

BEFORE THE INDIAN CLAIMS COMMISSION

TILLAMOOK BAND OF TILLAMOOKS,
ET AL.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

Docket No. 240

Decided: June 10, 1955

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. That the plaintiffs herein, the Confederated Tribes of Siletz Indians and the Confederated Tribes of the Grand Ronde Community, Oregon, include the descendants of the Nehalem band and Tillamook band of Tillamook Indians is admitted, and, as such, they are entitled to maintain this action on behalf of said descendants.

2. Although the amended petition in this case includes as plaintiffs the Clatsop Tribe, Kathlamet Band of Chinooks and Nuc-quee-clah-we-muck Tribe, no evidence has been submitted in support of any claim by such plaintiffs and consequently this action is considered to be dismissed as to these plaintiffs.

3. The two remaining plaintiff bands were not a part of the same tribe or group of Tillamooks who occupied the coastal area of Oregon to the south. The claim of this latter group of Tillamooks, along with others, was presented in the case of the Alcea Band of Tillamooks, et al., v. The United States, 103, C. Cls. 494.

4 (a). The Nehalem and Tillamook bands of Tillamook Indians have from time immemorial used and occupied a section of the coast of what is now the State of Oregon from Tillamook Head on the north to Cape Lookout on the south.

(b). There has been great uniformity among those who have written of aboriginal occupancy by the plaintiff bands. They have been consistently located by travelers, historians, and ethnologists within the above boundaries.

(c). There is evidence that the Tillamook Indians (for convenience the plaintiff bands will be referred to as Tillamooks in these findings) had been contacted by white men prior to 1775 but the first specific account of them is to be found in the writings of Haswell, a mate on an American vessel, which put in at Tillamook Bay in 1788.

(d). The next contact of which there is a record is that of the Lewis and Clark Expedition of 1805-06. During the course of their stay they made rather extensive notes on "The Killamucks, Clatsops, Chinooks, and Cathlamahs, the four neighbouring nations with whom we have had most intercourse....." They located the Tillamooks south of Tillamook Head.

(e). The next person to mention the Tillamooks was Alexander Henry, the younger, in 1814. He places them southward on the coast from the Clatsops, who had in turn been located on the south side of the mouth of the Columbia River by Lewis and Clark.

(f). The Tillamook were mentioned by Douglas in 1824, by Townsend in 1839, and by virtually every explorer and traveler in the 1840's and 1850's, and they were always placed in the same relative location.

Superintendents Dart and Palmer also located these bands in the same area in the late 1840's and early 1850's.

5 (a). On June 5, 1850, Congress passed an Act (9 Stat. 437) authorizing the negotiation of treaties with the Indian tribes of the Territory of Oregon for the extinguishment of their claims to lands lying west of the Cascade Range, the appointment of Commissioners for that purpose, etc.

(b). In pursuance of that act, Anson Dart, Superintendent of Indian Affairs for Oregon Territory, negotiated a series of thirteen treaties during 1851. Among those thirteen treaties are two unratified treaties, one of which was negotiated with the Tillamook band on August 7, 1851, and the other with the Naalem (Nehalem) band on August 6, 1851.

(c). The boundaries of the land ceded to the United States by the Tillamook band in the treaty of August 7, 1851, are as follows:

Art. 1. The said Tillamook tribe of Indians hereby cede to the United States the tract of land included within the following boundaries, viz: beginning at the point of rocks claimed as the southwestern corner of lands lately owned by the Naalem band of Tillamooks, on the coast of the Pacific ocean; running thence southerly along said coast to the south side of the first headland north of the Neastocka river; thence east to the summit of the coast range of mountains; thence northerly along the summit of said range to the southern boundary of land lately claimed by said Naalem band; thence westerly following their said southern boundary to the place of beginning. The above described land being all that is claimed by the said tribe of Tillamook Indians.

(d). The boundaries of the land ceded to the United States by the Nehalem band in the treaty of August 6, 1851, are as follows:

Art. 1. The said band of Indians cede to the United States the tract of land included within the following boundaries, viz: beginning at the mouth of a certain stream called the

Yocklespahta, and running thence along the coast of the Pacific ocean in a southerly direction to a certain point of rocks south of the Naalem river, which point of rocks is claimed as the southwest corner of lands belonging to said band; thence east to the summit of the coast range of mountains; thence northerly following said range of mountains to the southern boundary of land lately claimed by the Clatsop tribe of Indians; thence westerly following said southern boundary of the Clatsops to the head waters of the Yocklespahta; thence down and along said stream to the place of beginning. The above described land being all that is claimed by the said band of Tillamook Indians.

(e). The above boundaries include the land sued for by plaintiffs herein, with but a slight variation in order to conform to natural watersheds.

(f). In his letter of transmittal which accompanied the thirteen treaties, Superintendent Dart states that the treaties were negotiated at Tansey Point, near the mouth of the Columbia River and that the area ceded was more than 6,000,000 acres. He further states that the land was owned by tribes numbering about 320 Indians and that certain of the tribes were incensed at their treatment by the Government and were reluctant to part with their land. It is also mentioned that at the time of signing each of the treaties the entire bands were present.

(g). The treaties with plaintiff bands called for a consideration of \$10,500 each in goods and money. These two treaties were never ratified by Congress.

(h). Congress passed two acts, one on June 7, 1897 (30 Stat. 78) and one on August 24, 1912 (37 Stat. 535) under which the Nehalem and Tillamook bands were paid the \$10,500 each, less attorneys' fees, for which the treaties called. These payments were made in full settlement of any and

all claims which the respective bands might have against the Government.

6 (a), The journal of the Lewis and Clark Expedition of 1805-06 lists the population of the plaintiff bands at 1,000 during that period.

Dr. Herbert Taylor, plaintiffs' ethnologist, estimates that at the height of the Tillamook population there were one and one-half to two times as many Indians as when the Lewis and Clark figure was made. The report of Haswell indicated that smallpox was already known among the Tillamooks in 1788 and an epidemic of fever in 1829-30 further reduced the number of Tillamooks. By the time of the negotiation of the treaties in 1851 there were only 88 members of plaintiff bands left, according to Superintendent Dart's reports.

(b), The above population figures and estimates indicate that some 1,500 to 2,000 Indians used and occupied the same area which it is now claimed was used and occupied by 88 Indians in 1851. As indicated in a previous finding, there has been general agreement by all who have written of these Indians that they occupied this same area since aboriginal times. It is not contended that any greater area than that ceded was ever needed to support these bands at the height of their population.

7 (a). In the area claimed by the Nehalem band of Tillamooks at least six villages existed; and in the area claimed by the Tillamook there were at least six villages. These villages were located upon Nehalem Bay and Tillamook Bay and at the mouths of the principal streams flowing into such bays. (Substantially such finding is requested by defendant in its finding 29).

(b). Excursions by the Indians for hunting and gathering purposes went only into the lower slopes of the mountains. (Defendant's requested

finding 32).

(c). Their extent of exploitation inland would be approximately 10 miles along the river course. (Defendant's requested finding 33).

(d), As a matter of common knowledge and as indicated by the evidence herein, these people were a marine economy people. They lived along the coast and their principal diet was confined to seafood. They also used roots, berries, fruit, birds and animals, as did all aboriginal peoples. However, as compared with seafood, these latter items were only a small portion of the diet. This appears to be especially true of the animals.

(e), The journal of Lewis and Clark indicates that game was not widely used by the Chinooks to the north of plaintiff bands, nor by the Clatsops who were immediately north of plaintiffs. They also state that while elk were plentiful in the mountains, the Tillamooks could not kill many with arrows. The evidence herein also indicates that game in the form of elk and deer was plentiful along the coast, especially during the winter when the animals came down from the hills.

(f), The relatively brisk trade carried on between the Indians of the area would tend to diminish the necessity of hunting. Products of the coast were exchanged with the Indians from farther inland for meat, skins and camas.

8 (a). The evidence herein indicates that the plaintiff bands ranged from Tillamook Head on the north to Cape Lookout on the south and that their area of principal exploitation, due primarily to the comparative ease of obtaining subsistence along the coast, would not be over 10 miles inland. While it is very probably true that Indians roamed over the area

ceded from time to time and very possibly hunted over it on occasion, there is still insufficient evidence to justify a finding that the whole of the claimed area was used, occupied; and controlled by two bands of Indians whose total numbers were only 88 in 1851 when the treaties herein were negotiated.

(b); The evidence justifies a finding, and such finding is here made, that the plaintiff bands used, occupied, and controlled the following described area, to-wit:

From Tillamook Head at a point on the Pacific Ocean; thence east along the high ground north of the Nehalem River drainage to a point 10 miles inland from said coast; thence south in a straight line to a point due east of Cape Lookout; thence due west to the ocean at a point on said Cape Lookout; thence north along the coast to the place of beginning; being an area of approximately 45 miles by 10 miles in size.

9. The Indians from the various villages of the Nehalem band and the Tillamook band of the Tillamooks intermarried and exchanged their places of residence within such territory so as to make it impossible at this time to fix the liability of defendant to the separate bands but such liability must accrue to the plaintiffs jointly as one entity. (Justified by the evidence and defendant's requested finding 35).

10. Ever since the aforesaid treaties were negotiated the land therein described has been treated by the officials of the Government as public land and open to settlement by whites, under the laws of the United States. It was not until after the passage of the Oregon Donation Act of 1850 (9 Stat. 496), however, that the whites began to encroach upon the Indians. (Defendant's requested finding 8).

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner