

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNAKE OR PIUTE INDIANS OF	)	
THE FORMER MALHEUR RESERVATION,	)	
IN OREGON,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Docket No.17
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Mr. C. B. McConnell, with whom  
was Mr. Bernard J. Long,  
Attorneys for Petitioners.

Messrs. Ralph A. Barney and  
Leland L. Yost, with whom was  
Mr. Assistant Attorney General  
A. Devitt Vanech.  
Attorneys for Defendant.

DEC 29 1950

FINDINGS OF FACT

The Commission makes the following findings of fact in the above  
entitled case.

1. The petitioners herein are Snake or Piute Indians now resid-  
ing in the State of Oregon who assert these claims as the descendants  
of the Snake or Piute Indians who resided on the former Malheur Reser-  
vation. The Malheur Reservation was located immediately north of  
Malheur Lake, in east central Oregon. The claims are presented on  
behalf of all members of said group and all persons who shall be

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considered as entitled to participate in any judgment which may be rendered.

2. Among the first treaties concluded with Indian tribes and bands occupying the territory east of the Cascade Mountains in Oregon was:

(a) The treaty of June 9, 1855 (12 Stat. 945) with the Walla Walla, Cayuse and Umatilla tribes of Indians in which they ceded a tract of land in northeast Oregon lying between the Columbia River and Blue Mountain, including on the south a portion of the north fork of the John Day River.

(b) On June 25, 1855 a treaty (12 Stat. 963) was also concluded with the Confederated Tribes and Bands of Middle Oregon in which they ceded an area in the north central part of Oregon lying between the Columbia River on the north and 44° latitude on the south. This cession contained a portion of the lands later included in the Malheur Reservation.

3. The territory in east central and southeast Oregon lying south and southeast of the land ceded by the Walla Walla, Cayuse and Umatilla Tribes and the Confederated Tribes under the treaties of June 9 and June 25, 1855, was inhabited by a number of separate tribes or bands of Shoshonean Indians, about whom the Government had practically no knowledge until after 1860. The earliest historic account of contact by white man was by the explorer Peter Ogden, who visited the Harney-Malheur Lake region in central Oregon in 1825. He noted in his journal

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meeting a large number of "Snake" Indians in the area whom he described as a wandering tribe consisting of both "Upper" and "Lower" Snakes, the first war-like and the latter as timid. After 1848 when the Oregon territory was established, these Indians in eastern and southeast Oregon were known and referred to generally by Government officials and others as "Snakes" or "Snake or Shoshonee" Indians, with a distinction being made between those bands in the north of the area who were called "Snakes and Bannocks," while those in the southern part of the area were classed as Northern Piutes because of their close relationship to the Piutes of northern Nevada. These Indians were scattered throughout the area of east central and southeast Oregon in separate bands or groups. They did not have permanent villages or camps but each band usually had a favorite wintering site or sites to which its members returned after the hunting and gathering seasons. Each band or group ranged over such territory as was found necessary to furnish a livelihood during the hunting and gathering seasons. There were no fixed boundaries between the areas occupied and used by each of the different bands and each band felt free to use any hunting or gathering ground where food was available.

4. (a) By an act of Congress (13 Stat. 37) dated March 25, 1864, the President was authorized to conclude a treaty with the Klamath and Modoc and Snake Indians in southeastern Oregon for the purchase of the country occupied by them.

(b) On October 14, 1864, a treaty (16 Stat. 707) was concluded

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with the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, wherein they ceded to the United States an area of land lying in the south central part of Oregon and northern California. The Klamath Reservation was established out of the cession and located on Klamath Lake near the southern border of Oregon. This cession also contained a small portion of the lands later included in the Malheur Reservation.

(c) On August 12, 1865 a treaty (14 Stat. 683) was also concluded with the Woll-Pah-Pe Tribe of Snake Indians whereby they ceded to the United States a tract of land lying in the east central part of Oregon and were to move to the Klamath Reservation. This cession embraced approximately the west one-third of the lands later included in the Malheur Reservation, and also overlapped in part both the cession made by the Confederated Tribes of Middle Oregon in the treaty of June 25, 1855 and the cession by the Klamath, Modoc and Yahooskin Band of Snake Indians in the treaty of October 14, 1864.

5. (a) There were a number of other bands or groups of Snake or Piute Indians in southeast Oregon who were continuously hostile to the white man from the time Oregon was established as a territory in 1848. This hostility continued until in 1866 an aggressive campaign was undertaken against them by the Army and by the latter part of 1868 the majority of them had surrendered and were collected in camps near various Army posts in southeast Oregon under military surveillance. They were visited in the fall of 1868 by J. W. Huntington, Superintendent of Indian Affairs in Oregon, who had made the trip to personally ascertain

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their condition and take measures as he could to insure peace. After visiting the various camps, Huntington held a final council with the chiefs and headmen of these Indians at a camp near Fort Harney and negotiated a treaty which was signed by Huntington and by the chiefs and headmen of the various bands on the part of the "Snake or Shoshone Indians," which treaty reads as follows:

Treaty made this tenth day of Dec. A. D. 1868 at Fort Harney Oregon between the United States represented by J. W. P. Huntington, Supt. Indian Affairs and the Snake or Shoshone Indians represented by We-you-wo-wa, Gsha-nee, E-he-gant, Po-nee, Chow-wat-na-nee, O-wits, and Tash-c-go, Chiefs and Head men.

Article 1 - Hostilities heretofore existing between the whites and the Indians parties to this treaty cease from this date. No penalties or punishment to be inflicted for acts done by either party during the war.

Article 2 - The Snake Indians acknowledge the dominion of the United States and agree henceforth to submit to its authority and obey such Laws as may be enacted for their government and guidance.

Article 3 - It is mutually agreed that when any crime depredation or offense is committed by an Indian of the Snake Tribe he shall be delivered up to be punished according to law, and likewise when any crime or injury is perpetrated by any white man upon the Indians aforesaid the punishment shall be inflicted according to the Laws of the United States and the State of Oregon.

Article 4 - The Snake Indians agree that they will reside upon such reservation as may be hereafter allotted to them and that they will obey the authorities lawfully placed over them. And the United States hereby guarantees protection to such Indians in person and in property while upon such Reservation.

Article 5 - Future provisions will be made by the government of the United States for the permanent location

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of the Snake Indians and for their education, government, food and clothing and for allotment of lands in severalty to them when their advancement warrants it.

Article 6 - Complaints may be made by the Chiefs or Head men of any offense committed by whites to the agent in charge of the Tribe or to any other officer of the United States in the vicinity and in case wrong has been done or crime committed redress is guaranteed.

Article 7 - This treaty is only preliminary to a more complete treaty to be made hereafter under the direction and authority of the Government of the United States.

Done at Fort Harney Day and Year above written by the parties whose names appear hereto and in the presence of the Subscribing Witnesses.

J. W. P. HUNTINGTON	(L S)
WE-YOU-WE-WA	X (L S)
GSHA-NEE	X (L S)
E-HE-CANT	X (L S)
PO-NEE	X (L S)
CHOW-WAT-NA-NEE	X (L S)
OW-ITS	X (L S)
TASE-E-GO	X (L S)

Witnesses:

W. R. PARNELL  
1st Lt. 1st Cavalry PVT Maj U.S.A.  
Army Camp Harney Oregon  
W. F. Rice  
2nd Lieut 23d Inft Bat Capt U.S.A.

(b) The foregoing treaty was not presented to the Senate for ratification and was not ratified. So far as the record shows, no treaty or agreement has ever been consummated by and between the United States and the Indians who signed the unratified treaty on December 10, 1868.

6. In November, 1869, A. B. Meacham, Superintendent of Indian Affairs in Oregon and Colonel Elmer Otis of the United States Army

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held a council meeting covering several days with the Snake or Piute Chiefs We-ah-we-wah, E-c-gan, Pon-ee, Ow-itz-e, O-che-ho, Chock-tote and Teh-ah-ne for the purpose of requesting them to move to the Klamath Reservation to reside, but all of them except O-che-ho and Chock-tote declined to move.

7. On March 8, 1871 Superintendent Meacham, in a letter to the Commissioner of Indian Affairs, recommended

that the President withdraw for eighteen months all that portion of the country in the State of Oregon situated between the forty-second and forty-fourth parallels of latitude, and from 117 degrees to 120 degrees of longitude, excepting so much as may have been or may be granted for military or wagon road purposes, with a view of selecting an Indian reservation, on which to consolidate Indians east of the Cascade Mountains in said State, excepting those who may select lands in severalty from the reservation or reservations on which they are now located, and the President instruct me to proceed at the earliest practical time to select such reservation.

This recommendation of Meacham's was approved by the Acting Commissioner of Indian Affairs on March 10, 1871 and by the Secretary of the Interior on March 14, 1871, and the withdrawal of the lands as recommended was directed by Executive order dated March 14, 1871.

8. (a) On September 4, 1872 the Commissioner of Indian Affairs wrote the following letter to the Secretary of the Interior:

Sir: I have the honor to inclose herewith a report, dated the 22nd ultimo (and accompanying map), received from T. B. Odeneal, Esq., superintendent Indian affairs for Oregon, reciting the action taken by him relative to the establishment of a proposed reservation on the headwaters of Malheur River, in that State, for the Snake or Piute Indians, under instructions contained in letter to him from this office, dated the 6th of July last.

