

BEFORE THE INDIAN CLAIMS COMMISSION

The MUCKLESHOOT TRIBE OF INDIANS )  
 on relation of Napoleon Ross, )  
 Chairman of the General Council, )  
 Claimant, )  
 v. )  
 THE UNITED STATES OF AMERICA, )  
 Defendant. )

Docket No. 98

Decided: August 25, 1955

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Muckleshoot Tribe, claimants herein, have been found by this Commission to be an identifiable group of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U. S. Sec. 70(a)). As such they are entitled to maintain this cause of action. (See the findings of fact and opinion rendered by this Commission in this same Docket No. 98 on May 14, 1953). The following findings are supplementary to the above findings of May 14, 1953.

2. In Claimants' Requested Finding No. 19 the area claimed is described as follows:

Commencing at the southwest corner of Township 21 Range 5 E7M; thence north through the western edge of the town of Auburn to the town of Pialachie; thence to the northwest tip of Lake Cow; thence to the north tip of Lake Sawyer; thence to the town of Kangley; thence to the peak of Mt. Lindsay; thence to the peak of Goat Mountain; thence to Stampede; thence along the crest of Cascade Mountains to Naches Pass, to Chinook Pass to the peak of Mt. Rainier;

thence north to the headwaters of the West Fork of White River; thence along the divide between tributaries to the White River and tributaries to the Puyallup River to a point one mile south of the town of Buckley; thence to the place of beginning, consisting of 491,520 acres more or less.

3. The description of the area as given by claimants' witness, Mr. Ballard, does not coincide with that set forth in claimants' requested Finding 19 (Cl. Ex. 25) but stops at Naches Pass and turns west to follow the course of the Greenwater River to where it joins White River and thence continues down White River more or less, to the beginning.

4. At the time of white contact as indicated from the record, the Indians who eventually became what is now known as the Muckleshoot Tribe were living on and near the junction of the Green and White Rivers.

Governor Stevens mentions several sub-groups of the Duwamish in 1854, including the Smal-ka-mish at the head of White River and the Skop-ah-mish on the upper Green River, and Stakahmish on the main White River. Governor Stevens estimated the population at that time as follows: Smalkamish, 50; Skopahmish, 50; and Stakamish, 30, making a total of 130.

Dr. George Gibbs mentions, among others, the Skopahmish, Sk'tehlmish, and St'Kamish as lying upon the lakes and branches of Dwamish River. The Dwamish River was formed in part by the White and Green Rivers. In Defendant's Exhibit 30, p. 1805, is Dr. Gibbs' estimate of Indian tribes in the western district of Washington Territory in 1854 and he there lists the Smul-ka-mish, on head of White River, with a population of 8; the Skope-ah-mish, on head of Green River, population 50; and the Se-ka-mish, on main White River, population 30, making a total of 88.

Schoolcraft noted several Duwamish groups which included those on the White and Green Rivers.

5. The names of three bands on the Point Elliott Treaty were Smalk-kahmish, Skope-ah-mish, and St-ka-mish. These bands did not sign the treaty, however. (12 Stat. 927, 2 Kapp. 669).

There is indicated on Defendant's Exhibit 18, a map drawn by or at the order of Gov. Stevens in March 1857, three bands or groups surrounding the Muckleshoot Reservation. These are the St'Kamish, Scope-ahmish, and the Sma-lk-hamish. They are within the area claimed.

Myron Eells, a missionary, writing in 1887, mentions the up-river Duwamish, including the Skopahmish, Sk'telmish, and St'kahmish.

According to the Handbook of American Indians, Vol. 2, the Sk'telmish were located on Duwamish Lake and River which would appear to make them lower river Indians.

6. The Indians who were known as the Green River Indians and the White River Indians, as geographical designations, were also known by various other names. The Green River bands or groups were called Skopamish, Sko-pabsh, or Skopeamish, and the Niskap, Neccope, Nescope, or Nooscope.

The White River bands or groups were called Smulkamish, S'Balahco, Smalh-kah-mish, Smulcoe, or Sobal-Ruck, Klikitats, Niskaps, and Skopamish.

In addition there were other spellings of the respective names of these groups and their subordinate bands. It was testified to by Mr. Ballard, claimants' witness, that after considering all the spellings mentioned above, and possibly others, the names Skopamish and Smulkamish represented all of them and that these two groups are both identifiable

as present day Muckleshoots.

7. The use of the term Muckleshoot first appeared as a name for the Indians residing on the Muckleshoot reservation about 1868 when Superintendent McKenney stated as follows:

The Muckleshoots occupy the old military reservation lying between the White and Green Rivers, \* \* \*.

Thereafter, in 1870, these Indians were first referred to as the Muckleshoot Tribe.

8. The Muckleshoot Reservation was not established as a result of the Point Elliott Treaty (12 Stat. 927) or the Medicine Creek Treaty (10 Stat. 1132), but as the result of a later meeting at Fox Island between Governor Stevens and the principal men of the Nisqually, Puyallup, and Snohomish tribes in August, 1856. On December 5, 1856, Governor Stevens recommended the establishment of a new reservation on Muckleshoot Prairie. The President approved the recommendation on January 20, 1857 (1 Kapp. 919). On April 9, 1874, the reservation was given definite metes and bounds by Executive Order. It consisted of 3,532.72 acres.

9. Upon the establishment of the Muckleshoot Reservation on January 20, 1857, certain of the Indians in the vicinity were removed thereto. The contemporary report of Agent Browne with relation to the Indians placed on the reservation appears to be in error. He states:

...another post was established during the war at Muckleshoot, a point in the interior, about 25 miles from Steilacoom. At that station were collected some 300 of the most troublesome Indians, consisting of Upper Puyallups, the Nooscoopes, and Green River Indians.

From all other evidence it seems that the Nooscoopes and the Green River Indians were the same. Browne evidently meant White River Indians.

10. During the same year, Agent Gosnell stated as follows:

The Muckleshoot is also provided for in the treaty of Medicine Creek, and is the proper locality for the Toohk or Upper Puyallup, the S'Balaco or White River, and the Nooscope or Green River Indians; being in all about three hundred souls.

In 1858, Gosnell further reported as follows:

During a recent tour to the Nisqually and Puyallup reservations, I learned with regret that the Smulcoe and Niskap or White River Indians, both of which bands are parties to the treaty, and have been located at the Muckleshoot, appear not to be well disposed toward the whites.

There is also a difference in the designation of the White and Green River Indians in this statement but the location appears regardless of what the Indians are called.

11. During aboriginal times there appear to have been three villages located in the claimed area along the Green and White Rivers. One was located on the Green River above Auburn, one near the junction of the White and Green Rivers around Soos Creek, and one on the White River near the southeast corner of the Muckleshoot Reservation.

12. These villages, according to all of the evidence, were entirely autonomous. The village was the highest political unit on the Pacific Coast and there was no tribal organization comparable to that of the more eastern Indians and as a result the village was the largest land-using unit.

13. Throughout the whole of the Puget Sound area, including the area claimed herein, the economy of the aboriginal occupants was centered on the bays and rivers. It appears from the evidence that subsistence was never a real problem to these people as it was to some of the more eastern Indians. It is also true that the people of this area quickly adapted themselves to an agricultural economy. The salmon and other water life formed the basic meat economy and berries and roots were used to supplement that diet. The relative ease of the water economy as compared with hunting made the latter less important. Another factor in the hunting economy was the ratio between the number of Indians in the area and the abundance of game. It appears that it was hardly ever necessary to go beyond the almost immediate area to obtain any game with the exception of the mountain goat. Such hunting as was done occurred during the late fall after the fishing and berrying seasons were over and the animals had come down from the mountain to the prairies for the winter, thereby making it unnecessary to go any great distance into the mountains.

14. Such use as was made of the area away from the immediate vicinity of the village was seasonal. The seasonal uses were confined as far as possible to the closest area. The villages themselves were located as close as possible to berry patches, root areas and other food sources. Hunting excursions were infrequent and the lack of evidence of a hunting culture definitely points to that fact.

15. Mr. Ballard, claimants' witness, testified that the Indians of this area made seasonal trips to Euckleberry and Grass Mountains for berrying purposes, and to other areas in the eastern part of the

claimed area for hunting mountain sheep. There is no testimony that such use was exclusive and in view of the customary non-exclusive use pattern of lands away from the villages and the streams adjacent thereto, there is no reason to doubt that other Indians did not use the more distant areas to the east just as frequently and intensively as did the Indians who are claimants herein.

16. The extreme western portion of the claimed area was where the three villages admitted by claimant and defendant to have existed aboriginally were located. As indicated in Finding No. 12, there was a village on the Green River above Auburn, one near the junction of the White and Green Rivers around Soos Creek, and one on the White River near the southeast corner of Muckleshoot Reservation.

17. The area of the three villages and the prairies between the Green River and White River near their junction would have received very intensive use, while the upper reaches of the two rivers would have been used only infrequently and in conjunction with other Indians.

18. The Indians of the Sound area had no conception of land boundaries as such. They do appear to have had a well defined sense of "use area" with reference to the fishing and berrying places and the area in the immediate vicinity of their villages.

This feeling of exclusive "use area" did not extend beyond the immediate area of the village. Permissive use was common even in the village areas so long as the user was friendly or had some connection with the village through kinship.

From the record it appears that Mr. Ballard, claimants' witness, testified that the Upper White River Indians and the Green River Indians

shared the areas around their villages. He testified that their areas overlapped.

19. Non-village areas were open to all who cared to use them. This was a cultural characteristic of the Indians of the Sound area that they would share the outlying areas without any concern for exclusive use. They considered the area outside of their immediate village area as being common territory.

20. There were no boundaries known or recognized between these three groups or bands of Indians. They used the areas contiguous to their village areas in common with each other.

21. It appears from the evidence submitted in this case that it has not been established that the ancestors of the Indians now known as the Muckleshoot tribe exclusively used and occupied, during aboriginal times, the area claimed in their requested finding 19.

It does appear, however, that the ancestors of the claimants did exclusively use and occupy a certain area within the confines of the immediate village areas. This area is indicated by the testimony of claimants' witness and the maps executed by him during the course of his testimony and introduced as claimants' exhibits 23 and 25. This exclusive use and occupancy within the above-mentioned area is admitted by the defendant, who maintains, however, that such area is undefinable.

22. From the evidence before this Commission it is possible to define an area which can be said to have been exclusively used and occupied by the ancestors of claimants. Such area is as follows:



Beginning at the southwest corner of the town of Auburn and running southeasterly along the White River to the place where Red Creek joins said White River; thence in a northeasterly direction to the town of Kangley; thence westerly to the town of Kent; thence south to the point of beginning.

This includes the primary subsistence area of the Indians' respective settlements and the area over which they respectively and collectively exercised such dominion as to warrant finding that it was an exclusive use and occupancy and this Commission so finds that such area was exclusively used and occupied by the ancestors of claimants.

23. On August 14, 1848, Congress passed an act (9 Stat. 323) creating the Territory of Oregon. That Territory included what was later to become the Territory of Washington. In the act creating Oregon Territory, it was provided that nothing therein should be construed to impair the rights of person or property of the Indians so long as those rights remained unextinguished by treaties. Following that, Congress passed the Act of June 5, 1850 (9 Stat. 437) authorizing the negotiation of treaties with the Indians of Oregon Territory for the extinguishment of their claim to lands lying west of the Cascade Mountains and for other purposes. Congress then passed on September 27, 1850 the act known as the Oregon Donation Act (9 Stat. 486) under which grants of land in Oregon Territory were made to qualified people.

On March 2, 1853 (10 Stat. 172) Congress created the Territory of Washington from part of Oregon and extended the applicable laws passed after September 1, 1848, for the Territory of Oregon to the newly created Territory of Washington. On July 17, 1854, the provisions of

the Oregon Donation Act were specifically extended to Washington Territory and certain changes made in the requirements of the act.

In pursuance of the Act of June 5, 1850, Governor Stevens negotiated a treaty with some twenty-two tribes and bands of Indians "and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington..." This treaty, which became known as the Point Elliott Treaty (12 Stat. 927) provided that it should become effective upon ratification by the President and Senate of the United States. It was ratified by the Senate on March 8, 1859, and was proclaimed by the President on April 11, 1859.

The area ceded thereby is indicated as tract 347 on Royce's Map 1 of the State of Washington. The lands which claimants allege belonged to their ancestors lie in the extreme southern part of tract 347.

As a result of the ratification of this treaty, the defendant has treated these lands as public domain and has dealt with them as it saw fit since March 8, 1859.

24. Upon consideration of the legislative pattern as set by Congress and the exercise of dominion over the lands ceded by the Point Elliott Treaty, of which the area claimed herein is a part, this Commission finds that the aboriginal right of use and occupancy enjoyed by the ancestors of claimants in the area described in Finding 22 was appropriated by defendant without the payment of compensation and claimants are entitled to recover for the value thereof as of March 8, 1859. Said recovery shall be subject to such offsets, if any, as defendant may be able to establish at a subsequent hearing on the question of acreage and valuation.

25. Any rights which may have been acquired by the claimants or their ancestors to any land included in the claimed area may be made the subject of inquiry at the hearing mentioned above.

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner