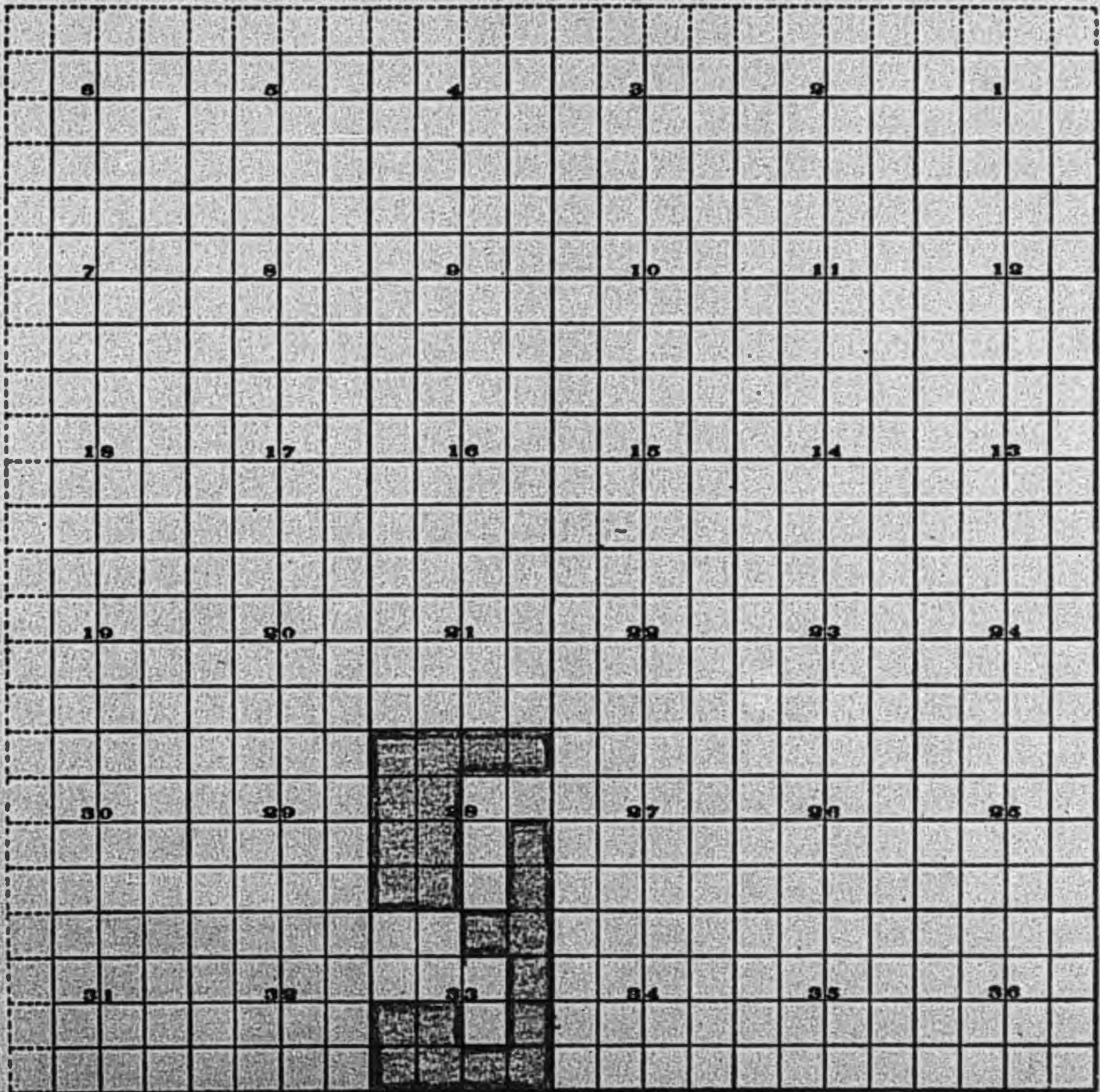
(PATENTED TO CAPITAN GRANDE BAND FEB. 23, 1894)

DEPARTMENTAL ORDER FEB. 2, 1907

(SECTIONS 21 & 22 PATENTED JULY 9, 1913)

4 SHEETS
SHEET No 2

County _____
Township No. 14 S. Range 3 E. of S. B. Principal Meridian



Engle Printing Co., Chicago - Price 1000

No. 315

Scale: 1 in. = 1 mile

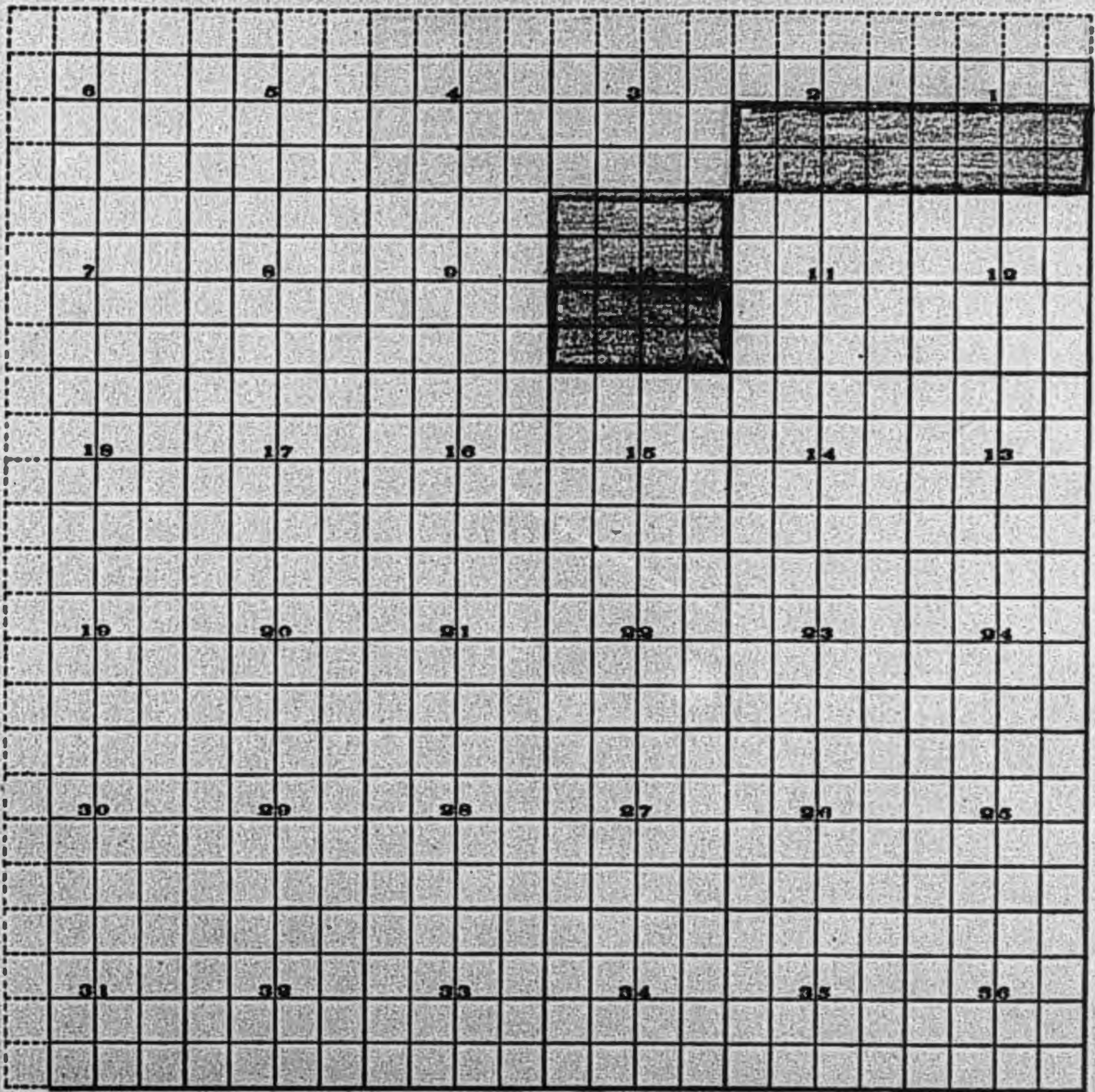
DEPARTMENTAL ORDER FEB. 2, 1907.....

EXECUTIVE ORDER DEC. 29, 1891

(PATENTED TO CAPITAN GRANDE BAND FEB. 23, 1894).....

4 SHEETS
SHEET No 3.

County _____
Township No. 15 S. Range 2 E. of S. B. Principal Meridian.



Engel & Sons Co., Chicago, Ill. U.S.A.

