

A Plea for Justice: Cupeño Indians versus Homesteaders in 1880s San Diego County

By Phil Brigandi

In 1883 Helen Hunt Jackson toured the Indian villages and reservations of Southern California as an official agent of the United States Government, charged with reporting on their “condition and needs.” Time and again she found the Indians—both on and off the reservations—struggling with tenuous land titles, uncertain boundaries, and unscrupulous settlers. Many villages had already been driven out—sometimes by force, sometimes by force of law.

At Warner Hot Springs Jackson visited the village of Cupa, or Agua Caliente as it was also known at the time. The Cupeño people there were already threatened with removal by the owner of the Warner Ranch, former California Governor John G. Downey.¹ They still retained their small fields below the village, but were left with no good grazing land for their livestock. Jackson reported:

These Indians have in use another valley called Lost Valley, some fifteen miles from their village high up in the mountains, and reached by one very steep trail. Here they keep their stock, being no longer able to pasture it below. They were touchingly anxious to have us write down the numbers of cattle, horses, [and] sheep each man had and report to Washington that the President might see how they were all trying to work. There are probably from one hundred and twenty-five

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Lost Valley, 1906. ©SDHC #86:15900-520.

to one hundred and fifty head of cattle owned in the village, about fifty horses, and one hundred sheep.²

Lost Valley is aptly named. Located at 4,500 feet in the San Ysidro Mountains, north of Hot Springs Mountain, its grassy meadows are surrounded by oak and pine, watered by several springs and the upper reaches of Agua Caliente Creek. The Cupeño had hunted and gathered acorns there for centuries, and a trade trail along the eastern edge of the valley connected the villages around Hot Springs Mountain with the Santa Rosa Mountains and the Coachella Valley beyond.

American cattlemen had discovered the valley by the 1870s. About the same time as Jackson's visit, Willis and William Newton (father and son) each filed 160-acre pre-emption claims that seem to have covered most of the meadow lands in the valley. This would have allowed them to eventually purchase the land from the government at a low price. But their claims never got that far. In July 1883, Mission Indian Agent Samuel S. Lawson wrote to the Commissioner of Indian Affairs asking that their entries be canceled. He was obviously unsure of just where the Newtons' claims were located, but felt they clearly covered lands used by the Indians. Lawson seems to have thought the area was part of what is now the Los Coyotes Indian Reservation:

The land referred to in T[ownshi]p 9S R4E S[an] B[ernardino] meridian, and filed on by the Newtons should be withdrawn as it has long been occupied by the Indians of that village.... Definite lines of subdivision cannot be given without a survey of the land. It will be safe to hold this filing for cancellation as it will embrace all that the Indians have occupied. These people have lived there long and done well. They cultivate and pasture the land referred to and should not be molested.³

Based on Agent Lawson's quick intervention, the Newtons' entries were cancelled. But the Indians' reprieve was short-lived, as the interesting series of letters reproduced here will show. Two letters from longtime Cupeño captain José María Moro and two letters from Lawson's successor as Mission Indian Agent, John G. McCallum, were included with a letter from Los Angeles attorney G. Wiley Wells seeking advice from Washington on Indian land rights. These letters illustrate not only the Cupeño's use of Lost Valley, but also their efforts to protect it, both on the ground and by turning to the American legal system.



San Diego River, c. 1916. ©SDHC #87:16449-4.

WELLS, VAN DYKE & LEE

G. Wiley Wells, Walter Van Dyke, & Bradner W. Lee
Rooms 11 to 18 Baker Block
Los Angeles, Cal. August 18, 1885

Honorable L. Q. C. Lamar;
Secretary of the Interior;
Washington D.C.

Sir;

As special Assistant to the United States Attorney, in all cases affecting the interests of the Mission Indians in California, under appointment by the Attorney General dated June 26th 1883, I have been attending to matters embraced within the letter of appointment addressed to the firm of Brunson & Wells. Hon. A. Brunson, my former partner, having been elected Judge of the Superior Court of the County; and being thereby disqualified for the practice of his profession, the firm of Brunson & Wells was dissolved and I have continued to act under the letter of appointment above referred to.⁴

Yesterday I was called upon by a delegation of Mission Indians residing in San Diego County, accompanied by Father Williams, a Catholic Missionary who acted as interpreter for them. They represented to me that the lands which they occupied, and which have been withdrawn by executive order from settlement, are being continually trespassed upon by whites who are attempting to claim the same under the laws of the United States.

