BEFORE THE INDIAN CLAIMS COMMISSION

THE MUCKLESHOOT TRIBE OF INDIANS on relation of Napoleon Ross, Chairman of the General Council, Claimant,	)	
v.	)	Docket No. 98
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: May 14, 1953

Appearances:

Frederick W. Post, with whom was
Malcolm S. McLeod,
Attorneys for Claimant.

Donald R. Marshall, with whom was
Mr. Assistant Attorney General
Wm. Amory Underhill
Attorneys for Defendant.

OPINION OF THE COMMISSION

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

The petition in this case is for the value of 491,520 acres of land (less 3,491 acres) alleged as having been owned under Indian title by the claimant group (that is, by their ancestors) of which ownership and occupation thereof the claimant was dispossessed by the defendant in 1855, without making any payment to or treaty with this tribe of Indians with reference thereto. Claimant alleges that defendant is liable to it

for the sum of $3,500,000 as the value of said lands of which they were dispossessed, together with interest from January 26, 1855.

The defendant denies liability to the claimant, among other defenses, on the ground that (1) the claim asserted is barred by the decision of the Court of Claims in Case No. F-275 (79 C. Cls. 530), and (2) the claimant is not a tribe, band of other identifiable group of Indians under the Act creating the Indian Claims Commission.

Because of the nature of the two defenses above set out it was agreed by the parties that they should be disposed of before the case should be heard on its merits. Hearings have been had with reference to these defenses, evidence introduced, briefs and requested findings of fact by both parties filed, and oral argument had. The two defenses will be discussed separately.

Res Judicata

It is unnecessary for this Commission to set out in detail the reasons why it holds that the defense of res judicata must be denied. reference is made to its opinion in the case of the Nooksack Tribe of Indians vs. United States, Docket No. 46, rendered January 14, 1950.

As in the Nooksack case, the claimant tribe was a tribe with whom no treaty had been made. With reference to the entire group of non-treaty Indians, whoch included the Muckleshoot Tribe, the Court said:

> We are of the opinion that this court is without jurisdiction in a case between tribal Indians and the United States for the recovery of the alleged value of lands thrown open to public settlement by an act of Congress, in the absence of a treaty or an act of Congress recognizing the Indians' title by right of occupancy to the same. The special jurisdictional acts

> do not confer such jurisdiction (Mille Lac Indian case, supra), and the issue is a political and not a judicial one.

In specifically discussing the Muckleshoot claim and the Court's dismissal thereof, the Court said:

> Difficult as it has been to trace the genealogy of the Muckleshoot, it is from the record quite clear that at no time has the Government recognized its claimed right of occupancy to the vast acreage claimed.

The Court decided with reference to the Muckleshoot claim, as it did of all the claims of the non-treaty Indians, that same was based upon the original rights of those Indians, and since they had never been recognized by the defendant the Court under the jurisdictional act had no power to make an award therefor.

As stated in our opinion in the Nooksack case it is obvious that the Court of Claims did not dismiss the Muckleshoot claim on its merits but because it had no jurisdiction under the jurisdictional act to entertain a claim for the validity of land based upon original Indian title. In keeping with our opinion in the Nooksack case and the cases there cited it follows that the defense of res judicata must be denied.

Capacity of Claimant to Sue

In keeping with the Findings of Fact it is evident that the claimant group are the descendants of a group that was formed in 1856 by the joinder or amalgamation of tribes that were probably previously known as the Skopamish Indians and their subordinate bands and the Smulkamish Indians and their subordinate bands, and such amalgamated group became known from that time as the Muckleshoots, and from and after that date said Indians

were referred to by Indian agents, superintendents of Indian Affairs, and anthropologists, as the Muckleshoot Tribe. Following such reports, the jurisdictional act of 1925 was passed by Congress which authorized a suit by the Muckleshoot Tribe, and the Court of Claims in its Findings of Fact and opinion treated such group as a tribe.

Even though said group in a strict sense might not be called a tribe, undoubtedly it is an "identifiable" group of American Indians, and under the recent decision of the Court of Claims in its Appeals Docket No. 14 in the case of C. W. McGhee, et al., vs. The Creek Nation and the United States, and in the case of Clude F. Thompson, et al. vs. United States, Appeals Docket No. 9, both decided in the Court of Claims on May 6, 1952, and reported in Vol. 122 of its opinions, it possesses the capacity to present a claim before this Commission.

In keeping with the above, it is the opinion of this Commission that the claim set forth in the petition herein is not barred by the judgment of the Court of Claims by the decision in Case No. F-275, and the claimant has, under the provisions of the Indian Claims Commission Act, the capacity to maintain its action herein.

/s/Edgar E. Witt
Chief Commissioner

We concur in the foregoing:

/s/Louis J. O'Marr
Associate Commissioner

/s/Wm. M. Holt
Associate Commissioner