

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUIATTLE-SAUK TRIBE)
 OF INDIANS on relation)
 of George Enick, Chairman)
 of the General Council,)
 Claimant,)
 v.)
 THE UNITED STATES OF AMERICA,)
 Defendant.)

Docket No. 97

Decided: December 18, 1952

Appearances:

Frederick W. Post, with whom was Donald C. Gormley, Attorneys for Claimant.

Donald R. Marshall and Ralph A. Barney, with whom was Assistant Attorney General William Amory Underhill, Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

Claimant denominates itself as The Suiattle-Sauk Tribe of Indians, sometimes known as The Suiattle Tribe, and it is alleged in the petition that said claimant is a tribe, band, or group which has a tribal organization recognized by the Secretary of the Interior, and that said claimant is an identifiable group within the meaning of the

Indian Claims Commission Act.

Claimant alleges that it occupied an area of land composed of Townships 30, 31, 32, 33, and 34 North, in Ranges 9, 10, 11, 12, 13, and 14, East of the Willamette Meridian, being lands extending along the Suiattle and Sauk Rivers west of the summit of the Cascade Range of mountains in what is now the State of Washington. The total number of acres is not alleged in the pleadings filed, but in a suit previously filed (but later dismissed) in the Court of Claims (Cause No. I-33), it is alleged the land owned by it comprised approximately 1,600,000 acres. Claimant alleges that said lands were appropriated by the defendant for its own use without making any payment to claimant therefor; that this was done without any treaty with this tribe of Indians. Claimant alleges the value of the lands in 1855, at the time they were taken by the defendant, to be the sum of \$15,000,000. It sues for that sum together with interest.

The defendant, by answer, sets up that (1) the petition fails to state a claim against the defendant upon which relief can be granted; (2) that the claim sued on is barred by the decision of the Court of Claims in the case entitled *Duwamish, et al. v. United States*, reported in 79 C. Cls. 530; (3) that the claimant is not a "tribe, band, or other identifiable group of Indians" within the meaning of the Indian Claims Commission Act.

By order of this Commission of date August 24, 1951, the Commission directed a hearing upon the defenses of law and fact involved in the plea that the decision of the Court of Claims constituted a bar to the consideration of this case, and upon the defense raising

the issues of fact and law as to the capacity of the claimant to maintain the action.

A hearing was held and evidence introduced on September 24, 1951, on the issues involved in said special defenses and thereafter, by orders of the Commission, the defendant was allowed to file additional evidence consisting of defendant's Exhibits Nos. 21 to 30, inclusive, and claimant was allowed to file additional evidence consisting of claimant's Exhibits Nos. 6 to 23-A, inclusive, and the depositions of sundry witnesses were taken at Darrington, Washington, on November 20-21, 1951, and filed herein on December 27, 1951. Thereafter briefs were filed by both claimant and defendant as to said issues so submitted.

Presumably the land involved in the instant case was the same land made the basis of the suit I-33 filed in the Court of Claims, though an examination of the pleadings in that case discloses that the land is not described in the same way it is described in the instant case. The pleadings, the proof, the argument made by the claimant, and the claimant's requested findings of fact, considered along with the Duwamish case, are confusing. In this connection, attention is called to the fact that while claimant sues in the name of The Suiattle-Sauk or Suiattle Tribe, by its Requested Finding No. 14 it asks this Commission to find that The Suiattle-Sauk Tribe is the same tribe as the Suiattle Tribe and the same tribe as referred to in exhibits as the Sak-wi-behu, Sakumehu, Sah-lu-me-hu, Sac-me-ugh, Sock-a-muk, and Sabkiuqa, and "that as such they existed in

1855 and for time immemorial before that; that they continued to exist since; that the said tribe is in existence today; and that as such it is a tribe, band or other identifiable group of Indians authorized to and having capacity to maintain this action."

The treaty of January 22, 1855 (12 Stat. 927), known as the Point Elliott Treaty, names the Sah-ku-me-hu as one of the tribes executing the same, and one Indian claiming to be a sub-Chief of that tribe is shown as a signer to such treaty. It would seem, therefore, that if the Suiattle-Sauk or Suiattle Tribe is the same as the Sah-ku-me-hu Tribe, then the rights of claimant herein cannot be determined as a non-treaty tribe, as claimed in the petition, but must be rights, if any, or wrongs, if any, growing out of the said treaty. It is not in evidence that any treaty was ever made with any tribe of Indians described as the Suiattle-Sauk Tribe, or the Suiattle Tribe, and this seems to have been recognized by Congress in the passage of the jurisdictional act under which the Duwamish suit was filed, because in that act the Suiattle Tribe or Band is among those with whom it is stated no treaty had been made. If the Sah-ku-me-hu Tribe is the same tribe as the Suiattle-Sauk or Suiattle, as claimed by the claimant by its Requested Finding No. 14, then the reason for not having made a treaty with the Suiattle-Sauk or Suiattle Tribe may be because said Indians were not so known at the time of the Point Elliott Treaty. That this was the situation is indicated by the fact that the Point Elliott Treaty takes a cession of all the northwest portion of the present State of Washington (then called Oregon) that was north of the 47th parallel and west of the Cascade

Mountains, including the lands claimed by the claimant herein, and that said treaty is executed by practically all the tribes or bands of Indians whose names appear on the various maps in evidence as of that period, including the Sah-ku-me-ku; and that none of these maps shows the names of Suiattle-Sauk or Suiattle as being a tribe occupying any portion of the territory ceded by the Point Elliott Treaty—though said maps do show the Sah-ku-me-ku as occupying the territory now claimed by the Suiattle-Sauk or the Suiattle.