They further represent that the encroachments of these white men have exasperated many of their tribe; and that they are now in a state of excitement such as would be dangerous to trifle with; and that unless something is done to protect them in their homes, there is liable to be serious trouble between them and the white men. They are occupying lands which were reserved from settlement by the following executive orders, to wit:

- Executive order dated June 19, 1885.
- Executive order dated June 27th, 1882.
- Executive order dated March 2d, 1881.
- Executive order dated Sept. 29th, 1883.

Executive order dated—1877.

Executive order dated May 15, 1876.

Executive order dated May 15, 1876.

Executive order dated Dec. 27, 1875.⁵

The great difficulty seems to be that the Indians do not know the boundaries of these tracts of public land upon which they are located, and which are withdrawn from settlement; and they therefore cannot take the proper legal steps to protect themselves from the encroachments of trespassing parties. It seems to us that it would be proper to have a deputy U.S. Surveyor authorized to go out upon the land accompanied by the Chief of the tribe, and point out the boundaries of the lands upon which they reside. The Indians would then know the lines, and would be able to report the fact whether or not trespasses were being made upon the lands which they occupied, and the proper legal steps could then be taken to protect them in their rights.

I would suggest therefore that the Department authorize the Surveyor General to have these lines established in such a way that the Indians may have actual knowledge of their boundaries. From the representations made to me by the delegation who called, I am satisfied that unless something is done speedily there is liable to be trouble between them and the settlers who are trespassing upon the lands referred to. These Indians are continually reporting these troubles to me in my official capacity, and I am desirous of doing everything that I can to protect them in their rights.

I also have the honor to report the receipt of two letters from the Indian Agent at San Bernardino, addressed to the firm of Wells, Van Dyke & Lee, of which I am the senior member, which letters are dated May 14th 1885, and May 18th 1885 respectively, with enclosures with reference to Indian matters.

I am not sure whether my letter of appointment gives me authority to act in the matters referred to in the two communications of the Indian Agent. If however the letter of appointment is to be so understood I will take the proper steps to protect the Indians in the cases referred to; and in such other cases of a similar character as may be referred to me. I enclose herewith copies of the letters and enclosures referred to. Awaiting your further direction in the matter, I have the honor to be

Very respectfully,

G. Wiley Wells
Special Assistant United States Attorney
In Mission Indian cases.
7 Enc.
(Copy)

Wells also included three additional letters forwarded by Agent McCallum dealing with another land conflict on Volcan Mountain between Warner's Ranch and Santa Ysabel, which have been omitted here. In brief, that dispute was over a homestead on the mountain filed before the Santa Ysabel Indian Reservation was established and later acquired by one Castinos Paine and occupied by his son-in-law, Charles Moretti. This dispute dragged on for nearly 20 years until the government bought the land, "thus settling a matter of long standing and much annoyance."⁶

The letters reproduced below are extremely significant and represent a rare first-hand account of the position of the Cupeño Indians. José María Moro (ca 1815-1885) was a member of the Cibimoat clan, but used the family name Moro. As early as 1851 he was said to be in control of the village of Cupa when Captain Antonio Garra was away. Whether he took part in the Garra Uprising of 1851 is not recorded, but if he did, he must not have played a very major role since he was never tried for any offense.⁷ Sometime after Garra's execution, Moro became the captain (chief) of the Cupeño. The 1860 census lists him as captain, aged about 40. In 1873 a government agent met with Moro. "From a notched stick given me by the captain of the village, Jose Maria Moro, it appears that there are one hundred and sixty-eight Indians at that place..." he reported. "They are peaceably disposed, and for the most industrious, and deserve better treatment than they get."⁸ Moro was still in command when Helen Hunt Jackson visited the village a decade later and wrote:

The aged captain of the Agua Caliente Indians still preserves a paper giving a memorandum of the setting off of this reservation of about 1,120 acres for his people. It was by executive order, 1875. He also treasures several other equally worthless papers—a certificate from a San Diego judge that the Indians are entitled to their lands; a memorandum of a promise from General Kearney [sic], who assured them that in consideration of their friendliness and assistance to him

they should retain their homes without molestation, 'although the whole State should fill with white men.' It is not to be wondered at that these Agua Caliente Indians find it difficult to-day to put any faith in white men's promises.... [This] is said to be the most industrious village in the county; the old captain dealing severely with any Indians found idle.⁹

Moro's widow, Machola Moro, testified in 1893 in the eviction suit brought against the Cupeño by Gov. Downey when she was about 75 years of age. In part she said:

My husband was José Maria Moro; he was the captain of the Agua Caliente village, had control over the people that lived there and advised them to keep quiet and work – [he] was Captain a long time.... My husband had an orchard above the springs; it was planted by his father.... My husband used to go and work in the upper country ... [he] didn't work for anybody; he was a kind of shoemaker. He used to hunt a good deal, and kill deer and make buckskin.... (Harvey vs Barker, Transcript on Appeal, [n.p.: Chas. W. Palm Co., 1897], 68-71).

But the court held that the Cupeño had no rights to their land, and after appeals to both the California and United States Supreme Courts, the people were taken from their homes by the U.S. Government in 1903, and forced on to the reservation at Pala. Machola Moro died there around 1910, well past 90 years of age.



Warner's Ranch Hot Springs, 1902. ©SDHC #19101-2.

UNITED STATES INDIAN SERVICE

Mission Agency,
San Bernardino, Cal.
May 14, 1885
Wells, Van Dyke & Lee
Asst. U.S. Attys.
Los Angeles, Cal.

Gentlemen;

The inclosed letter dated the 5th inst. from Jose Ma Moro presents certain legal questions, which are respectfully submitted for your opinion as Govt. counsel for the Mission Indians. There are a number of similar cases. The leading facts are these: A Mission Indian is settled upon public lands, outside of any reserve, when he makes some improvements. A white man dispossesses the Indian (usually by taking possession during the Indian's temporary absence) and refuses to leave. I have no authority outside of the reserves to remove the trespasser. It is a case for the Courts. A regulation was made by the General Land Office, within the last few years, requiring a settler to prove by competent [sic] testimony that no Indian was living upon, or had improvements upon the land sought to be entered by the Settler without which proof no entry could be made.¹⁰

Besides, a law was enacted last July by Congress, providing that Indians could have homesteads on the public lands on the same terms and conditions as white persons.¹¹ I have not the notice spoken of as being "inclosed" in Capt. Moro's letter; but can state that it was simply a notice that Wm. Panie [sic] claimed the land in question....If your employment extends to such cases please take such action as you deem best....

All the land referred to in [this letter is] outside of the reserves. Shall I refer such cases to you in the future?

Very Respy.

J. G. McCallum; Agt.
(Copy)

Following is the letter by José María Moro and forwarded to Agent McCallum:

Agua Caliente, 5. 5. 1885.

J. G. McCallum, Esq.
U.S. Ind. Agt.

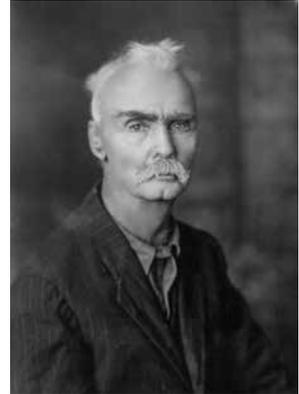
Dear Sir.

Enclosed paper was found by us on the door of a little log hut which is on said land.¹² We have held this land and occupied it as a pasture for our animals for many years in fact as long as we have had cattle. The little hut was built by an old man (now dead) who put some of his cows there with our permission. Now this man Fain left some of his things there and we are at a loss what to do.¹³ He is a bad man having killed his own uncle and an Indian in San Diego and he is only a boy as yet. Shall we leave him in possession or will you please notify him that said land is ours. Mrs. Jackson and Mr. Kinney left a paper with us that Govt. land held and used by us was not open for entry. We are most anxiously waiting for your reply, as said land is the only place where we can have our animals now that all the fields are under cultivation and planted with wheat, barley, potatoes, corn, beans peas etc. In winter we can have some of them here, but now need that land & as we always have had it we do not know how to get along without it. Oak Grove, San Diego Co. is Wm. Fain's address.

Mr. Lawson has given them a paper also for the possession of the land; the place is known as "Wet Agua."¹⁴ We have left a paper, where the enclosed was found, telling him that we have always had the land & for him not to make any improvements.

Most respectfully,

Capt. Jose Ma Moro
& all the Indians
of Agua Caliente.
(Copy)



Bill Fain, Mesa Grande - nd.
©SDHC #OP:15362-590.

UNITED STATES INDIAN SERVICE

Mission Agency,
San Bernardino, Cal.

May 18, 1885
Wells, Van Dyke & Lee.

Dear Sirs:

In the case of the Complaint against William Fain, for trespass on Indian lands not on any reservation, which I referred to you last week, I now inclose a letter from Capt Jose Ma Moro, just received, which gives some further particulars. In case you engage in this matter, you should address "Capt Jose Ma Moro (care of Flora Golsh) Warner P.O. San Diego Co Cal"

Miss Golsh is the teacher of the Indian School there, and well posted in the matter.¹⁵ I do not see what I can do in such cases except to refer them to you. I have no jurisdiction outside of the Reservations. I requested you in my former letter to inform me whether your employment includes such business as the above.

If so I would, and will refer all such matters to you. Otherwise I should not trouble you about them. I think it is clear, that all such matters are for the Courts, and not for the Agent, and of course must be brought before the Courts by Attorneys for the Indians. Please give me your views on this point.

Very Respy

J. G. McCallum, Agt.
(Copy)



El Capitan Dam, 1947. ©SDHC #13644-3.

Agua Caliente 5. 15. 85.

J. G. McCallum Esq.
U.S. Indian Agt.

Dear Sir.

Bearer of this—Matias Chutnicut & 1 man Francisco Laws take enclosed papers for you to see & hereby I & all men of this village certify & solemnly declare, that said land now occupied by Will Fain has been used by us as a pasture for more than forty years.¹⁶

To prove this we have to show marks on an oak tree a cross + and the brand with which some of the cattle are branded. Also 5 little huts made of split pine boards 2 have fallen from age, 3 are standing; there is a good corral & always has been there are signs of the old one & the last one we made has just a few days ago been demolished by Will Fain, Miss Golsh our teacher went up & saw all these things.

She saw the corral in perfectly good condition a post put in the middle & the brands of 3 families carved into the wood. Now the corral has been broken down. He is a bad man, he killed his own uncle & there is no telling what he might do.

We have gone to said place off and on. Many of the men have slept there. If we lose this land our animals will trespass on Gov. Downey's land or starve.

We most humbly pray in this urgent case for your advice & help.

Very resp.
Jose Ma Moro Capt.
& all the men of
Agua Caliente¹⁷

But Captain Moro's letters fell on deaf ears, and nothing was ever done to evict Bill Fain from Lost Valley. On July 22, 1885 he made homestead entry #2381 for 160 acres in the valley. Five years later he was allowed to prove up his claim, and on November 11, 1891 he was issued a patent (deed) by the U.S. Government. By then, Fain had already sold his claim to John Stone of Mesa Grande in June 1890, who in turn transferred it to his brother, Jim Stone, who had been running cattle

in Lost Valley for some time, and is said to have given the valley its mysterious name. Jim Stone sold the land to Aguanga cattleman Henry Bergman in 1897 and his family owned the valley until 1959 when it was sold to the Boy Scouts for a summer camp. Today it is known as Schoepe Scout Reservation at Lost Valley.¹⁷

José María Moro saw none of this; he died on July 19, 1885, just three days before Fain formally filed his claim. Moro's son-in-law, Adolfo Moro, who had adopted the name of his famous father-in-law, followed him as Captain.¹⁸ The loss of Lost Valley was another omen of what was to come. In 1892 John Downey filed suit against the Cupeño and four other villages on the Warner Ranch. After a lengthy court battle, in 1901 the U.S. Supreme Court ruled against the Indians and in May 1903 they were removed to the reservation at Pala where many of their descendants live to this day.¹⁹

NOTES

1. See Joseph J. Hill, *The History of Warner's Ranch and its Environs*, with a preface by Herbert E. Bolton. Los Angeles: Privately printed 1927.
2. Helen [Hunt] Jackson, *Report on the Condition and Needs of the Mission Indians* (Washington: Government Printing Office, 1883), 21. For the valley's naming, see Winifred Davidson, "Indians Were Proud," *The San Diego Union*, January 3, 1956.
3. S.S. Lawson to Commissioner of Indian Affairs Hiram Price, July 20, 1883 (NARS, RG75, SC31, LR #13581-1883). The Newtons were Southern California pioneers. Willis Newton (1840-1924) came from Texas in 1865, and eventually settled in Downey. His oldest son, William (1858-1927), farmed in Norwalk for many years. Another son, Jesse, lived in San Diego County, which may explain how the Newtons became aware of Lost Valley.
4. G. Wiley Wells (1840-1909) was a Civil War veteran who practiced law in Mississippi before being elected to Congress in 1875. In 1879 he moved to Los Angeles and formed a partnership with Anson Brunson (1834-1895). When the firm of Brunson & Wells dissolved, he formed the partnership of Wells, Van Dyke & Lee. His junior partner, Bradner Wells Lee, was also his nephew. For a brief biography, see J. M. Guinn, *Historical and Biographical Record of Southern California* (Chicago: Chapman Publishing Company, 1902), 553. Brunson & Wells were originally retained by Helen Hunt Jackson, who paid their fee out of her own pocket until the U.S. Attorney General agreed to appoint them. Wells continued to serve as Special Attorney for the Mission Indians until 1886. G. Wiley Wells to Secretary of the Interior L.Q.C. Lamar, August 18, 1885, National Archives and Records Service, Record Group 75 (Department of Indian Affairs), SC 31 (Mission Indians in California), Letters Received #19419-1885. Copy courtesy of Valerie Sherer Mathes.
5. All of the early Indian reservations in Southern California were created by Presidential Executive Order. The order of December 27, 1875, created nine reservations spread across the mountains of San Diego County. The order of May 15, 1876, created eight more reservations from the San Gorgonio Pass down to the lower end of the Coachella Valley. The June 1882 order set aside the Pechanga reservation. Some of the other dates listed here represent additions to the existing reservations.
6. See Charles E. Shell, "Report of School Superintendent in Charge of Mission Indians," *Annual*

- Report of the Commissioner of Indian Affairs for 1904* (Washington: Government Printing Office, 1904), 168.
7. George Harwood Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California, 1769-1906* (Norman: University of Oklahoma Press, 2014), gives the best overview of Antonio Garra's attempt to unite the tribes and drive out the Americans. See especially chapters 5, 6, and 7, and pages 124, 188, 240, and 263 for Moro.
 8. "Report of Special Agent John G. Ames on the Condition of the Mission Indians," reprinted in Robert F. Heizer, ed., *Federal Concern about Conditions of California Indians* (Socorro: Ballena Press, 1979), 55-56.
 9. Jackson, *Report*, 21.
 10. There was a change from earlier years when the Register of the Government Land Office in Los Angeles told an Indian Agent: "[T]he location of an Indian family or families on land upon which a white man desires to settle is, in law, no more a bar to such settlement than would be presence of a stray sheep or cow." Ames, *Report of Special Agent John G. Ames* (1873), 65-66.
 11. The original Indian Homestead Law was enacted in 1875, and amended several times. It allowed Indians to make homestead entries of up to 160 acres just as the general law allowed.
 12. The village of Cupa was originally considered to be outside the boundaries of the Warner Ranch, and in 1875 an executive order reservation was established there. But in 1880 the final survey of the ranch by the Federal Government took in the village, and the reservation was cancelled. From then on, conflicts between the Cupeño and the owner of the ranch, John Downey, only increased. For a general history of the ranch, see Hill, *The History of Warner's Ranch and its Environs*.
 13. William Berry Fain (1858-1929) had a nasty reputation and a foul mouth that earned him the nickname "Billy Profane." Born in Tennessee, he followed his uncle, James C. Fain, to the area in the early 1880s and lived for a time on his ranch at Radec, between Temecula and Aguanga. But the two soon had a falling out, and in 1884 Fain did indeed shoot and kill his uncle. The killing was ruled self-defense, but there were always rumors that an Indian witness could have told a different story—if only he could have been found to testify. See the *San Diego Sun*, May 23, 27, 1884. Lester Reed (whose family had their own troubles with Fain) repeats the old rumors in his *Old-Timers of Southeastern California* (Redlands: Citograph Printing Co., 1967), 100. For sworn testimony of Fain threatening an Indian witness in another shooting incident, see the *San Diego Sun*, March 30, 1887. Early in 1883 Fain settled in the heart of the Cahuilla Indian village at San Ignacio, on what is now the Los Coyotes Indian Reservation. Jackson noted his presence in her *Report* (1883), 23 (though she mistakenly calls him Jim Fane). Further down the mountain, Chatham Helm had moved in on the San Ysidro village. Jackson gives some details in her 1883 article "Captain Pablo's Story," reprinted in Valerie Sherer Mathes and Phil Brigandi (eds.), *A Call for Reform: The Southern California Indian Writings of Helen Hunt Jackson* (Norman: University of Oklahoma Press, 2015), 161-71. Fain and Helm carried on a long running feud, which the *Union* wrote up like something out of a dime novel in "The Faine [sic]-Helm Case," *The San Diego Union*, April 5, 1890. Surprisingly, Fain served as Constable in the Warner Ranch area in 1889-90 though it was perhaps more in character that he used his office as an opportunity to further harass Chat Helm. Fain left the area for Arizona around 1891. But that didn't end his scrapes with the law. In 1901 he was the object of a major manhunt after an accusation of being an accessory to murder. See "An Awful Tragedy," [Yuma] *Arizona Sentinel*, February 13, 1901, "Fain Would Hide," *Los Angeles Times*, February 27, 1901, and "Fain Gives Himself Up," [Yuma] *Arizona Sentinel*, February 27, 1901. Once again, Fain seems to have dodged the rap. He remained in Arizona the rest of his life, occasionally visiting his old haunts in San Diego County. He died in 1929 (*The San Diego Union*, March 28, 1929). For an overview of his checkered career, see Phil Brigandi, "Backcountry Badman," *The High Country*, 65 (Fall 2003), 18-22.
 14. A recognizable phonetic transcription of Wiatava, the Cupeño name for Lost Valley. *Wiat* is

the Cupeño word for live oak, so the name can be translated as Place of the Oaks. Lost Valley is identified as Wiatava in William Duncan Strong's *Aboriginal Society in Southern California* (Berkeley: University of California Publications in American Archaeology and Ethnology, Vol. 26, 1929), 245, 271; this is confirmed in the unpublished field notes of both Edward Davis (1907), and John P. Harrington, who visited Lost Valley in 1925.

15. Flora Golsh may have written these letters for Captain Moro. She was born in Austria in 1854 and came to San Diego County with her family in the 1870s. In 1881 she became the first teacher at the new government Indian school at Cupa. In 1883 Jackson described her as a "lady of excellent education and much enthusiasm in her work," even bringing her piano "up into these wilds" (Jackson, *Report*, 21). Golsh was probably the "F.G." who was writing the Warner Ranch correspondence for *The San Diego Union* at the time. She noted Jackson's visit, and said Jackson had "left all the Indians very happy." *The San Diego Union*, April 26, 1883. In 1890 Golsh transferred to the La Jolla Indian School, where she taught until 1899. She was still living in San Bernardino as late as 1920. For general background on the Golsh family, see Steve Williamson, "The Missing Link, The Source of the Golsh Nobility," *The High Country*, 77 (Spring 2010), 36-46. For early descriptions of Flora Golsh's work at Agua Caliente, see "The Nation's Wards," *Los Angeles Times*, September 3, 1882, and "An Indian School," *Los Angeles Times*, January 12, 1886.
16. Matias Chutnicut was born about 1830. He was a clan leader and the grandfather of noted Cupeño elder Roscinda Nolasquez (1892-1987). Francisco Laws (1859-c. 1937) was a Cupeño ceremonial leader. He later lived on the Morongo Indian Reservation. He was one of anthropologist John P. Harrington's major Cupeño informants in the 1920s.
17. See Phil Brigandi, *A History of Lost Valley and the Surrounding Area* (Orange: Wrangler Press, 1979) for the later history of the valley and the camp.
18. "Dead at Last," *The San Diego Union*, July 31, 1885. Moro's grandson, Domingo Moro (1866-1931), was also a prominent community leader, and served as tribal policeman at both Cupa and Pala.
19. For more on the removal see Phil Brigandi, "In the Name of the Law—The Cupeño Removal of 1903." www.socalhistoryland.mysite.com/article.html.



Native Cupeño, Angel Quilp, 1909. ©SDHC #OP: 15362-487, E.H. Davis Collection.