No. 338

Scale: 1 in. = 1 mile

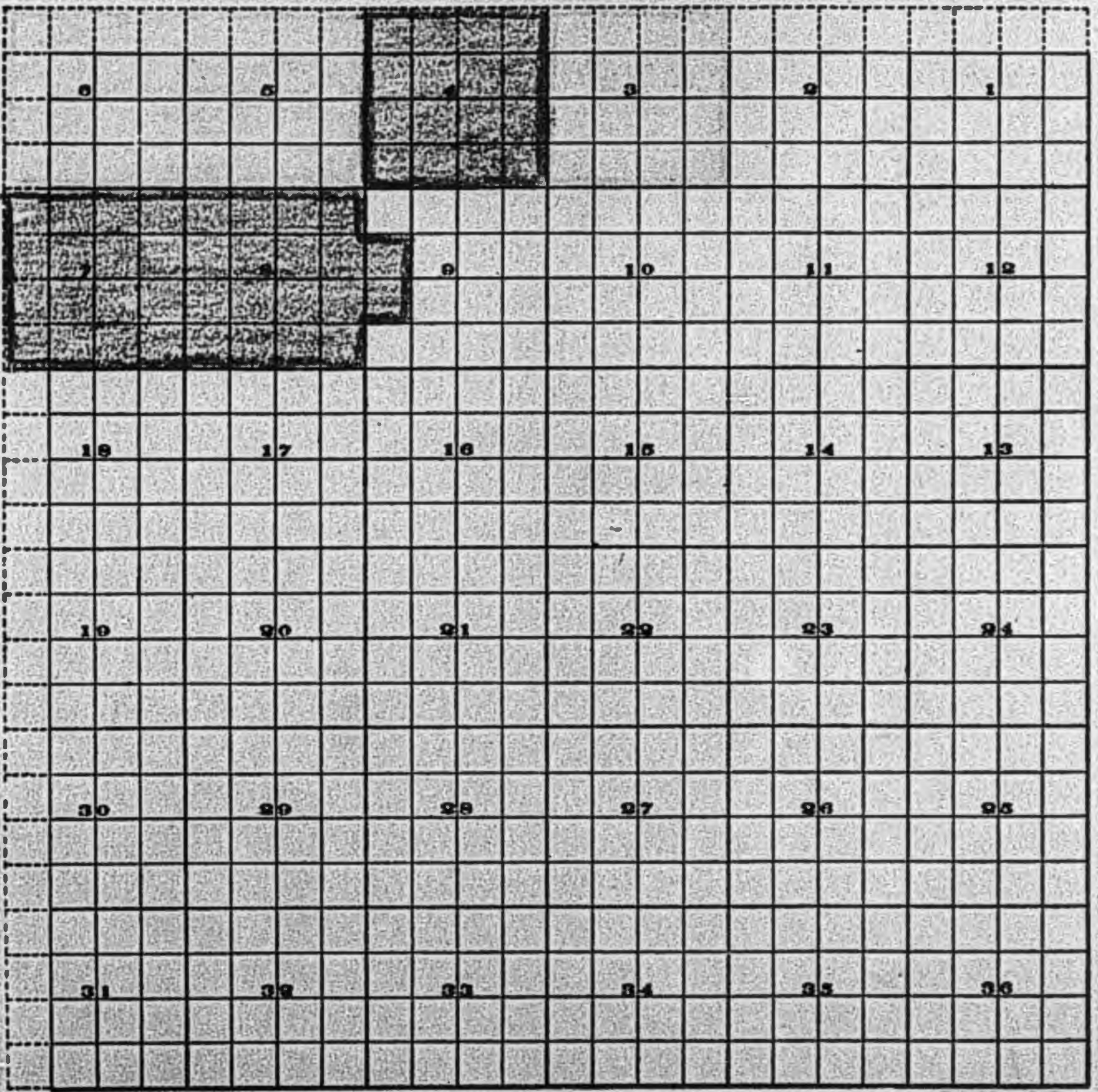
EXECUTIVE ORDER DEC. 27, 1875

EXECUTIVE ORDER DEC. 29, 1891
(PATENTED TO CAPITAN GRANDE BAND FEB. 23, 1894)

DEPARTMENTAL ORDER FEB. 2, 1907

4 SHEETS
SHEET No 4.

County _____
Township No. 15 S. Range 3 E. of S.B. Principal Meridian.



Map Design Co., Chicago - New York

No. 345

Scale 1 in = 1 mi

EXECUTIVE ORDER DEC. 29, 1891

(PATENTED TO CAPITAN GRANDE BAND FEB. 23, 1894)

DEPARTMENTAL ORDER FEB. 2, 1907

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON, D. C.

-0-

James A. Murray
Ed Fletcher
William G. Henshaw
Protestants and Appellants.

vs.

The City of San Diego
(A Municipal Corporation)
Assignee of W. B. Hamilton
Protestee and Respondent.

Involving application of right of way. Serial No 014623, Los Angeles, California series. Under the act of February 15th, 1901. (Stats. 790).

-0-

Appeal to the
Secretary of the Interior

--oOo--

By
Ira E. Bennett

--oOo--

STATEMENT IN BEHALF OF THE CAPITAN GRANDE BAND

OR VILLAGE OF MISSION INDIANS.

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The application of the City of San Diego for a permit to use rights of way for reservoir purposes through lands of the Capitan Grande Indian Reservation, under the Act of Congress approved February 15, 1901, is in fact and effect an attempt to dispossess the Indians of their lands, which they hold under trust patents from the United States, issued in accordance with the Act of Congress approved January 12, 1891.

These trust patents declare that the United States at the expiration of twenty-five years will issue patents to the Indians "In fee simple, discharged of said trust and free of all charge and incumbrance whatsoever.

The proposed permit to use the rights of way, if it could be given, would conflict with the vested rights of the Indians, and would prevent the United States from conveying the lands to the Indians by patent in fee simple and free of incumbrance, as it is bound by law to do.

The permit, if given, could not be continued in force longer than March 10, 1919, when the twenty-five year trust will expire. At that date the Secretary of the Interior is required by law to convey the lands in question to the Indians by patent in fee simple and free of incumbrance.

The patent issued March 10, 1894, reads in part as follows:

"NOW KNOW YE, THAT THE UNITED STATES OF AMERICA, in consideration of the promises and in accordance with the provisions of the third section

of the said Act of Congress approved January 12, 1891, heroby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said Act of Congress, January 12, 1891), for the period of twenty-five years in trust, for the sole use and benefit of the said Capitan Grande band or village of Mission Indians, according to the laws of California, and at the expiration of the said period the United States will convey the same or the remaining portion not patented to individuals, by patent to said Capitan Grande band or village of Mission Indians, as aforesaid, in fee simple discharged of said trust and free of all charge or incumbrance whatsoever.

"And there is reserved from the lands heroby held in trust for said Capitan Grande band or village of Mission Indians a right of way thereon, for ditches or canals, constructed by the authority of the United States."

Under this patent 8,960 acres of land were conveyed to the Indians in trust. Another patent, issued July 9, 1913, conveys to the Indians 1,24- acres in trust. There have been no allotments in this reservation.

WHAT SAN DIEGO REALLY ASKS.

The City of San Diego ostensibly asks for a revocable permit to use rights of way through the Capitan Grade Indian Reservation, but in fact it asks for a transfer of practically the entire reservation and the removal of the Indians to another place. This was admitted by the City Attorney at the hearing before the Register and Receiver at Los Angeles (Transcript, Page 37). He said:

The City admits that the granting of this permit will flood, if not the entire tillable land of the Indians, such a large portion of it that the remaining portion would be uninhabitable from a sanitary standpoint, and we would not desire Indians living on the rim of the reservoir, and we admit that the granting of the permit, for all practical purposes, will take from the Indians all their tillable land, take from them all their places of abode, and they would have to be moved from their location. The position the City of San Diego takes is that the granting

of the permit would compel the Government to remove the Indians to some other place, and we are ready to stand the expense and furnish the ground to which they may be moved."

This frank avowal that San Diego's application for a permit, if granted, would result in the eviction of the Indians is made clear by the terms of the pending bill (H.R. 11540), introduced by Mr. Kettner, in which it is provided that the Indians shall be removed, and that the damages suffered by them, not exceeding \$100,000 shall be paid by the city.

The bill in question provides for rights of way, while the application before the Secretary of the Interior is merely for a revocable permit to use the right of way.

Thus the City of San Diego is asking simultaneously for a violation of the law by the Secretary of the Interior and for nullification by Congress of the act for the relief of these Indians and the violation of the trust created by said Act.

There is nothing in the act of February 15, 1901 which appeals prior acts or part of acts. The act of January 12, 1891, for the relief of the Mission Indians of California, is in full force and was amplified by the Act of Congress approved March 1, 1907 (34 Stat. 1022), the Indian Appropriation Act.

RIGHTS OF THE INDIANS.

It is not necessary here to go deeply into the history of the Mission Indians of California. The story is told in Sen. Ex. Doc. 49, Forty-eighth Congress, First Session, which contains the report of Special Agent Helen Jackson and Abbot Kinney to the Commissioner of Indian Affairs; the Commissioner's eloquent appeal to the Secretary of the Interior for action; the letter of Secretary Teller to President, asking that the matter be called to the attention of Congress, and President Arthur's message to Congress, dated January 14, 1884. On December 21, 1885, President Cleveland asked Congress to relieve these Indians. The Senate passed a relief bill several times, but the bill did not pass the House until December 10, 1890, and it was approved by the President

January 12, 1891.

Many years of injustice were suffered by the Mission Indians before their friends could impress the subject upon Congress. The devotion of Mrs. Helen Jackson to their cause finally won recognition. The temper of Congress, when its attention was finally directed to the plight of the Indians, is exhibited in the brief, but emphatic report of the Senate Committee on Indian Affairs (S. Rep. 74, Fiftieth Congress, 1st. Sess.), reading as follows:

"The history of the Mission Indians for a century may be written in four words: Conversion, Civilization, neglect, outrage. The conversion and civilization were the work of the Mission fathers previous to our acquisition of California; the neglect and outrage have been mainly our own. Justice and humanity alike demand the immediate action of Government to preserve for their occupation the fragments of land not already taken from them. Accompanying this report is a letter from the Commissioner of Indian Affairs, giving information of their present condition; also the report of Mrs. Helen Jackson and Mr. Abbot Kinney, giving the results of an investigation into the condition of these Indians and making recommendations of measures to be adopted for their protection and relief.

"The bill referred to the Committee is substantially the bill passed by the Senate in the Forty-ninth Congress, and, with certain amendments, indicated in the text, is recommended for passage."

Pursuant to the Act, the Secretary of the Interior Albert K. Smiley, Joseph B. Moore, and Charles C. Painter as members of the Mission Indian Commission. They made a thorough investigation of conditions, and caused surveys to be made, upon which surveys they based recommendations for the adjustment of the boundaries of the various reservations. The report of the Commissioners was submitted to the President December 7, 1891, and on December 29, an Executive order was issued by President Harrison approving the report and the recommendations. The Executive order reads in part:

"All of the lands mentioned in said report are hereby withdrawn from settlement and entry until patents shall have issued for said selected.

reservations, and until the recommendations of said Commission shall be executed, and, by the Proclamation of the President of the United States, the lands of any part thereof shall be restored to the public domain. (Signed) Benj. Harrison."

The Capitan Grande Reservation was created in accordance with this order, and its boundaries remained as thus determined. A Patent conveying 8,960 acres to the Indians in trust for twenty-five years was issued on March 10, 1894.

The Indian Appropriation Act, approved March 1, 1907, (34 Stat. L., Page 1022) contains the following provisions:

"That Section three of the act approved January twelfth, eighteen hundred and ninety-one, entitled, 'An Act for the Relief of the Mission Indians in the State of California,' be, and the same is hereby, so amended as to authorize the Secretary of the Interior to select, set apart, and cause to be patented to the Mission Indians such tracts of the public lands of the United States, in the State of California, as he shall find upon investigation to have been in the occupation and possession of the several bands or villages of Mission Indians, and are now required and needed by them, and which were not selected for them by the Commission as contemplated by Section two of said Act.

Pursuant to this act, a patent was issued on July 9, 1913, conveying 1,240 acres in trust to the Indians.

Although no allotments have been made, the Indians are occupying individual parcels of ground, and in due time will be entitled to individual patents. The policy of Congress and the Department of the Interior in dealing with the Capitan Grande Indians has been the same as that which was successful in dealing with the Omahas.

There has been no intimation in Congress that the policy of relief for the Mission Indians of California is to be changed. On the contrary, the Act of March 1, 1907, is a comparatively recent reassertion of this policy. The application of the City of San Diego traverses this policy, and if granted would cause serious embarrassment. Any permit given would necessarily have to be revoked in a short time. The City of San Diego might suffer injury by entering upon an enterprise which cannot be completed, and the Indians of Capitan Grande would be disturbed by the fear that the United States, notwithstanding its solemn pledge, intended to take away their homes and set them adrift as wanderers.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 60 Folder: 6

**Business Records - Water Companies - Cuyamaca
Water Company - Case Resulting From Hamilton
Filing on Mission Gorge, through El Capitan
Reservation - Protest from El Captain Indians**



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