In this connection notice is taken of the act of Congress of June 5, 1850 (9 Stat. 437), wherein the President is authorized to appoint commissioners to negotiate with the several Indian tribes in the territory of Oregon having claims lying west of the Cascade Mountains; that said commissioners, in negotiating the Point Elliott Treaty, did not include any tribe known as the Suiattle-Sauk or Suiattle, but did include seemingly every known tribe in the territory ceded (including the Sah-ku-me-ku). This is persuasive that at that time there was no such tribe existing as the Suiattle-Sauk or Suiattle Tribe, and that the Indians that thereafter became known as the Suiattle-Sauk or Suiattle Indians were originally known as the Sah-ku-me-ku Indians, or as some other tribe.

The evidence submitted indicates that among the claimant Indians are Indians whose ancestors lived on the Sauk, Suiattle and Skagit Rivers and that they represented some autonomous villages on said rivers, but we think same is insufficient to establish that they constitute a definite determinable Indian tribe, band, or other identifiable group of Indians, or the successor, or the descendants

of any such definite entity within the meaning of the Indian Claims Commission Act.

The treaty ceding the land involved in the instant case along with other lands, as herein previously stated, is the treaty of January 22, 1855 (12 Stat. 927), called the Point Elliott Treaty, which was negotiated by Governor Isaac Stevens and associates, all of whom were familiar with the territory involved and the various tribes and bands of Indians living thereon. Maps of Governor Stevens in evidence dated September 16, 1854, December 30, 1856, and March, 1857, show neither a "Suiattle" nor a "Suiattle-Sauk" thereon, but do show the "Sah-ku-me-hu" as the inhabitants on the upper Skagit River. A War Department map of the territory involved dated 1858 does not locate either a Suiattle or a Suiattle-Sauk Tribe in the area involved. Dr. George Gibbs, an Indian Ethnologist, in his publication entitled "Contribution to North American Ethnology," Vol. 1, 1877, makes no mention of either a Suiattle or Suiattle-Sauk Tribe or Band; in his map, however, of Indian tribes of the Washington Territory of 1876, he identifies the Sah-ku-me-hu Tribe as being Skagit. Rev. Myron Eells, a missionary writing in 1877, mentions the Sah-ku-me-hu as being Skagit and living on the south bank of the Skagit River. He makes no mention of a Suiattle or a Suiattle-Sauk Tribe or Band. Dr. James Mooney's map showing tribes of the upper Columbia region in Washington, Oregon and Idaho, including the area involved herein, shows same as Skagit territory, but no mention is made either on the map or in his writings of a Suiattle or Suiattle-Sauk Tribe or Band. Frederick W. Hodge, in his "Handbook of American Indians" published

in 1910, mentions the Sah-ku-me-lu as one of the numerous bands around Puget Sound, but he does not mention a Suiattle or Suiattle-Sauk Band or Tribe. In fact, no anthropological or historical writer undertaking to identify Indians occupying the territory involved in 1855 or thereabouts speaks of any group known as Suiattle or Suiattle-Sauk. The evidence indicates that the use of the name Suiattle and Suiattle-Sauk came about in later years and was indicative only of the Indians living on or near the Suiattle and Sauk Rivers. The earliest reports so describing said Indians as Suiattle or Suiattle-Sauk were made more than 50 years later than 1855, and as previously stated, it is thought the Indians were so described because of their geographical location.

If the Indians are descendants of the Sah-lu-me-lues, as claimant requests us to find, then they are precluded from suing as a non-treaty tribe because they were parties to the Point Elliott Treaty; if they are descendants of the Skagits then they are precluded because the Skagits were parties to the Point Elliott Treaty; and for the further reason that the Skagits were parties to the Duwamish suit heretofore mentioned, and are plaintiffs in a suit now pending before this Commission, styled Docket No. 92, based on the same land involved in the pending suit.

Regardless of whether or not the suit should be dismissed because of the fact that claimants were either Sah-ku-me-lues or Skagits, it would have to be dismissed because of the failure to establish the fact that they are descendants of a tribe, band, or other identifiable

group that was not a party to the Point Elliott Treaty.

Wherefore claimant's suit is dismissed.

/s/ Edgar E. Witt
Chief Commissioner

We concur in the foregoing:

/s/ Louis J. O'Marr
Associate Commissioner

/s/ Wm. M. Holt
Associate Commissioner