

## BEFORE THE INDIAN CLAIMS COMMISSION

THE NOOKSACK TRIBE OF INDIANS )  
 ON RELATION OF JOSEPH LOUIS, )  
 CHAIRMAN OF THE GENERAL COUNCIL, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 46

Decided: May 9, 1955

FINDINGS OF FACT

The Commission makes findings of fact as follows:

1. The petition in this case was filed by a member of the Nooksack Tribe of Indians setting forth the claim of said tribe for the value of land in Whatcom County, Washington, to which it is alleged said tribe held original Indian title, and was taken in 1855 by the defendant without any payment to or treaty with the tribe.

Defendant filed its answer to the petition setting up, among others, the defenses that (1) the claim is barred by the decision of the Court of Claims in the case of Dwanish, et al., v. United States, 79 C. Cls. 530, and (2) the claimant herein is not a "tribe, band, or other identifiable group of American Indians" within the meaning of the Indian Claims Commission Act. (25 U.S.C. 70). By agreement of all parties, the issues raised by said defenses were heard and determined by the Commission, and on July 14, 1950, were disposed of in accordance with the opinion of the Commission filed on that date. As no order was made

at that time, the Commission entered a formal order on January 30, 1952, denying these special defenses for defendant, which in pertinent part is as follows:

\* \* \* Therefore, and for the reasons set forth in said opinion, IT IS HEREBY ORDERED AND ADJUDGED that the judgment of the Court of Claims in said cause, No. F275, reported in 79 C. Cls. 530, does not constitute a bar to the prosecution of the above-entitled cause before this Commission, and that the special defense based upon said judgment, is denied; that the claimant, Nooksack Tribe of Indians, is a tribe of American Indians entitled to present its claim to the Indian Claims Commission under the provision of the Act creating such Commission, and said defense of the defendant relating to the capacity of the claimant to assert its claim, is denied. \* \* \*

2. Pursuant to a motion filed by claimant and consented to by defendant, the Commission entered an order on January 31, 1952 limiting the hearing on the merits to the determination of the question of (1) whether claimant, under the law and facts to be adduced, had aboriginal or Indian title to the lands described in the petition at the time of the alleged appropriation thereof by defendant, and if so (2) whether defendant unlawfully deprived claimant thereof, postponing until after such determination, should it be favorable to claimant, the proof as to the value of the land or as to any other questions of fact raised by the pleadings not previously determined by the Commission. Thereafter, evidence was concluded by both the claimant and defendant, and said issues were submitted to the Commission for determination.

3. The Nooksack Tribe was an entity known and considered by the defendant as a tribe of American Indians at the time of the alleged taking in 1855 by the defendant of the tribe's interest in the lands for which the claim in this case is made. The members or the descendants of members of said tribe are an identifiable tribe or group of American

Indians having a common claim which they are authorized to have heard and determined by this Commission under the Indian Claims Commission Act. (25 U.S.C. 70a). The claimant, Joseph Louis, is a member of this group of Nooksack Indians who are descendants of the original members of the Nooksack Tribe and is entitled, under Section 10 of the Act, to maintain this action in a representative capacity on behalf of himself and all other members of the claimant group of Nooksack Indians, who are descendants of the members of the Nooksack Tribe of Indians. See *Indians of California v. United States*, 122 C. Cls. 348.

4. The lands for which claimant seeks compensation are located in the northwestern part of the present State and former Territory of Washington, and are described as follows:

Commencing at the point of intersection between the International Boundary line with the western edge of Range 3 E.W.M.; thence due south along the said edge of Range 3 E.W.M. to its intersection with the shore of Puget Sound at the City of Bellingham, Washington; thence northwestwardly to the town of Silver Beach at the northeastern head of Lake Whatcom; thence southeast along the center line of Lake Whatcom to the town of Park; thence east to the town of Wickersham; thence northeastward along the divide between the south Fork of the Nooksack River and the Skagit River marked by a line through counterpoints of the highermost contour lines to the crest of Goat mountain; thence northward to the crest of Mount Baker; thence northeastward to the crest of Mount Shuksan; thence north to the Canadian border; and thence west along the Canadian border to the place of beginning.

The above-described land lies within the boundaries of the cession made in the treaty of January 22, 1855 (12 Stat. 927) which treaty will be referred to hereinafter. The claimed area includes substantially all the territory between the Canadian border on the north and a point below Lake Whatcom on the south, and from the crest of the Cascade Mountains on the east to the Puget Sound on the west.

