

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 47
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Filed: May 29, 1953

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The Yakima Tribe of Indians, the petitioner, is comprised of fourteen separate bands or groups of Indians which confederated together and negotiated the treaty of June 9, 1855, 12 Stat. 951, II Kapp. 698, ratified March 8, 1859. It is authorized to institute these proceedings under the Indian Claims Commission Act.

2. Under the treaty of June 9, 1855, the Yakima Indians ceded a large area in the present State of Washington, and reserved therefrom for their use and occupation the lands situate within the following boundary set forth in Article 2 of said treaty:

Commencing on the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River;

thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning.

3. For the purpose of locating the boundary of the lands so reserved for the use and benefit of the petitioner, the defendant caused the same to be surveyed and definitely fixed the boundary of such reservation to be as follows:

Commencing at the mouth of the Ahtanum Creek down the Yakima River to the range line between ranges 21 and 22 in Township 9; thence south along the range line to the Township corner; thence on a line south  $86^{\circ}$  west to the summit of the Horse Heaven Hills; thence along said summit west to Grayback Peak; thence in a direct line to Goat Butte on the east slope of Mt. Adams, northwesterly to the summit of the Cascade Mountains and north along that summit to Goat Rocks; thence west along the summit of the Klickton Divide to Spencer Point; thence westerly in a straight line to the headwaters of Reservation Creek; down Reservation Creek and the South Fork of the Ahtanum Creek to its mouth, and then down the main Ahtanum Creek to the point of beginning.

For a more definite description of such boundary reference is hereby made to Defendant's Exhibit No. 2, in which the boundary is bordered by blue shading, and Claimant's Exhibit No. 1, in which the boundary line is shown by a black broken line.

4. In fixing and definitely locating the boundary of said reservation, as set forth in paragraph 3 above, the defendant erroneously excluded from the lands reserved for the use and occupation of petitioner by said treaty an area of land lying north of the northerly boundary of such reservation, as fixed by defendant, bounded as follows:

Commencing at the junction of Reservation Creek (as now known) and South Fork Ahtanam Creek (referred to as the southern tributary of Attah-man river in the treaty), thence up South Fork Ahtanam Creek to its headwaters, thence following the crest of the divide

around the headwaters of the Klickitat river by way of Darling (also known as Darland) Mountain to Spencer Point (about section 10, Tp. 12 N of Range 12 E), thence in a straight line easterly to the head of Reservation Creek, thence up Reservation Creek to the place of beginning.

The acreage of this area is not separately shown, although the part of this area lying within the boundary starting at the head of Reservation Creek, instead of South Fork Ahtanam River, was determined to be 16,448 acres. (See Pl. Ex. 31, Earnard Map). If this acreage is acceptable to the parties, there need be added only the acreage lying between the South Fork Ahtanam River and Reservation Creek.

5. That by erroneously fixing the boundary line of the reservation as running up Reservation Creek to its headwaters and from there in a straight line to Spencer Point, defendant has taken and does now deprive petitioner of all the land described in next preceding paragraph hereof.

6. That, with the exception referred to in paragraph 5 hereof, the boundary of the reservation as set forth in paragraph 3 of these findings is the true and correct boundary of the reservation as described in and provided for in said treaty of June 9, 1855.

7. Prior to 1904, it had been discovered that through an erroneous survey made in 1890 the Indians had been deprived of at least 293,837 acres of their lands which had been excluded from their reservation, and part of the lands in the excluded area had been disposed of by defendant to settlers and purchasers under the public land laws. To meet this situation there was enacted the Act of December 21, 1904, 33 Stat. 595, section 1 of which contained the following provisions:

That the claim of said Indians to the tract of land adjoining their present reservation of the west, excluded by erroneous boundary survey and containing approximately two hundred and ninety-three thousand eight hundred and thirty-seven acres, according to the findings, after examination, of Mr. E. C. Barnard, topographer of the Geological Survey, approved by the Secretary of the Interior April seventh, nineteen hundred, is hereby recognized, and the said tract shall be regarded as a part of the Yakima Indian Reservation for the purposes of this Act: Provided further, That where valid rights have been acquired prior to March fifth, nineteen hundred and four, to lands within said tract by bona fide settlers or purchasers under the public-land laws, such rights shall not be abridged, and any claim of said Indians to these lands is hereby declared to be fully compensated for by the expenditure of money heretofore made for their benefit and in the construction of irrigation works on the Yakima Indian Reservation.

In passing it might be stated that a large part of the excluded area had been granted a railroad under the Act of July 2, 1864, 13 Stat. 365, but the patents for these lands were cancelled. Northern Pacific Railway Co. v. United States, 227 U. S. 355.

8. Pursuant to the validation provisions of the 1904 Act, patents have been issued to settlers and purchasers of lands within such excluded area, referred to in Finding 7 hereof, to the extent of 27,647.71 acres, and by virtue of said act and the issuance of such patents petitioner has been deprived by defendant of its land to the extent conveyed by said patents. The lands so conveyed are set forth and described in Claimant's Exhibit No. 70.

8 (a). After the passage of the 1904 Act and before the Pecore Survey officially marked the western boundary of the reservation along the summit of the Cascade Mountains, the defendant conveyed by patent to the Northern Pacific Railway Company 346.44 acres of land belonging

to petitioners lying in the area between the summit of the Cascade Mountains and the Spencer Point -- Hump (Goat Butte) line, and thereby deprived petitioner of that much of its lands. (See Cl. Ex. 71).

9. In 1861 the Superintendent of Indian Affairs for Washington Territory made an agreement with Thomas F. Berry and James Lodge (Cl. Ex. 21) to survey that portion of the boundary of the reservation from "the 'divide' between the waters of the Klickitat and Pisco rivers" to a point on the Yakima River, defined in the treaty as follows:

\* \* \* thence along said divide to the divide separating the waters of the Satass Creek from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River, \* \* \*.

In making their survey, Berry and Lodge attempted to find a point eight miles down the Yakima River below the mouth of Satus Creek ("Satass River") and to proceed from that point by surveying in the reverse direction from that of the description in the treaty.

10. The only survey that Berry and Lodge were to make was that of the southern boundary from a point "on the Yakima River, where the 'divide' separating the waters of the Satus River from those flowing into the Columbia River juts against said Yakima river," southerly and westerly until the "divide" between the Klickitat and Pisco Rivers should be reached. However, the instruction given by the Superintendent of Indian Affairs for Washington to Berry and Lodge stated that if the intersection of the said "divide" with the Yakima River was not "plain and apparent" they should start at the "mouth of Satus River, and run thence eight miles down the Yakima river and from this point proceed as previously directed." (Cl. Exs. 20 and 21, Def. Ex. 7).

The course down the Yakima River from the mouth of Satass River (or Satus Creek) was not to form a part of the boundary survey. It was run for the purpose of determining the starting point of the boundary survey.

11. In reporting the courses and distances on the survey of the southern boundary that they were requested to make, Berry and Lodge also listed the courses and distances of a purported survey down the Yakima River from the mouth of Satus Creek for the purpose of determining the starting point for their boundary survey. (Cl. Ex. 20; Def. Ex. 7; R. 338-350). However, no physical evidence of the starting point, turning points or ending point of the Berry and Lodge survey has existed for many years, and the alleged courses and distances cannot be harmonized with any reasonable interpretation thereof as related to the known course of the Yakima River. There is nothing in the Berry Lodge field notes that shows a connecting line from the mouth of Satus Creek to any natural object that can be identified today. There is no convincing evidence of the location of the point that Berry and Lodge considered to be the appropriate starting point for this survey of the southern boundary of the reservation. The most satisfactory determination of the initial point on the Yakima River for the southern boundary of the Yakima Reservation was made by Surveyor Harry A. Clarke in 1885. (Cl. Exs. 26-28; Def. Ex. 16; R. 393-397).

12. The natural habit of minor tributaries entering a river through a flood plain is to migrate downstream, not upstream. (Kidder, R. 566-568). The witness Calvin apparently failed to take this fact into consideration in formulating his theory regarding the location of the mouth

of Satus Creek in 1861 (Kidd, R. 567), whereby he placed it further downstream in 1861 than it is known to have been in 1874 and 1885, when it was in Section 8 of T. 9 N., R. 22 E. (Def. Ex. 1; Calvin, R. 181-183).