Superintendent Odeneal defines the boundaries of the tract of country selected by him for the proposed reservation as follows:

'Beginning at the mouth of the North Fork of the Malheur River; thence up said North Fork, including the waters thereof, to Castle Rock; thence in a northwesterly direction to Strawberry Butte; thence to Soda Spring, on the Canyon City and Camp Harnoy Road; thence down Silvies River to Malheur Lake; thence east to the South Fork of the Malheur River; thence down said South Fork, including the waters thereof, to the place of beginning (to be known as Malheur Reservation), including all lands within said boundaries, excepting so much thereof as may have been granted for military or wagon-road purposes.'

I respectfully recommend that the tract of country embraced within the foregoing limits be set apart and reserved as an Indian reservation, and that the President be requested to issue an Executive order accordingly.

It is also requested that the papers inclosed be returned to this office.

Very respectfully, your obedient servant,

F. A. Walker,  
Commissioner.

The Secretary of the Interior.

(b) The Acting Secretary of the Interior forwarded the Commissioner's letter to the President on September 12, 1872, stating that he approved the recommendation of the Commissioner and recommended that the President direct the same to be carried into effect. The Executive order was signed by the President on September 12, 1872, and is as follows:

Let the lands which are fully described in the accompanying letter of the Commissioner of Indian Affairs be set apart as a reservation for the Snake or Piute Indians, as recommended in the letter of the Secretary of the Interior of this date.

U. S. Grant



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(c) On May 15, 1875, an additional area was added to the Malheur Reservation by Executive order. The order is as follows:

It is hereby ordered that the tract of country in Oregon embraced within the following described boundaries, viz: Commencing at a point on the Malheur River where the range line between ranges 39 and 40 east of the Willamette Meridian intersects the same; thence north, on said range line, to a point due east of Strawberry Butte; thence west to Strawberry Butte; thence southeastwardly to Castle Rock; thence to the west bend of the North Fork of the Malheur River; thence down and with the said west bank to the Malheur River; thence along and with the Malheur River to the place of beginning, be, and the same hereby is, withdrawn from sale or settlement, except such lands within said boundaries as have passed or may pass to The Dalles Military Road Company, under act of Congress approved February 27, 1867 (vol. 14, p. 409), and to the Willamette Valley and Cascade Mountain Military Road Company, under act of Congress approved July 5, 1866 (vol. 14, p. 89), and the same set apart as an addition to the Malheur Indian Reservation set apart by Executive order of September 12, 1872.

U. S. Grant.

9. By Executive order dated January 28, 1876 most of the land added to the Malheur Reservation area by the Executive order of May 15, 1875, supra, was restored to public domain and the Malheur Reservation area was redefined. The order is as follows:

It is hereby ordered that the tract of country in Oregon lying within the following described boundaries, viz: Beginning at a point on the right bank of the Malheur River where the range line between ranges 38 and 39 east of the Willamette meridian intersects the same; thence north on said range line to a point due east of the summit of Castle Rock; thence due west to the summit of Castle Rock; thence in a northwesterly direction to Strawberry Butte; thence to Soda Spring, on the Canyon City and Camp Harney Road; thence down Silvies Creek to Malheur Lake; thence due east to the right bank of the South Fork of the Malheur River; thence down said right bank of the

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South Fork to the Malheur River; thence down the right bank of the Malheur River to the place of beginning, except such lands within these limits as have passed or may pass to The Dalles military road on the north, and the Willamette Valley and Cascade Mountain military road on the south, be, and the same is hereby, withdrawn from sale and set apart for the use and occupancy of the Piute and Snake Indians, to be known as the Malheur Indian Reservation; and that portion of country set apart by Executive order of May 15, 1875, not embraced in the limits of the above described tract of country is hereby restored to the public domain.

U. S. Grant.

10. (a) In the fall of 1873 various roving bands of Indians in southeastern Oregon and adjacent areas in Nevada and Idaho were collected by the defendant and placed on the Malheur Reservation.

(b) By 1875 there were over 700 Indians residing on the Malheur Reservation. They were classified as Piutes, Bannocks and Snake Indians.

(c) In July, 1877 there were 759 Indians on the reservation, 204 of whom were classified by the officials in charge as Snakes under Chief Egan. The rest were classified as Piutes, which included the followers of Chief We-ow-we-wa, and listed the Piutes as 150 under Chief Oits, 288 under Chief Tanwahta, and 141 under Chief Winnemucca.

(d) In February, 1878 87 Shoshone Indians were added to the Malheur Agency, making a total number of 846 Indians on the Malheur at that time.

11. (a) Upon the outbreak of the Bannock War in June, 1878, all the Indians then belonging at the Malheur Agency left the reservation, and the majority of them joined the Bannocks in the hostilities and

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depredations against the white settlers and the military.

(b) In the winter of 1878-79, following the end of the Bannock War, the hostile Malheur Indians, consisting of the bands of Chiefs Oits, Egan and Tav-wa-dah, together with Leggins' band of Piutes who had not taken part in the war, were removed with their families to the Yakima Reservation in Washington for permanent settlement.

12. (a) In January, 1880 a delegation of Piutes headed by Chief Winnemucca visited Washington, D. C. and obtained permission from the Secretary of the Interior for the return to the Malheur Reservation of all the Piutes who had formerly lived there. On June 25, 1880 the Acting Commissioner of Indian Affairs rescinded the permission for the return of those Piutes at the Yakima Reservation because of reports that if they attempted to march across the country from Yakima to the Malheur Reservation it would be attended with great risk of life on the way, due to the hostile feeling towards them for their part in the Bannock War. This action by the Commissioner did not effect the permission to move on the Malheur Reservation granted to those Piutes that were living near the Malheur.

(b) The Malheur Agency was re-opened by the Indian Service in the latter part of 1878, and repeated efforts were made by the defendant's agents to resettle the Malheur Reservation with Indians in the area who had formerly resided on the Malheur, but they were unsuccessful so the Malheur Reservation was never again occupied by Indians

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after June, 1878.

(c) On December 23, 1880, upon the recommendation of the Commissioner of Indian Affairs that the reservation was no longer needed for purposes of Indian occupation, the Malheur Agency was discontinued by the direction of the President.

13. By Executive order of September 13, 1882, the greater portion of the Malheur Reservation was restored to the public domain. By Executive order of May 21, 1883 the remainder of the Malheur Reservation, except a tract of 320 acres, was also restored to the public domain, and by Executive order of March 2, 1889 this remaining 320 acre tract was also restored to the public domain. This was done without the consent of the Snake or Piute Indians and without payment to them of any compensation therefor.

14. (a) The former Malheur Reservation Indians taken to the Yakima Reservation began stealing away from the Yakima soon after their arrival, and by the fall of 1883 all of them, with the exception of the "Paddy Cap" and "Oitz" bands, had either escaped or been permitted to leave. The largest group of 300 left in the summer of 1883 and headed towards Nevada.

(b) In June, 1884 Paddy Cap's band of about 50 Piutes removed to the Duck Valley Reservation located in Idaho and Nevada, where, by Executive order dated May 4, 1886, the President of the United States withdrew from sale and settlement and set apart three townships as an addition to the Duck Valley Reservation "for the use and occupancy of

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Paddy Cap's band of Piutes and such other Indians as the Secretary of the Interior may see fit to settle thereon." In 1887 there were 115 Piutes on the Duck Valley Reservation.

(c) In August, 1884 Oitz's band of about 70 left the Yakima Reservation and settled on the Warm Springs Reservation in Oregon.

(d) The former Malheur Reservation Indians who were not taken to Yakima, so far as the record shows, were last reported in 1880 in the vicinity of Camp Bidwell in California and Camp McDermitt and the town of Winnemucca in Nevada.

15. (a) In 1940 there were 256 Piutes located at Burns, Oregon under the Umatilla Indian Agency; 59 Piutes at the Warm Springs Reservation in Oregon; and 518 Piutes on the Duck Valley Reservation under the Western Shoshone Agency in Nevada. The record does not disclose whether these Piute Indians were former residents of the Malheur Reservation.

(b) The statistical reports of the Commissioner of Indian Affairs for 1945 show that Indians classified as Paiutes were residing on Indian reservations in the States of California, Idaho, Nevada, Utah and Oregon.

16. It has not been established by the evidence that any tribe, band or group of Snake or Piute Indians had exclusively occupied, held and used from time immemorial any part of the lands embraced and described in the Executive order of the President of the United States, dated January 28, 1876, and which are heretofore, in finding No. 9,

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specifically described and set forth.

17. In issuing the Executive orders of September 12, 1872, May 15, 1875, and January 28, 1876, establishing, enlarging, diminishing and redefining the Malheur Reservation in Oregon, the United States did not recognize, nor did it intend to recognize or acknowledge the exclusive use and occupancy, right or title of any tribe, band or group of Snake or Piute Indians in the reservation lands described in the aforesaid Executive orders.

18. There are no facts or circumstances shown by the evidence in this case that will justify this Commission in finding that, on the basis of fair and honorable dealings, the petitioners are entitled to recover on their claims set forth in Count II of the amended petition for the value of the former Malheur Reservation lands, or damages for noncompliance with the unratified treaty of December 10, 1868 by the United States.

December 29, 1950.