5. By the Act of August 14, 1848 (9 Stat. 323), Congress created the Territory of Oregon within the area of which lived various Indian tribes and bands, including the claimant Nooksack Tribe. The Act made all land laws of the United States applicable to Oregon territory and in Section 1 provided that nothing therein contained "shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians \* \* \*."

By an Act dated June 5, 1850 (9 Stat. 437) Congress authorized the negotiations of treaties with the Indian tribes in the Territory of Oregon for the extinguishing of their claims to lands lying west of the Cascade Mountains.

By the Act of March 2, 1853 (10 Stat. 172), Congress organized the Territory of Washington out of the north half of Oregon Territory, and by Section 12 of said Act provision was made that all laws of Congress relating to Oregon Territory, not inconsistent with said 1853 act, were continued in force in the newly created Washington Territory. Section 2 of the Act provided for the appointment of a Governor who was also to perform the duties of a Superintendent of Indian Affairs in the Territory.

6. The Nooksack Tribe was among the Salish speaking Indian tribes found living in the Puget Sound area in Oregon Territory at the time it was established in 1848. The name of "Nooksak" appears to have been first applied by officials of the Government in 1853 to designate the Indians inhabiting the region along the upper part of the Nooksack river, extending to the north and east from Bellingham Bay.

The tribe at that time occupied three principal village sites located along the valley of the main Nooksack river. One village was at the main fork of the river near the present town of Demin, Washington; a second village was up the main river near Goshen, Washington, and the third village site further up the main river near the present towns of Everson and Nooksack, Washington, all within a span of approximately ten miles along the river.

At the time of the 1855 Point Elliott treaty the Nooksack Tribe was estimated by Government officials to number approximately 450--men, women and children.

7. In 1855 and in aboriginal times, each of the Nooksack villages appear to have been largely autonomous in a political sense, which was the type of political organization then found among the Indians throughout most of the Puget Sound area. Each village was made up of a number of families and had a chief or leader, but there was no strong central organization or chief with complete authority in a political sense over all the Nooksack villages. However, between the villages there were ties of kinship, their village areas were more or less contiguous, and they shared a common culture and dialect of the Salish language different from that of adjacent village groups and considered themselves a distinct group and were so considered by defendant and the neighboring tribes. It was also largely on account of their characteristics, as well as the Government's policy in effect in 1853 of regarding and designating such village groups as the Nooksacks as tribes, that subsequent to 1853 the Indians living in villages along the Nooksack river were known and designated by Government officials, and others, as the Nooksack Tribe.

8. On December 26, 1853, Isaac Stevens, the first Governor and ex-officio Superintendent of Indian Affairs of Washington Territory, wrote to the Commissioner of Indian Affairs suggesting the urgent necessity for making treaties immediately with the Indians west of the Cascade Mountains in Washington Territory. He pointed out that these tribes lived on different water courses or Bays and Inlets of Puget Sound, and they had selected spots that were their permanent homes which they wished to reserve, but would sell the rest of their lands to the whites.

By the Act of July 31, 1854 (10 Stat. 315, 330) an appropriation was made by Congress for expenses of making treaties with the Indians in Washington Territory to extinguish their claim to lands. Thereafter, on August 30, 1854, the Acting Commissioner of Indian Affairs notified Governor Stevens of his official appointment to negotiate treaties with all the tribes in Washington Territory by which the United States would extinguish their "claim of title" to all their lands, except such limited areas as might be assigned them for future occupancy. Stevens was also directed that in making the treaties he should endeavor to unite the "numerous bands and fragments of tribes into tribes," and to furnish the Commissioner of Indian Affairs a skeleton map of Washington Territory, showing the location of the different tribes and bands, and the boundaries of the regions claimed by each.

In carrying out his duties as Superintendent of Indian Affairs, Governor Stevens had previously, on March 22, 1854, appointed Col. Simmons as Indian Agent for the Puget Sound District wherein the

claimed lands were located, and directed him to visit the various tribes in his District, make a census of the tribes and bands, ascertaining as nearly as possible the boundaries of the territory claimed by each, and at the same time organize the small bands into tribes and appoint chiefs for each.

9. Thereafter, on September 16, 1854, Governor Stevens, on the basis of his investigations of the Indians in the area involved, submitted a written report to the Commissioner of Indian Affairs on the "Indians west of the Cascades," in which he set out the locations of the various tribes. As to the Nooksack Indians, the Stevens report states as follows:

The Lummi living on a river (Nooksack) emptying into the Northern part of Bellingham Bay, and on the peninsula, are variously estimated at four to five hundred \* \* \*.

Above the Lummis, on the main fork of the river, which is said to rise in and carry off the water of Mt. Baker, is still another considerable tribe called the Nook-sahk; they seem to be allied with the Lummi and the Skagit, and according to Indian account, speak a mixed language. They are supposed to be about equal in number to the Lummi.

10. Pursuant to the Act of July 31, 1854, supra, and the instructions of the Commissioner of Indian Affairs, Governor Stevens negotiated the treaty of January 22, 1855 (12 Stat. 927) between the United States and twenty-two named tribes "and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington \* \* \*." The treaty, commonly referred to as the Point Elliott treaty, was not ratified by the United States Senate until March 8, 1859, and was proclaimed April 11, 1859. By its terms the said tribes and bands ceded, relinquished and conveyed

all their right, title and interest in and to a described area of land in northwest Washington Territory "occupied by them," reserving to themselves four small designated areas as a reservation. The area ceded, which includes the claimed area, is shown as Tract 347 and the reserved areas as Tract Nos. 348, 349, 350 and 351 on Royce's Map 1 of the State of Washington. As Article 15 of the treaty provided that the "treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States," the treaty did not become effective until March 9, 1859, the date the treaty was ratified by the Senate. See *Bush v. The United States and Klickitat Indians*, 29 C. Cls. 144.

11. During the period between the execution of the Point Elliott Treaty in 1855 and its ratification in 1859, the Nooksack Indians were, with other Indians, placed under the charge of Edmund Fitzhugh, Indian Agent of the Bellingham Bay Agency, but their location remained unchanged. In 1856 and 1857, Governor Stevens submitted to the Commissioner of Indian Affairs separate maps of Washington Territory west of the Cascade Mountains showing the general location of the various Indian tribes. Each of these maps show the "Nooksack" Indians in an undefined area extending along the Nooksack river within the claimed territory.

On January 18, 1857, Agent Fitzhugh also submitted a detailed report to the Secretary of Interior describing the Nooksack and other Indian tribes then under his supervision. As for the Nooksack Tribe, he estimated their number - men, women and children - at 450, and states in part as follows:



The Neu-sacks trace from the salt water Indians; \* \* \* they live by the chase, principally around the foot of Mt. Baker. There are hundreds of elk and deer; the rivers abound in salmon, trout and sturgeon. They are divided into three bands, under three heads, but all subservient to one Humpklam; he lives at the foot of the mountains and holds supreme command over the whole tribe. The middle band, under Tulliskerum, are situated at Upper Prairie, and the lower band at the large prairie about six miles from Whatcom, or twenty-five by river. The old chief is very religiously inclined, has divine services twice a day, and says he is a friend of the whites, but does not want them to settle in his country. They know the extent of their prairies, and know by the growth of their potatoes that they have the best soil for cultivation in this section, and a better hay or grazing country does not exist than their prairies.

The whites of the Bay have surveyed a road through to their lower prairies, a distance of from sixteen to twenty miles, and have cut out three or four miles. I am in hopes they will not get it through this summer, for I am confident that as soon as any white settlers go there to locate they will drive them out. They say that they are determined not to have their lands taken from them. If the treaty that has been made with them, if any, could be modified so that they could receive value for so much of the land as the United States wants, and give them a reservation in place, so that they would not be entirely out of their element, then, I think, there would be no difficulty; but until then, there will always be more or less trouble. These Indians live adjacent to the boundary line, and have three trails to Frazer's River and one to Fort Langley, where they carry all their furs and get all their articles of trade from the Hudson's Bay Company.

There are several large tribes contiguous to them, viz: the Su-mat-se, Smuttons, Cluwap, Tates, etc. There are several large lakes which abound in fish and innumerable quantities of berries. The Neuk-sacks derive their name, which signifies mountain men, from the salt water Indians. They are entirely different from the others; they have no slaves, and but one wife each.

On July 1, 1859, B. F. Shaw, Special Indian Agent at Bellingham Bay in Washington Territory, wrote a letter to Col. M. T. Simmons, Indian Agent for the Puget Sound District, with reference to the Indians under his charge, in which he states in part as follows:

Sir: In accordance with your instructions, I herewith submit my annual report. The Indians under my charge are the Lummi-neuk-sack, Samish and Stick Indians, numbering near fifteen hundred souls. \* \* \*

The Neuk-sacks and Samish, a part of my charge, live on the Neuksack and Samish rivers; they cultivate small patches of potatoes, but depend mostly on fishing and hunting for a living. Their land is very rich, a small patch yielding as many potatoes as any family can use. They are very much attached to their river homes and do not wish to leave them; and indeed it will be difficult to induce them to do so, until such time as the reservation can present such superior advantages over their present homes that it cannot fail to convince them of the advantage to be gained by the change in homes. \* \* \*

12. At the time the Point Elliott Treaty was negotiated the Nooksack tribe occupied lands within the territory ceded to the United States under that treaty, and the Government officials conducting the treaty negotiations recognized that the Nooksacks were a separate tribe or group of Indians who had an interest in the subject matter of that treaty. The Nooksack Tribe was not, however, a party to the treaty.

13. Congress must have regarded the Nooksack Indians as a separate tribe or band not a party to any treaty when it passed the Act of February 12, 1925 (45 Stat. 886). Under that Act the parties to the Point Elliott Treaty and other named treaties, and, six other named tribes, including the Nooksack, with whom the Act recites "no treaty has been made," were authorized to submit their claims against the Government for adjudication. Pursuant to said Act, the Nooksack tribe asserted the same claim as presented here in the Court of Claims in 79 C. Cls. 530. In that case the Court designated (Finding No. III) the Nooksack tribe as one of the five tribes with whom no treaties were ever made, and found (Finding XXV) that "the United States endeavored to, but did not conclude or ratify treaties with \* \* \* the Nooksack \* \* \*".

The above tribes have no claim growing out of a treaty with the United States \* \* \*." Although the Court dismissed the Nooksack claim for lack of jurisdiction to adjudicate a claim based upon unrecognized original Indian title, it found (Finding XXVIII) that "at and prior to the time of the treaties involved in this case, the Nooksack Tribe numbered approximately 450 individuals and inhabited that part of the Territory of Washington stretching from Bellingham Bay northeastwardly to Mount Baker within the area ceded to the United States by the tribes parties to the Point Elliott Treaty. The country to the north of them up to the International Boundary was inhabited by a number of smaller tribes."

14. At the time the 1855 Point Elliott treaty was negotiated, and on March 8, 1859 when said treaty was ratified by the Senate, and for an indeterminate time prior thereto, the Nooksack Tribe occupied, used and was in exclusive possession of a triangular tract of land located in the northwestern part of the claimed territory. This tract of land so exclusively occupied, held and used by the Nooksack Tribe, and which includes their village areas along the Nooksack river and surrounding subsistence areas, is described as follows:

Commencing at the present town of Lynden, Washington, on the Nooksack river for the northwest corner, thence east to the town of Maple Falls located on the north fork of the Nooksack river, thence southwest across the middle fork of the river to the present town of Acme, Washington, located on the south fork of the Nooksack river, thence northwest to the point of beginning.

The Nooksack Tribe did not actually occupy and exclusively possess and use the remainder of the claimed territory described in Finding 4.

15. Although the lands so exclusively occupied and used by the Nooksack Tribe in 1859 were included in the territory ceded to the United States under the Point Elliott Treaty, the tribe was not a party to the treaty and has never ceded nor relinquished its original Indian title to the lands as described in the preceding Finding 14.

16. It was understood and considered by the officials of the United States that original Indian title to all the lands ceded under the Point Elliott treaty, including the lands occupied by the Nooksacks, was terminated and extinguished when Congress ratified the treaty in 1859. Since that time the defendant has continued to regard and to treat such lands as public lands to be fully disposed of by the Government as and when it saw fit to do so. By such action on the part of the United States, the lands hereinbefore described in Finding 14 and to which in 1859 the Nooksack Tribe held original Indian title through exclusive use and occupancy were taken by the defendant without payment of compensation, as of March 8, 1859, the date the Point Elliott treaty was ratified by the Senate.

17. Although the original Indian title to aforesaid lands so occupied by the Nooksacks was considered by the defendant as extinguished by the Point Elliott treaty, most of the Nooksacks continued to live in their former location for a number of years subsequent to 1859 and any limitations on their use of the land appear to have been gradually improved by the defendant. Following ratification of the Point Elliott treaty in 1859, the Nooksacks were placed under the jurisdiction of the Tulalip Indian Agency in Washington Territory and have continued to be under the jurisdiction of that agency to the present time. There is

evidence in the record indicating that some Nooksack Indians may have acquired certain rights subsequent to 1859 in a part of the land within the area as described in Finding 14, but the character and extent of such rights and the method by which they were acquired are not shown by the record.

EDGAR E. WITT  
Chief Commissioner

LOUIS J. O'MARR  
Associate Commissioner

WM. M. HOLT  
Associate Commissioner