13. The first survey of the west or right bank of the Yakima River under the direction of the General Land Office was made in 1874 by T. M. Reed under a contract of June 27, 1874. This contract authorized a survey and subdivision of the part of T. 9 N., R. 22 E., lying west of the Yakima River. This survey involved the meandering of a portion of the west or right bank of the Yakima River. The field notes of this survey, which are a part of the records of the General Land Office, show that after Reed had determined the point where the eastern boundary of T. 9 N., R. 22 E., intersected the Yakima River, he made a meander survey of the west bank from the said intersection to the mouth of Satus Creek, which he located near the center of Section 8 of the said township, and found such meandered distance to be 994.70 chains or 12.43 miles. Reed had no instructions to ascertain a point eight miles down the Yakima River and apparently made no effort to determine the location of such a point. (Def. Exs. 1, 11, 12, 15; R. 183; 386-387, 391-393).

14. In 1885 Harry A. Clarke made a sectionalized survey of T. 9 N., R. 22 E., and also meandered the west or right bank of the Yakima River, under instructions from the General Land Office. He submitted complete field notes of the survey and also a plat of the township. Clarke found the mouth of Satus Creek just north of the center of Section 8, T. 9 N., R. 22 E., at substantially the same

point where it was found by T. M. Reed in his survey in 1874. Starting from the point where the eastern boundary of township 9 was intersected by the Yakima River, Clarke meandered the course of the Yakima River, following the west or right bank of the stream. He found the distance from the said intersection to the mouth of Satus Creek to be 793.35 chains or 9.91 miles. The fact that Clarke found the distance between the mouth of Satus Creek and the point on the east boundary of T. 9 N., R. 22 E., to be only 9.91 miles, wherein Reed, in 1874, found the distance between the same points to be 12.43 miles was apparently due to the fact that Clarke took longer "shots" and did not meander the river so accurately as Reed had. (Cl. Ex. 12; Def. Exs. 13, 14, 16; R. 390-394).

15. The instructions to Harry A. Clarke provided also for the survey of the southeastern and southern boundary of the reservation, starting from a point eight miles down the Yakima River from the mouth of Satus River (or Creek), which point was stated by the General Land Office to be located near the common corner of Sections 21, 22, 27 and 28 of T. 9 N., R. 22 E. Clarke found that if the distances of all meander lines were added, the eight miles from the mouth of Satus Creek would fall at the point described by the General Land Office letter of instruction--more than three miles in a direct line west of the east boundary of the township. However, he stated that if only the general courses were taken and some of the bends in the river ignored, the eight miles down stream from the mouth of Satus Creek would end 12.2 chains (or 805.2 feet) west of the east line of the township. Since Clarke found that this range line between Townships 22 and 23 West,



had for some time been considered the east boundary of the reservation (or at least the whites had not settled west of it), he recommended that the range line, which was 8 miles, 12.2 chains down the river from the mouth of Satus Creek, be accepted as the starting point for the southeastern and southern boundary. Clarke therefore began his boundary survey at the corner of fractional sections 25 and 30 between Ranges 22 and 23. (Cl. Exs. 27-28; Def. Ex. 16; R. 363-364).

16. From a point in the western part of T. 6 N., R. 16 E., there is a divide that separates the waters flowing into Satus Creek, a tributary of the Yakima River, from the waters flowing southward toward the Columbia River which do not flow into the Yakima River. This divide extends easterly to about the center of T. 7 N., R. 21 E., where this ridge, known as Horse Heaven Hills, ceases to form the divide between the Satus Creek and streams flowing southerly into the Columbia River. From about the center of T. 7 N., R. 21 E., the main ridge extending northeasterly becomes a divide between waters that flow northerly into the Yakima River east of the Satus Creek watershed and the waters flowing in a southerly direction to the Columbia River. The drainage of the major portions of T. 8 N., R. 22 E., is into the Yakima River east of the watershed of Satus Creek. Only a small portion of the southwestern quarter of T. 9 N., R. 22 E., and a small area in the northwestern part of T. 8 N., R. 22 E., lie within the Satus watershed.

17. The straight lines extending south slightly more than a mile from the intersection of the line between ranges 22 and 23 and the Yakima River and thence southwesterly to a point near the center of Section 6, T. 7 N., R. 22 E., as established by Harry A. Clarke in

1885 for the southeastern boundary of the Yakima Indian Reservation are located some distance east of the easterly limit of the watershed of Satus Creek. This location of the boundary represents an interpretation of the treaty of 1855 favorable to the Yakima Tribe. (Calvin, R. 194-195; Kinney, R. 371-374, 380-384, 391-398; Kidder, R. 571-572. See Cl. Exs. 11, 12, 26, 27, 28; Def. Exs. 8, 9, 10, 15, 16, 17).