

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF  
THE COLVILLE RESERVATION,  
ET AL.,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

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Docket No. 181

Decided: February 29, 1956

Appearances:

I. S. Weissbrodt, with whom  
were David Cobb, Abe W. Weissbrodt,  
and Lyle Keith,  
Attorneys for Petitioners.

John D. Sullivan, with whom was  
Mr. Assistant Attorney General  
Perry W. Morton,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The petition in this case presents the claims of six tribes, namely, Colville, Okanogan, Sanpoil, Nespelem, Lake and Methow, arising out of the alleged taking by the United States of lands aboriginally used and occupied by said tribes without the payment of compensation therefor. The six tribes are now part of the organization known as the Confederated Tribes of the Colville Reservation, which is recognized by the Secretary of the Interior as having authority to represent the Indians enrolled on the Colville Indian Reservation in the State of Washington, including the petitioner, tribes. The petition was filed with this Commission by

said Confederated Tribes, as representative of the above-named tribes and by certain named individuals as representatives of the respective tribes. (Findings 1, 2, and 3).

The case was presented and the proof was offered by the respective tribes. The proof conclusively shows that, while for administrative purposes the several tribes on the Colville Reservation have operated under an organization known as The Confederated Tribes of the Colville Reservation, large numbers of each of the petitioner tribes reside on said reservation and belong to said organization and by reason of the fact that each petitioner tribe is suing separately an award herein can and will be made for the separate tribes.

The only question before the Commission at this time is whether the defendant is liable to any or all of the petitioners, leaving for future determination the amount of such liability, should it be established.

Petitioners state that the issues before this Commission at this time are threefold, namely: (1) What areas of land were aboriginally used and occupied by each of these petitioner tribes?; (2) When and how did the United States take the lands so held?; (3) What compensation, if any, was paid to each of petitioner tribes for the taking? (Pet. Br., page 1). The parties have stipulated that the United States has never entered into any treaty of cession with any of the six tribes and that the United States has never paid any of the petitioner tribes for their lands lying outside the boundaries of the reservation established by the Executive Order of July 2, 1872. (Tr. 8). Counsel for defendant contends the issues before the Commission are twofold: (1) Were all or any of the six claimants at the time in question a politically organized, property-owning unit, and

therefore, the party suffering a loss, if any?; and (2) Did the petitioners or any of them have aboriginal Indian title to any of the lands for which claim is made? (Def. Br., page 28).

The lands for which petitioners seek to establish Indian title and for the taking of which they ask compensation are located along the upper reaches of the Columbia River and its tributaries in the northeastern section of the State of Washington in what are now Okanogan, Douglas, Ferry, Lincoln, and Stevens counties. (Finding 5). Since the advent of the white man into this region, historical records have, in a general way, located these Indians in certain portions of this territory. The Lakes have always, except in rare instances, been said to have resided along the Columbia River from the Canadian border down to a point just above Kettle Falls; the Colville have consistently been named as living along the same river from just above Kettle Falls down to Hunters, Washington; the Sanpoil, according to these records, have always been known to make their home along the Columbia south of the Big Bend and on the Sanpoil River, while their neighbors, the Nespelem, are reported on the Columbia and Nespelem rivers; the Okanogan have always been described as living on the river of that name; and, finally, the Methow have been generally located west of the Columbia and on the Methow River. There is no history of record of any migration of these Indians from these general locations where they remained during the white contact period until placed upon the Colville Reservation following its establishment by Executive order on July 2, 1872.

The findings of fact made herein are exhaustive and detailed for each of the petitioner tribes with respect to their history, political

composition, subsistence pattern, use and occupation of land, and their contact with the white man. These findings are made upon facts disclosed by the tremendous documentary record in this case, consisting of some six hundred exhibits including a great number of ethnological studies previously made of these Indians and by the testimony of two qualified ethnologists, Dr. Verne F. Ray, for petitioners, a recognized authority on the Indians of this region, and Stuart A. Chalfant, for defendant. Since the findings are numerous and exhaustive, they are not paraphrased herein, but are referred to where pertinent to a determination of the issues.

Several subsidiary matters must be mentioned before discussing the main issues involved in this case. Although the amended petition -- the petition was amended solely to sever claims not pertinent to the issues now before the Commission -- contains allegations with respect to recognition by defendant of title in these tribes to their lands, the petitioners do not urge such recognition in their briefs nor request an ultimate finding with respect thereto. In any event, the evidence of record does not support finding title by recognition. The evidence does support the conclusion, however, that the Indian title to lands outside the reservation was extinguished by the United States without the payment of compensation as of July 2, 1872, when by Executive order the Colville Indian Reservation was established in Washington, as stated in Finding 42.

Defendant, with respect to the main issues in this proceeding, contends that petitioners were not politically tribes, and that none of the six groups had a government, or tribal organization. Defendant urges that these divisions or groups "not having an entity, not having

an organization, not bound together politically, but just treated separately because of linguistic and other considerations, are not capable, legally or otherwise, of having an interest in property of any kind." (Tr. 196-197). Defendant's counsel argues that the ethnologists agree that, with the exception of the Lakes, each petitioner comprised a number of villages or bands and that the autonomous unit was the village or band which had its own leaders, and that for these reasons the village or band and not the petitioners herein, "is the only proper entity, if any, entitled to recover compensation for the taking of any particular land in the claimed area." (Def. Br., pages 28-29).

Aboriginally, the political organization of these groups of Indians, was the village or the band, with the exception of the Lakes, who did have a tribal organization. (Pet. Ex. 473). Ray, in writing of the Sanpoil, said: (Pet. Ex. 478).

The Sanpoil political unit was the village. Tribal organization in the ordinary sense was lacking entirely. The inhabitants of a village were known by the name of that village plus the prefix "s" or the suffix "x" or both. No term existed or any larger political aggregation, but there was a name for the more inclusive dialectic division. The members of each village were subject to their own chief and to no others. The chief of one village, no matter how small, answered in no wise to the chief of any other village. \* \* \*

The Sanpoil realized that many of their neighbors, not far distant, lived under an entirely different type of political organization \* \* \* knit into a single group which recognized a single head. Informants used these tribes for contrast to make it entirely clear that the only bonds between the Sanpoil villages were of an utterly different nature. These bonds were social, linguistic, common interests and customs - not political.

The Sanpoil (including the Nespelem), Ray found were, however, "one people" who made use of common territory for hunting and berry picking, and considered the area, which he states was fairly well bounded, as their proper range for food. (Finding 16).

Leslie Spier, in writing of the use of the term "tribe" for the groups of Indians in eastern Washington, states: "Here too residence with a particular group is no criterion that an individual 'belongs' to that tribal or national unit. Again dialectic and territorial community are the cue to the larger groupings. At the same time, it is not desirable to assume that dialectic and tribal groupings are one and the same thing." (Pet. Ex. 492). Miss Walters who studied the political organization of the Southern Okanogan and found it to be composed of autonomous bands, observed: "The term 'tribe' is loosely used in anthropological literature \* \* \*."

Ray, in his "Native Villages and Groupings" (Pet. Ex. 482), had this to say with regard to the use of the word "tribe":

But one point is clear: the tribe in any literal sense is absent from a great part of the Basin. In consequence the term has been avoided throughout this paper as a designation for any group where definite indications of true tribal organization are absent. If the concept of tribe is to retain any significance whatsoever it must not be stripped of its basic implication of political unity. Yet political affiliation of any kind between one and another village of many of the social and geographical units here treated was entirely lacking. In other words, the political unit was the village itself, any political entity of greater embrace being wholly unknown. \* \* \*

It is not argued here that village autonomy indicates the absence of any significant unit of larger compass than the village. The essential point is that under these circumstances the larger unit was ethnic or social in nature. \* \* \* Yet nameless, these social groupings were far from unimportant. Bonds of common habitat, common interest, like customs, like values, one religion and one language are not to be passed over lightly. The feeling of unity that exists among speakers of a common dialect often is especially striking. \* \* \*

Further, intermarriage among members of friendly villages not far separated was exceedingly common, resulting in relatives being distributed over a number of villages. Then too, common

hunting, berrying and root grounds were used by a number of villages, the grouping being determined by factors mentioned above together with geographical conditions. During these activities village affiliation was more or less forgotten and all mingled freely.

These observations made by ethnologists of the early aboriginal composition of these Indians of northeastern Washington, are important, not to establish the existence of an "ethnic tribe" but to show that among these groups there were present elements characteristic of a tribe except the political ties. There was needed only a purpose to supply the political element in order to establish these groups as tribes and this was developed through their contact with the white man and their dealings with the United States government. For this reason, it is unnecessary to determine whether an "ethnic tribe" composed of autonomous villages could be considered an entity capable of holding Indian title to lands.

The Government, early in its dealings with the Indians of the northwestern part of the United States, established a policy of instructing its officials and agents to attempt to organize the detached bands and groups of Indians for the purpose of more conveniently conducting negotiations with the Indians. The bands and groups of Indians were urged to select chiefs for their tribes. The chiefs frequently met in council with agents of the defendant. The petitioner tribes, except the Nespelem who were part of the Sanpoil Tribe, had chiefs who represented them in these councils. (Findings 7, 17, 22, 36). In this respect, what the Commission said in the Nooksack case, 3 Ind. Cl. Comm. 494, is equally applicable here and that case held: "In late aboriginal times, and from the time of their first contact with the officials of the Government whose duty it was to deal with and report on said Indians, the Nooksack

village groups were recognized, designated and dealt with as a separate and distinct tribe by said Government officials." So also the Sanpoil, Methow, Colville, Lake and Okanogan Tribes were recognized, designated and dealt with by Government officials.

Having determined that at the time the Indian title to these lands was extinguished the petitioner tribes existed, there remains the necessity of determining the boundaries of the lands exclusively used and occupied by these tribes. The findings of fact herein made are detailed in their scope for each of the respective tribes with respect to their general location and their subsistence pattern where it has been studied by ethnologists. The villages of the respective tribes were located along the waterways, and the ethnologists, for the respective parties agree that the boundary lines between the tribes at points on the rivers or streams could be indicated with reasonable accuracy. (Tr. 66 and 263).

Petitioners' expert, Dr. Ray, was aware of the fact that the greater the distance from population centers the more vague these boundary lines became, and stated: (Pet. Ex. 482, page 117).

Thus, far back in hunting territory or far out in desert root digging grounds, boundaries sometimes completely faded out. An attempt has been made in preparing the accompanying maps to indicate roughly the preciseness of the boundaries by the relative space between adjacent segments of the broken lines of demarcation. In a few instances lack of definiteness is the result of insufficient data, as indicated below. But during the gathering of this material every group in the Basin was visited and the maps were first drawn in the presence of informants as information was given, bit by bit, including village location as well as boundary lines.  
\* \* \*

Ray's maps prepared for publication in his "Native Villages and Groupings" (1936), (Pet. Ex. 482) depict the boundaries of the petitioner tribes as



found by him in his early research and indicate thereon the preciseness of the boundaries by spacing of the adjacent segments of the broken lines. The areas now claimed by the petitioner tribes are the lands within the boundaries determined by Ray in his early publications and which also are on petitioners' Exhibit 532.

Defendant contends, however, that the areas portrayed upon Exhibit 532 were not exclusively occupied by each separate group but were also used by the other petitioners as well as groups not involved in this case. (Def. Br., page 31). Petitioners' expert, Ray, testified that any use of territory within the tribal boundaries of each tribe by Indians from other tribes was solely as visitors. (Tr. 80). Defendant takes exception to this view of use by others and asks: "Petitioners contend that each of the ethnic groups designated on their Exhibit 532 claimed the lands assigned to them upon that exhibit and that other tribes or groups came upon each other's territory only by permission. Does this seem reasonable in view of the admitted facts that such ethnic groups had no organization, no leaders, no central authority? From whom did they get such permission? From whom could they get such permission?" Ray, in his book, "The Sanpoil and Nespelem" wrote that the area he found to be their territory "was considered by the Sanpoil as their proper range for food gathering but no effort was made to keep outsiders from making use of it also. Neighboring groups, however, were reasonably considerate and encroachment was slight." (Finding 16). That some use of another's territory was considered by the Indians to be as visitors, is apparent, such as the Kettle Falls in Colville territory, and defendant's ethnologist agrees with this observation. (Tr. 263). There is also substantial evidence of record that the

Southern Okanogan made consistent use of the upper Methow river country above Twisp, Washington, which is claimed by the Methow and the ethnologist, Post, who made the study of the subsistence quest of the Southern Okanogan, gives no indication that these Indians went into that territory as visitors. (Finding 35). Miss Walters who wrote of the tribal structure of the Okanogan, states: "A very close relationship is felt to the other Okanogan speaking groups in the area: the Nespelem, the Sanpoil, the Colville and the Northern Okanogan. Berry and hunting territories and fishing sites are shared in common by the Okanogan linguistic group. In fact, most Salish-speaking people in the Plateau are treated as friends."

It is clear from a study of the maps, village locations and ethnological reports that petitioner tribes found their main sources of subsistence in most instances within the areas now claimed by them. The evidence justifies determining that use of fishing sites, near which were located the permanent villages of the tribe, by other tribes was in the capacity of visitors. In areas away from the waterways where the definiteness of boundary lines is not as clear it is just as obvious that exclusive use and occupancy must be shown with reasonable certainty. It is also evident from the record that these tribes, even when village autonomy prevailed, considered a definite territory their proper range for subsistence purposes. (Finding 16). With the advent of the white man and continued intercourse with Government officials their land consciousness increased and is apparent throughout the historical documents. The Sanpoil even refused to accept presents in fear that it would give the Government a claim to their land. (Finding 13).

The evidence does not justify holding that the separate territories which are claimed for the separate petitioners were used by all without any opposition. To the contrary, the evidence shows that these tribes consistently used and occupied the lands within the boundaries as described in the specific findings for each respective tribe to the exclusion of any other of the tribes. On the other hand, the evidence does not support the boundaries as determined by Dr. Ray and as delineated on petitioners' Exhibit 532 for all the tribes. The areas as found and shown by Dr. Ray for the Sanpoil (and Nespelem), Colville and Southern Okanogan territories are supported by substantial evidence. The territory of the Methow Tribe must be limited to that portion of the Methow River drainage area from the mouth of the river to the town of Twisp, since there is substantial evidence that the Southern Okanogan Indians made consistent use also of the upper Methow River country above Twisp. The southern lobe of Lake's territory is also found not to have been within the exclusive use and occupancy of this tribe. The extension of Lake Tribe territory by Ray to include the country southeast of Kettle Falls to Addy, Washington, is admittedly based upon a single informant and the indefiniteness of this boundary line in this section is indicated by Ray on his map in petitioners' Exhibit 432, at page 114. There is also evidence of the use of this territory by the Colville. (Findings 18-21). The petitioner, Okanogan Tribe, claims all the land portrayed on petitioners' Exhibit 532 as "Okanogan" and "Southern Okanogan." The record supplies substantial evidence to support holding that petitioner tribe has proven exclusive use and occupancy to the area designated as "Southern Okanogan." With respect to the area delineated

as "Okanogan," however, the evidence does not support finding exclusive use and occupancy to have been within petitioner tribe. The Okanogan, according to Cline and others who conducted the ethnographic studies of these Indians, consisted of two tribes, the Southern Okanogan and the Okanogan proper. The Southern Okanogan denied political affiliation with the Okanogan proper who were located mostly in Canada. No Okanogan villages for either tribe are located by these ethnologists within the area denoted on petitioners' Exhibit 532 as "Okanogan." (Findings 33 and 34; Tr. 64). Ray testified that the Northern Okanogan, or Okanogan proper, and the Southern Okanogan were as much separate, politically speaking, as were the other petitioner tribes. He further testified that the Northern Okanogan, or Okanogan proper, had the same rights to "Okanogan" territory as did the American (Southern) Okanogan. The only specific use of "Okanogan" territory mentioned in the record shows the Southern Okanogan going yearly to Oroville for salmon fishing and Spier mentions that the Northern Okanogan entered what is now the State of Washington only along the lower Similkameen River and that section of the Okanogan River from the Canadian boundary south to Tonasket.

The Commission concludes that the Sanpoil Tribe, of which the Nespelem Indians were a part, has proved aboriginal Indian title to the lands described in Finding 15 and as delineated on petitioners' Exhibit 532 for the Nespelem and Sanpoil. The Commission further concludes that the Colville Tribe has proved aboriginal Indian title to the lands described in Finding 23 and as they are delineated on petitioners' map, Exhibit 532. The Commission also concludes that the Lake Tribe has proved aboriginal Indian title to the lands as described in Finding 26 and as set forth on Exhibit 532 with the exception of the southeastern boundary line

which is corrected and limited in Finding 26. The Commission further concludes that the Okanogan Tribe has proved aboriginal Indian title to only the area delineated as "Southern Okanogan" on Exhibit 532, and as described in Finding 37. Finally, the Commission concludes that the Methow Tribe has proved aboriginal Indian title to only so much of the land as delineated in Exhibit 532 as is found within the Methow River watershed between the mouth of the Methow River and Twisp, Washington, and as described in Finding 40.

Concerning the Sanpoil-Nespelem territory, shown on petitioners' Exhibit 532, we find a slight conflict in that territory, as determined above, with the area described in a claim of the Yakima Tribe (Docket No. 161). Since the Yakima claim has not been tried, we do not know whether the Yakima will eventually make claim to this small overlap. In any event, and on the basis of this record, we think it belonged to the Sanpoil.

The proof of aboriginal use and occupancy by the petitioner tribes of necessity covered the entire area claimed by each which in each case included parts of the Colville Reservation which was established by the Executive order of July 2, 1872 (I Kappler 916). This reservation covered all lands lying west and north of the Columbia River, east of the Okanagon River and as far north as the 49th parallel -- the British possessions (Royce, Washington 1, tract 536), and thus set apart for reservation purposes part of the land aboriginally used and occupied by each of the respective petitioners. Therefore, as to each petitioner, any part of the lands which lie within the boundaries of the reservation is excluded from the claim of the petitioner.

Accordingly, an interlocutory order will be entered herein adjudg-  
ing the defendant liable for the value of the lands of each petitioner  
as described in the findings of fact.

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner