BEFORE THE INDIAN CLAIMS COMMISSION

UPPER CHEHALIS TRIBE, ET AL., )

Plaintiffs,

v. )

THE UNITED STATES, )

Defendant. )

Docket No. 237

Decided: June 25, 1956

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The petition in this case was filed with the Indian Claims Commission on August 8, 1951, by the following named plaintiffs: Upper Chehalis Tribe, Lower Chehalis Tribe, Chehalis Tribe, Satsop Tribe, Hupptulip Tribe, Upper Chinook Tribe, Lower Chinook Tribe, Chinook Tribe, Hoquiam Tribe, Clatsop Tribe, Confederated Tribes of the Chehalis Reservation and portions and descendants of such tribes and bands.

The petition was amended by plaintiffs to omit "The Upper Chinook, Lower Chinook, Chinook and Clatsop Tribes" as plaintiffs and added "Ralph A. Heck, Frank F. Pete and Murphy Secena, who are members of the Chehalis Tribe and subordinate bands not members of the Confederated Tribes of the Chehalis Reservation." The plaintiff, the Confederated Tribes of the Chehalis Reservation is organized and recognized by the Secretary of the Interior.
2. Plaintiff Indians, together with the "Clatsop" and "Chinook" Indians, originally alleged joint and several occupancy of certain lands in what is now the State of Washington. In their amended petition plaintiffs apparently allege joint ownership to the following described land:

BEGINNING on the coast of what is now the State of Washington at a point north of Gray's Harbor, which point is now called Copalis Rock; thence in a northeasterly direction to the headwaters of the Copalis river in a northeasterly direction to headwaters of the Humptulips river; thence in a general easterly direction from the head of the Humptulips river to the head of the Wynoochee river; and thence in a southeasterly direction from the headwaters of the Wynoochee river to the headwaters of the Satsop river; thence in a southeasterly direction following the watershed between the Satsop river and Puget Sound to the watershed between the Chehalis river and the Deschutes river, and following the watershed between the Chehalis river and the Deschutes river to a point east of what is now the town of Centralia, where the Chehalis river bends; thence in a southwesterly direction, following the watershed between the Nezazumus river and the Cowlitz river to the Willapa Hills; thence, following the northern edge of the Willapa Hills to the Pacific Ocean at a point now called Graylands, above the northern reach of what is now called Willapa Bay.

3. E. L. Crawford, of Salem, Oregon, is the duly authorized attorney for the Confederated Tribes of the Chehalis Reservation, under contract duly approved by the Commissioner of Indian Affairs on March 21, 1951. That E. L. Crawford, on July 5, 1951, made an assignment of interest of said contract to Garland S. Ferguson, III, and Joseph W. Creagh, attorneys of Arlington, Virginia, and that said assignment of interest was duly approved by the Commissioner of Indian Affairs.

Historical

4. The first white contact made with the Indians of what is now the State of Washington occurred in 1592 when Juan de Fuca, a Spanish
Captain, reached the Straits named after him. Vancouver in 1792 visited
the area and the Hudson Bay and Northwest Companies soon became active
in the region. Lewis and Clark, in 1806, mention the "Chilts", probably
Chehalis Indians. In 1821 Stuart located the Chehalis along the coast
40 miles to the north of the Columbia River. John Work, 1824, explored
the area and mentions the "Halloween" tribe on Black Lake and Black
River. Moffas, 1844, reported the "Chekilis et Quinayat" were located
on Gray's Harbor and the Chehalis river. Hale, who accompanied the
United States Exploring expedition, 1838-1842, reported in 1846 that
"Among the Tsihailish are included the Avainl and Quenainiut * * who
lived near the coast, thirty or forty miles south of Cape Flattery
** **." Lt. George M. Colvoodorosses in 1852 wrote of visiting part of
the claimed area where he met the "Sachal" tribe (probably on Black
river). He stated: "They are all of the wandering habit and change
their residence in search of food, which consists principally of fish
and clams * * *. According to the Chief's account, the Sachals are not
more than forty in number, and live chiefly on the camas root and salmon,
which fish they capture in great quantities in the Rivers Sachal and
Chickeless * * *. The next day we arrived at the point where the Sachal
and Chickeless unite * * *. About dusk we had a visit from some Chenocks,
who had encamped three or four miles down the river. * * * On the
first day out he met some Indians of the Squamish Tribe * * *. The
Indians who inhabit the shores of the Arbor [Gray's Harbor] call them-
selves Chickeless and their number is about 200 * * *. Live principally
by fishing * * * they are much dreaded by their neighbors the Sachals
and Sachaps. * * *"
5. Joseph Lane, Superintendent of Indian Affairs for Oregon Territory reported in 1849 that the "Quenoit and Chehaylis tribes live on the Chehaylis river; total number about 300; well disposed, live by hunting and fishing." (Def. Ex. 131). In the report of the Secretary of War for 1855 is contained the report of 1854 by George Gibbs who was Secretary of Governor Stevens' treaty commission on the Indians of Washington Territory and of the Chinook Indians it is stated that "Of the Lower Chinooks there are six or seven settlements, most of which consist of single families. The one on the Chinook tract is the largest, and amounts to 66. Almost all these are, however, intermingled with the Chihales."

The report further narrates:

As this last named locality (Shoalwater Bay) has only recently been much known, a rather more particular notice of it is not out of place. ** ** "The southern half of the bay belonged to them (Chinooks); the country on the Willapa river to the tribe of that name; and the upper end to the Chihalis." ** **

At present but few Indians remain here, the small-pox having nearly finished its work during the past year. ** **

The Willapa may be considered as extinct, a few women only remaining, and these intermarried with the Chinooks and Chihalis.

Part of the Chihalis Indians still frequent the bay for fish, clams and oysters, and, with the Chinooks living there, are employed by the whites in taking the latter for market. ** ** They have some horses, and this beach is a favorite race-ground. The number of the tribe on Gray's harbor, and that part of the river from the Satsop down, is supposed to be one hundred and fifty. ** **

There are said to be several other bands inhabiting the northern branches of the Chihalis, the Whishkah, Wynchees, etc., between whom and the whites there has been no intercourse whatever, and who have never been included in any estimate. For the present purpose they may, with sufficient probability, be reckoned at three hundred. The Indians of the Upper Chehalis will be considered in connexion with the Cowlitz.
The Cowlitz likewise, a once numerous and powerful tribe, are now insignificant and fast disappearing. The few bands remaining are intermingled with those of the Upper Chehalis. According to the best estimates obtained, the two united are not over one hundred and sixty-five in number, and are scattered in seven parties between the mouth of the Cowlitz and the Satsop. (Def. Ex. 11a).

Agent Starling reported in 1852 that the "Cowellitz and Chehalis or Chicalacs speak the same language and are much intermixed." (Def. Ex. 122). Spier, Def. Ex. No. 5, page 31, states of the village recorded as Talal, at Ford's Prairie, as a "Willapa", that: "It is quite possible that this group joined the mixed Chehalis-Cowlitz peoples during the first half of the last century." Gibbs in 1856 prepared a map of the western part of Washington Territory in which he locates the "Chihalis" on Cray's Harbor and south of the harbor along the coast between Shoalwater Bay and Cray's Harbor; the "Wan-noon-chie" are located near the mouth of the Wynoochee river; the "Satsupsh" on the southern part of the Satsop river; the "Satsall" near the mouth of the Black river and the Stak-ta-mish located northwest of the Skookumchuck river and north of the Chehalis river. (Def. Ex. 176). See also the following maps showing tribelets on the various rivers north of the Chehalis: Def. Ex. 137, p. 56; Def. Ex. 111 (Satsop); Def. Ex. 109 (Satsop); Def. Ex. 108 (Satsop, Wynootchee, Whiskah); Def. Ex. 85 (Copalis, Cyhut).

6. On March 22, 1854, Colonel U. T. Simmons was appointed special Indian Agent for Washington Territory. Governor Isaac Stevens of Washington Territory instructed him to make a tour of the various tribes.
within his district to prepare the Indians for future negotiations.
Simmons was further instructed to "organize small bands, not at present united, by gathering them into tribes, having reference to their general affinities, and by procuring the selection of head Chiefs & of assistant or lesser types, over the larger existing tribes you will also direct the appointment of head and sub Chiefs, * * *. To these respectively you will issue commissions of the forms enclosed, * * *"). (Def. Ex. 31). Acting Commissioner of Indian Affairs Charles E. Mix, on August 30, 1854, notified Governor Stevens that the latter had been designated by the President to conduct treaty negotiations with the Indian tribes in the Territory of Washington. Mix instructed Stevens to "endeavor to unite the numerous bands, and fragments of tribes into tribes & provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes." (Def. Ex. 32).

7. In February 1855, Governor Stevens commenced treaty negotiations at a point on the Chehalis river with Upper and Lower Chehalis, Cowlitz, Lower Chinook, Quinault and Queets Indians. James G. Swan, a settler in the area, who was present at the negotiations later wrote [1855]:
"Around the sides of the square were ranged the tents and wigwams of the Indians, each tribe having a space allotted to it. The Coast Indians were placed at the lower part of the camp; first the Chinooks, then the Chehalis, Quinault and Quilts, Satsop or Satchap, Upper Chehalis, and Cowlitz. These different tribes had sent representatives to the council and there were present about three hundred and fifty of
them, and the best of feelings prevailed among them all." (Def. Ex. 12). Governor Stevens proposed to the Indians that they cede their lands and move on to a single reservation to be selected for them but the Indians were adamant for reservations in their respective territories. The Upper Chehalis wanted their reservation to include Mound Prairie and Smith's Prairie. The Lower Chehalis desired "three miles above and below 'Wahoolchie' for a reserve on the Chinalis." Yowanmus spoke as head chief of the Upper Chehalis while Tu-leh-uk spoke as head chief of the Lower Chehalis, Chah-lat "a sub chief from the North side of Gray's Harbor" expressed a desire to speak "of his land" which he wanted to retain. Tee-whit of "Satsop and Squatsen" wanted part of his land for a reserve. Later Anannata, "sub chief Upper Chihalis" stated he spoke for the "Cowlitz and Satsop too" and that they would give up all their land for a reserve from "the mouth of Black River down to the lower end of Smith's prairie." Yowanmus stated "We have finally settled on a place for these five bands, the Cowlitz, Upper Cowlitz, Upper Chehalis, Satsop, and Mountain Indians (a remnant of the Kwalk wi o quas)." Tu-leh-uk said "We give up all our lands to you but a small piece. We Kwinai-ult speak a different language. All those on this river from Wan ool chie down are willing to go together."

Mak-an-hu, "North side of Gray's bay" stated he wanted the Governor to look out for those north of the Chehalis and "they are willing to give up their lands and go over on the west side with Tu-le-huk. They have four rivers on the Northern side which they give up." The Satsop and Cowlitz expressed a willingness to give up their lands and go on the
reserve asked for by the Upper Chehalis. Mo-te-lis, "a sub chief from north side of Gray's Harbor" claimed to own a large country on the north side of Gray's Harbor and stated he wanted to remain there. Kish-kok, Cowlitz chief, said they were willing to move to the Satsop country. Yowanmus, Upper Chehalis chief, stated the Governor had given him a paper "on Mr. Ford's recommendation. He gave up all the country that had belonged to him and came down to the Satchel, and wanted the place to extend to a small creek below it, for the five or six bands he had spoken of." Governor Stevens would not accede to the requests of the Indians for the reservations they desired and no treaty was consummated.

As the council ended, Governor Stevens reprimanded Tu-leh-uk, of the Lower Chehalis, for not controlling his Indians who had been drinking the night before and firing their guns, and tore to pieces the paper which had been given him to show that the government recognized him as chief. (Def. Ex. 78).

8. James G. Swan in his book "Three Years at Shoal-Water Bay" (1857) stated that George Gibbs in 1855 had inquired of him the names of the coast tribes. Swan said "the names given him by the Indians and by which the tribes * * * are known" included the "Chenooks", the "Kar-wee-wee, or Arts-nilsh, the name of the Shoal water Bay tribes, which are now nearly extinct, and are usually considered as Chenooks," the "Che-halis, on Gray's Harbor and Chehalis River," the "Copalis, on the Copalis River, eighteen miles north of Gray's Harbor," and the "Quoniult, at Point Grenville." Swan narrates of a journey to "Quenuilt country" which required passing through the lands of the "Chehalis and Copalis tribes." Swan wrote in
part "Carcowan and his son Tluyuk, the chiefs of the Chehalis Indians insisted that, as we would pass through their lands first, they were entitled to let the horses and canoes for the whole distance; but the Copalis said they had better horses than Carcowan, and we must take theirs; * * *." (Def. Ex. 12) Special Indian Agent Ford, western district of Washington Territory in his 1857 report wrote that the Upper and Lower Chehalis tribes were embraced within his district. He stated further that: "The Lower Chihalis consist of the Clickquannish, Satsop, and Wanoolchie bands, as well as the Indians living at Gray's Harbor, which latter are the Lower Chihalis, properly so called." Ford recommended a treaty be made with the Indians in his district and that two reservations be set aside for them - one upon the coast north of Gray's Harbor and one on the Chehalis River at the mouth of Black River. (Def. Ex. 33). Indian Agent M. T. Simmons of Washington Territory in his annual report dated June 30, 1858, also recommended a treaty be made with the Chehalis Indians and that it provide for two reserves. Simmons reported that "Te-la-ek, the head man of the lower or salt water band, refused to sign or allow his people to sign a treaty when Governor Stevens, some four years since, attempted to treat with them. Since then, all, with the exception of this Te-la-ek and some that he influences, have become eager to sell their land. I have just returned from visiting these Indians. At Ford Prairie I met and talked with the upper band, they expressed a willingness to treat, and specified the land they wanted set apart for a reserve." Simmons further stated that "The Indians on the Satsop and at Gray's Harbor expressed their good wishes towards the whites, and their
willingness to go on a reserve. I mean all but those who are influenced by Te-la-ek, they will number about one hundred." (Def. Ex. 79). The same agent in 1860 reported he had selected a piece of ground adaptable to the wants of the Coulitz and Upper Chehalis tribes and upon which he believed it advisable to settle these Indians while the Chinook and Lower Chehalis should be located somewhere near the seashore. (Def. Ex. 67).

9. On May 17, 1864, the Commissioner of Indian Affairs wrote to the Secretary of the Interior with respect to a proposed reservation for the Chehalis Indians. The Commissioner stated in part as follows:

(I Kapp. 901)

* * * It will be seen by Superintendent Hale's letter of July 3, 1862, that the country claimed by these Indians is large, comprising some 1,500 square miles; that they have never been treated with, but that the Government has surveyed the greater part of it without their consent and in the face of their remonstrances, and the choicest portions of their lands have been occupied by the whites without any remuneration to them, and without their consent or having relinquished their claim or right to it. They have been thus crowded out and excluded from the use of the lands claimed by them and those which they have heretofore cultivated for their support. This has caused much dissatisfaction and threatens serious trouble, and they manifest a determination not to be forced from what they claim as their country. After various propositions made to them by Superintendent Hale, looking to their removal and joint occupation of other Indian reservations, to all which they strenuously objected, they expressed a willingness to relinquish all the lands hitherto claimed by them, provided they shall not be removed, and provided that a sufficient quantity of land shall be retained by them at the mouth of the Black River as a reservation.

The Commissioner stated the reservation would consist of about six sections of land. On July 8, 1864, the Secretary of the Interior approved the setting aside of 4,224.53 acres as a reservation.
10. In the report of the Secretary of the Interior for 1873 (Def. Ex. 175) with regard to the Chehalis reservation it is stated that:

The Indians for whom this reservation was set apart, being parties to no treaty, number at least 600, and consist of the Chehalis, Chinook, Shoal Water Bay, Clatsop, Huptolops, Cakoklan, and Cowlitz tribes. The Chehalis is the largest of these tribal remnants, and reside mostly on the reservation, which contains about 5000 acres, * * *.

* * * These tribes when first discovered by the white man were in peaceable possession of, and had the just right to, all the country around Gray's Harbor, and from about ten miles north of that bay, south sixty miles along the Pacific coast to the mouth of the Columbia River. The rich valley of the Chehalis and all the country south of that valley to the Pacific; the valley of the Cowlitz and all the country west of it to the Pacific; * * * in all nearly two million acres of land, which our Government, without treaty, purchase, or contract, or right of any kind, save that which is governed by might, took from these weak, powerless barbarians and appropriated to her own use. After years of complaining, the protest against the injustice of this wholesale absorption of their country was so far heeded that in 1860 Superintendent Geary directed to be set apart to them a tract of about 5,000 acres, (out of a country all justly their own,) which constitutes the present Chehalis reservation. The Cowlitz, Chinook, Shoal-water Bay, and Huntolops, have never recognized this reservation as their home, and refused to come and reside on it; nor have they ever consented to receive a present of any kind from Government, fearing it might be construed into a payment for their lands.

* * * Chinoose, chief of the Huntolops, and about seventy of his people arrived on the 11th, * * * They declined taking anything, saying that they had come to talk about their lands; that they never had taken any goods from the United States, and that, though they were poor, they wanted nothing from the Government but a paper that would enable them to hold their land against white men who were threatening to drive them away from it. I told them to come to the reservation with their people, where there was plenty of room and good land for all. They replied that was not their home; that they had always lived at the mouth of the Huntolop and Chinoose Rivers, where their fathers had lived and died from time immemorial, and they wished to live and die there; that they did not know how to live away from salt water, where they could always get plenty of fish and clams, * * *
In 1879 the Indian Agent for Washington Territory in listing Reservations, Tribes and Bands mentions the Chehalis and Shoal Water reservations, and the Gray's Harbor Band, "situated on Gray's Harbor and tributaries, about 60 miles southwest of Olympia, and consisting of 164 Indian men, women and children." The agent further reported that "the Chehalis and Shoal Water Bay tribes and the Gray's Harbor band all talk the same language." (Def. Ex. 71). Remnants of the Chinook Bands and Lower Chehalis had a reservation established for them of 335 acres by Executive Order of September 22, 1866 (I Kapp. 921). (See 79 C. Cls. 608).

11. In 1885 Indian Agent Edwin Bells reported that the Chehalis Indians lived on the reservation on the Chehalis River where the lands had been allotted to them in severalty but there being no way for them to get patents he recommended that the executive order establishing the reserve be so changed that the Indians residing thereon be allowed to take the lands they occupied under the Indian homestead laws. Bells also reported the following tribes or remnants of tribes and population of each which came under the jurisdiction of the Quinaielt Agency:

<table>
<thead>
<tr>
<th>Tribe</th>
<th>1885</th>
<th>1886</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hoquiam</td>
<td>61</td>
<td>61</td>
</tr>
<tr>
<td>Quinaieltls</td>
<td>85</td>
<td>85</td>
</tr>
<tr>
<td>Oybut</td>
<td>102</td>
<td>107</td>
</tr>
<tr>
<td>Chehalis</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Montesano</td>
<td>35</td>
<td>36</td>
</tr>
<tr>
<td>Satsop</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Hoquiam</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Georgetown</td>
<td>71</td>
<td>69</td>
</tr>
</tbody>
</table>

The Agent stated that the last seven of the above tribes "have their villages more or less distant from the reservation, and are widely
scattered. * * * The Hohs are 25 miles north of the agency, the George-
towns 50 miles south, and the Satseps 13 miles southeast of the agency,
* * *" (Def. Exhibits 73, 74; see also Def. Exhibits 76, 173). Eells
reported in 1889 that the Indians on the Chehalis reservation had re-
ceived patents for their allotments. (Def. Ex. 75). In 1907 the Secre-
tary of the Interior caused an investigation to be made by the Commissioner
of Indian Affairs into the claims of the Chehalis tribe. The Commissioner
reported in part: "There is no evidence on file in the office that any
of the Indians belonging to the four bands [including Chinook bands]
specified in the act of June 21, 1906, are now living, except the Che-
halis, for whom a reservation has been set aside. If it be true that
some of their descendants are alive, they have married and intermarried
with other bands until it would be impossible to determine with what
tribe they affiliated in 1851." The Court of Claims found (Finding XXVI)
in Duwanish, et al. v. United States, 79 C. Cls. 530, 553, 555, that
by Executive Order of October 1, 1886 (I Kapp. 203), 3,753.63 acres of
the Chehalis reservation were restored to the public domain for Indian
homestead entry and 1.71 acres set aside for school purposes and that
thirty-six of the Indians on the reservation made homestead selections
covering all the land not reserved for school purposes.

Ethnological

Ethnology, Bulletin 30, Part 2, includes the Chehalis group as part of
the Salishan family. Under "Coast Dialects" he lists the "Chehalis
group", embracing six dialects, which show considerable variation. These
are the Quinault and Quitals of N. W. Washington; the Humptulips of the N. Part of Grays Harbor; the Lower Chehalis of Grays Harbor and Shoalwater bay; the Satsop e. and n.e. of Grays Harbor; the Upper Chehalis e. of Shoalwater bay; and the Cowitz on the river of that name southward to Columbia r." (Def. Ex. 6h). "Chehalis" according to Hodge is: (BAE 30, page 241)

A collective name for several Salishan tribes on Chehalis r. and its affluents, and on Grays harbor, Wash. Gibbs states that it belongs strictly to a village at the entrance of Grays harbor and signified 'sand.' There were 5 principal villages on the river, and 7 on the N. and 8 on the s. side of the bay: there were only a few villages on the n. end of Shoalwater Bay. By many writers they are divided into Upper Chehalis or Kwaiailk (q.v.), dwelling above Satsop r. and the Lower Chehalis from that point down. The following subdivisions are mentioned, some of which were single villages, while others probably embraced people living in several: Chilkisilkh, Cloquallum, Hoquiam, Hooskhal, Humptulips, Kishkallen, Klinvar, Knumaitwsh, Kealckt, Nickomin, Nooach-hummilh, Noohaoolitch, Noohalthu, Hercisatsih, Nookoh, Satsop, Menatchi, Whiskah. The Satsop speak a dialect distinct from the others. In 1806 Lewis and Clark assigned to them a population of 700 in 38 lodges. In 1901 there were 117 Chehalis and 21 Humptulips under the Puyallup school superintendent, Wash.

Of the Lower Chehalis, Hodge wrote that the name is a collective term for Salish tribes on the lower Chehalis river and its tributaries as well as those about Gray's Harbor and the north end of Shoalwater Bay, Washington. Included within this collective term, according to the writer, were the Satsop, Menatchi, Humptulip, and other small tribes. The handbook states: "According to Ford (Ind. Aff. Rep. 1857, 311, 1858) the term is properly restricted to the Grays Harbor Indians, and Gibbs confines it to those about the n. end of Shoalwater bay." (P.A.E. 30, page 766). The Upper Chehalis, Called Kwaiailk in the handbook, were a Salishan body
on the upper course of the Chehalis river above the Satsop river and on
the Cowlitz, Washington and in "1855, according to Gibbs, they numbered
216, but were becoming amalgamated with the Cowlitz." (B.A.E. 30, page
Ethnology, Bulletin 145, (1952), states that "Chehalis", meaning sand,
"was the name derived originally according to Gibbs (1877), from a village
at the entrance of Grays Harbor." Swanton states further that the Che-
halis were intimately related to the Humptulips, Wynochee, and Quinault
and that they were located on the "lower course of Chehalis River, es-
pecially on the south side, and on the south side of Grays Bay. In later
times the Chehalis occupied territory to and about Willapa Bay that had formerly been held by the Chinook." Swanton lists thirteen
villages for the Chehalis listing seven as being "earlier in territory
occupied by the Chinook" and six of the named villages are not within
the territory now claimed by plaintiffs. According to Swanton the
village at Ford's Prairie on the Chehalis River near Centralia was "far
outside of the Chehalis territory proper."

13. In 1936 the University of Washington Publications in Anthro-
pology (Vol. 6, No. 1) published a study of "The Quinault Indians" by
Ronald L. Olson. In speaking of the neighbors of the Quinault, Olson
stated that "The peoples of the southern part of the Puget Sound region
were not wholly strangers, for the Quinault had intimate contacts with
the several Chehalis tribes who occupied the territory between Grays
Harbor and the southern extremity of Puget Sound." Olson found that the
tribe nearest to the Quinault on the south was the Popalalis who "occupied
the coast from the limits of Quinault territory to the entrance to Grays Harbor and a portion of North Bay within the harbor. In addition they seem to have claimed the valley of the Copalis river. The largest village was No-shal, now called Cyhut after the Chinook jargon name." According to Olson, the Humptulips lived to the east of the Copalis tribe and held the north shore of Grays Harbor from "somewhere near the middle of North Bay eastward probably to Junction City. They had several villages on the Humptulips river and perhaps claimed the whole valley. They may have held the valley of the Hoquiam river as well, though the Hoquiam may have regarded themselves as a distinct group." To the east of the Humptulips lived the Wynoochee and Satsop tribes according to Olson who further stated: "It seems probable, however, that these minor tribes to the south and east of the Quinault are but subdivisions of Lower Chehalis. The lack of interest in tribal units and the particularism of the village units (i.e., family groups) make it difficult to determine tribal affiliations with any exactness." Olson states that the "tsahe'l's (Chehalis) tribe [the Lower Chehalis according to Spier] seems to have occupied the district between the Chehalis river and the Willapa river. They had villages on the northern arms of Shoalwater bay as well as along the southern shores of Grays Harbor." (Def. Ex. 52).

14. Dr. Leslie Spier in 1936 had published a study entitled "Tribal Distribution in Washington" (Def. Ex. 5) in which he reviews the ethnological material on the Indians of that state. With respect to the Chehalis Indians he wrote:
It is reasonably certain that Lower Chehalis should be separated from Upper Chehalis. What Swan wrote would seem at first glance to imply no distinction (simply "Che-ha-lis, on Gray's Harbor and Chehalis River"), but we must bear in mind that he was enumerating only the coastal tribes, hence this must refer to the Lower Chehalis alone.

However, there is another question whether the tribelets north of lower Chehalis River are to be included with Lower Chehalis. Earlier writers do include them, but Curtis and Olson express a clear conviction that the grouping is artificial. Curtis, in fact, states that the name Chehalis was extended by the Indians following white example, until it came to include the people from Westport "along the south shore of Grays harbor, up Chehalis river to Wynoochee river, and on Whiskal river at the head of the bay." Gibbs uses the term in its extended sense, writing in 1856: "The Lower Ts'halis, or those from the mouth of the Satsop down, including the villages on the Whishkah and Vanalchi ['Wynoochee'], and the few on Shoalwater Bay ['Villapah Harbor'], numbered in all 217..... There were formerly five principal villages of the tribe on the ['Chehalis'] river, seven on the north, and eight on the south side of the bay ['evidently Gray's Harbor'], and even within the recollection of American settlers the population was very considerable."

Spier then quotes Agent Ford (see Finding 8) and continues "It seems preferable then to map the tribelets north of the river separately from Lower Chehalis proper." Spier stated it seemed advisable to map the Humptulips, Wynoochee and Satsop, as distinct entities and cites Olson (see Finding 13) and also Haeberlin and Gunther who wrote: "The Satsep, sometimes regarded as a distinct tribe, are a band of Nisqually who lived on Satsep Creek and intermarried with the Chehalis and Skykomish **.** W. F. Talmie in writing to George Gibbs in 1854 of a census of the tribes living on the western inlets of Puget Sound states that the census of the "Nisquallies" includes "some scattered families living on the grand or mound Prairie." (Def. Ex. 61). Of the Upper Chehalis, Spier wrote:
Upper Chehalis [Kwaiailk, Stak-ta-mish (Stag-tube, "inland people"), Ku-so-lupsh, Kwa-teh-nil]. A distinction was made between Lower and Upper Chehalis by early writers which it would be well to follow. Gibbs writes of the Upper Chehalis: "Their territory included generally all that drained by the Tsihalis above the mouth of the Satsop," evidently excepting the southwestern headwaters on which were the Kwalhiokwa. Harley writes: "The Staktomish inhabit the country between Nisqually and Cowlitz, and the headwaters of Chehalis river."

A division the Cloquallum, residing on the creek of this name above the Satsop River, were perhaps the Clickquamish of Ford (1857) and by him assigned to the Lower Chehalis.

Gibbs (1856) also wrote: "A few miles to the north lies Gray Harbor

* * *. This also is in the country of the Tsihalis Indians who extended up the river to the Satsop, where they were met by bands to whom the name of Upper Tsihalis is collectively given." (Def. Ex. 6).

15. In "Folk-Tales of the Coast Salish" (1934) Thelma Adamson writes that she spent two summers with the Upper Chehalis and Cowlitz Indians studying their folk tales one year and the general culture of the Upper Chehalis who were then living on the Chehalis reservation at Oakville, Washington, the next year. According to Miss Adamson "The Upper Chehalis call themselves Q'waya'sl. Approximately, their territory formerly extended along the Chehalis River from Chehalis to a little west of Oakville. This territory embraced Oakville and Rochester Prairies, large parts of Nisqually and Grand Nound Prairies, besides various smaller prairies." Miss Adamson further reported that one group of Cowlitz lived along the Newaukum River (which is just within the area now claimed by the Chehalis). (See also Def. Ex. 151, transcript of hearings in Docket No. 218, The Cowlitz Tribe of Indians v. The United States. Indian witnesses for petitioner therein testified that the
Cowlitz occupied the Nevaukum River Valley \(\text{Tr. 13, 14}\) and that the Shookumchuck River was the boundary line between the Nisqually and the Cowlitz \(\text{Tr. 20, 21}\). (See also Pl. Ex. 1 in Docket No. 218).

Miss Adamson also stated that she had made a small collection of Wynoochee and Satsop tales during a short visit to Montesano, Washington, from informants living there and her Humptulip tales were obtained from a "Humptulip - Grays Harbor" woman living on the Upper Chehalis reservation and who was married to an Upper Chehalis Indian (Def. Ex. 55).

16. Edward S. Curtis, in "The North American Indian" (1913), reported with respect to the Lower Chehalis as follows: (Def. Ex. 47)

The name Tshels, whence the Anglicized Chehalis, was applied by the natives to Point Hanlon, the projection of land at the southern side of the entrance to Grays harbor, at which place, near the site of Westport, Washington, was a principal settlement of the Lower Chehalis. From here the country along the south shore of Grays harbor, up Chehalis river to Wynoochee river, and on Whishkah river at the head of the bay, was occupied by villages whose inhabitants used a common dialect, very similar to that of the Shoalwater Bay people and to that of the Quinault. There formerly was no collective designation for these bands, but, influenced by the white men's usage of the word Chehalis, the natives have adopted the term Ch't'shels, that is, People of the Sandy Place. ** Their activities were almost altogether concerned with obtaining a livelihood from the sea.

In describing the territory occupied by the Quinault tribes, Curtis states it extended along the coast from Hoquiam river to the Queets river and that "In the three settlements on the north shore of Grays harbor — Hoquiam, Humptulips, and Qiyaamuhl (Demons point), — as well as in Kpels (Copalis) on the coast, the language possessed a difference noticeable to the Quinault proper. The variation however is negligible." It would appear that Curtis includes the Hoquian, Humptulip and Copalis Indians
among the "Quinault tribes." In dockets Nos. 155 and 242, the Quileute and Quinault cases before this Commission, Dr. Verne F. Ray, a recognized authority on the tribes of the northwest, testified for plaintiffs therein (Tr. 53) that the group generally referred to as Quinault, including the Queets and Copalis, constituted an Indian tribe; that the Copalis were a subdivision of the Quinault Tribe (Tr. 55); that it is entirely possible that the Quinault Tribe included the people of the Hump tulips drainage and also the peoples of the Hoquiam and Whishkah rivers although there was an uncertainty about this affiliation and so their territory was not included in the Quinault claim (Tr. 56); that the Quinault had a camp site at Damon's Point at Grays Harbor occupied at times in the course of exploiting the resources of Grays Harbor (Tr. 116); that the "peninsula or arm" on the north side of Grays Harbor was Quinault territory (within area claimed by the Chehalis herein), (Tr. 116); that "if the Hump tulips were a separate tribe, then we would have a portion of Grays Harbor that they could use, or joint usage of Grays Harbor, and also we have the lower Chehalis on the south side of Grays Harbor and they certainly used Grays Harbor" (Tr. 119); that fragmentary data suggests the Satsop were a tribe (Tr. 150) (Def. Ex. 116). Plaintiffs' witness herein, Dr. Taylor, testified (Tr. 293) that there is now no living Satsop Indian.

Village Autonomy

17. Although some writers have referred to Indians residing on the Chehalis River as the "Chehalis Tribe" or the "Lower Chehalis Tribe" and the "Upper Chehalis Tribe," they have done so on the
arbitrary basis of geographical location and not on a determination that said Indians constituted a political unit, or units, or a land-using entity, or entities. According to the best ethnologies concerning this area, the village actually functioned as the largest social grouping, and was the only political and land-using unit. The village, thus, was the only entity in this area which could be designated a tribe.

16. Leslie Spier in his "Tribal Distribution in Washington" (1936) (Def. Ex. 5), had this observation to make with respect to the political organization of the Indians in northwestern Washington:

"* * * The early historical literature contains an erroneous number of references to tribes, local groups, and the territories they occupied. Group names are legion; names appear once and vanish from the literature; variations of a name occur which may or may not pertain to a single people; dialect and local groups are cited equally as "tribes"; and so endlessly. * * *.*

It seems unnecessary to become involved in the definition of a tribe. In western Washington the villages appear to have been autonomous in a political sense but differentiated only slightly in culture. Local groups of this kind have been marshaled by dialect both by the natives and by ethnographers, who forthwith refer to the dialect groups as tribes. Further, present day informants have great difficulty in answering the apparently simple question, to what tribe or tribelet do they belong. This is because the majority combine in their immediate ancestry affiliation with a number of local groups. That this is not at all a recent phenomenon is evidenced by the early accounts, which record the pride displayed in studied inter-marriage with other peoples, especially in the aristocratic classes. The upshot is that some of us have solved the dilemma by describing these peoples in somewhat arbitrary groups: groups having some degree of community of speech, contiguous territory, and a name commonly used in the sense of a tribal designation.

Dr. Ruth Underhill in her "Indians of the Pacific Northwest" wrote in part that: "The Northwesterner had no idea of belonging to a large group, with fellow citizens he had never seen. His country was his village of
plank houses, where he knew every person and was related to most of them.

*** Then what of the powerful 'tribes' of which history has so much to say? Mostly, they existed in the imagination of the whites. Explorers found a number of people in a river drainage all speaking the same language and they called them a tribe, assuming that they had one chief and one government, as so many tribes did in the Old World. Those names, often the name of the river itself, have come down to us and many are used in these pages. However, that is only for convenience." (Def. Ex. 7).

19. Gabriel Franchere's "Narrative to the Northwest Coast of America" (1811-1814) was published in 1852. Franchere in writing of the Chinook Indians stated their politics were a simple affair with each village having its chief who did not seem to exercise a great authority over his "fellow-citizens." Franchere noted that "as all the villages form so many independent sovereignties, differences sometimes arise, whether between the chiefs or the tribes." (Def. Ex. 172). Dr. Verne F. Ray, in his "Lower Chinook Ethnographic Notes" (1938), quotes Franchere and states that his own informants "affirmed the existence of village autonomy" among the Chinooks, neighbors of the Chehalis. Ray stated further that his informants pointed out that able and well-liked or greatly feared chiefs "often exerted a wider influence ***, though this extended power was strictly unofficial." Ray added, however, that "Such power of course must not be confused with political control, since it was of no significance in village internal affairs." (Def. Ex. 38). Ray in "The Historical Position of the Lower Chinook in the Native
Culture of the Northwest" wrote that "On the coast from Alaska through California, and east to the Rocky Mountains, the village was the basic political unit with very few exceptions. Villages were strictly autonomous and the chief's power was limited to the village that he represented."

(Def. Ex. 111; see also Def. Ex. 16). With respect to the Cowlitz Indians, also neighbors of the Chehalis, Curtis in "The North American Indian" (1913) wrote: "Allied by speech and by proximity, the people of these villages were not politically united by a tribal organization."

Curtis also states "The tribal organization of the coast Salish was very loose. Indeed it frequently was quite lacking, each small community being independent of all others, and cooperating with them only as the necessities of war and subsistence or as the social instinct demanded."

(Def. Ex. 17). The Coast Salish, according to Marian W. Smith (Indians of the Urban Northwest, 1949) had no political organization through which they could band together for protection. "Neighboring villages did sometimes function as a single economic unit within which exchange of goods regularly took place," according to Miss Smith, but she added: "Yet political autonomy was rigidly maintained, * * *

Population

20. Lewis and Clark in 1806 reported the "Chilts" to have a population of 700 (Def. Ex. 31); the Clamaitonish, (on the south side of Gray's Harbor?) 260, (see Hodge's Handbook Vol. I, p. 715); the Potawees, north of the Clamaitonish, numbered 200 souls (see Handbook, Vol. II, p. 293), and the Pailsk, apparently the Cawalis River Indians, at 200 souls (see Handbook, Vol. I, p. 313). Jedidah Morse in 1800 reported
there were 1,400 "Chihleesh" Indians forty miles north of the Columbia river. (Def. Ex. 130). Farnham in 1839 reported 700 "Chikelis and Puget's Sound" Indians. (Def. Ex. 83, p. 99). Hale reported as of 1810 that the "Tshihailish," including the "Kwaialti" and "Kwenaivitl" Indians had a population of 2,000. (Def. Ex. 21, p. 212). Dr. W. F. Tolmie who took a census in 1844 found: "Stak-ta-mish * * * 207 * * * living on Cowlitz Prairie between Chute river and Hawakum." (A census of Indian bands "on Puget's Sound and the Inlets, Chehalis River, etc. Feby. 1854," accompanying the above census does not include the Staktaimish). (Def. Ex. 81, pp. 12-13). In 1854, Gibbs estimated 100 Chehalis located at Gray's Harbor and the Lower Chehalis river; he also estimated 200 on the northern forks, Chehalis river and the Cowlitz and Upper Chehalis whom he reported to be located on the Cowlitz river and the Chehalis above the Satsop river to number 165. Of this group he stated "the two have become altogether intermixed." (Def. Ex. 11b).

At the time of the treaty negotiations of 1855 with the Chehalis and other Indians a census taken showed 217 "Lower Chehalis" and 216 "Upper Chehalis." (Def. Ex. 72). Dr. Herbert C. Taylor, Jr., anthropologist, expert witness for plaintiff, estimated that the Chehalis numbered "around 1,500 to 2,000 people, possibly even more" in aboriginal times prior to the "great smallpox epidemics of the 1810's and the so-called intermittent fever epidemics of 1829 and 1830." (Tr. 77-78).

**Location of Villages**

21. The exact location of the villages in the claimed area in which the Indians were living at the time of the alleged taking of their lands
is not ascertainable from the evidence. Apparently in the early 1850's there were villages at or near the mouths of the Humptulip, Hoquiam, Wynoochee and Satsop rivers where village-tribes of the same names resided, a village of the Upper Chehalis near Porter Washington, at Ford's Prairie, and a village or villages of the Lower Chehalis at Gray's Harbor probably near Westport on the south side of the harbor (according to the rough draft of the council notes in 1855 there were 82 Lower Chehalis proper and 120 on the "north side" of the harbor which probably would include the Satsop, Humptulip, Wynoochee and Hoquiam river Indians). The difficulty in attempting to locate the residences of the Indians in the claimed area during the period involved is further complicated by the movement of the Chehalis-speaking people into the Shoalwater (Willipa) Bay area and into the Willipa Hills section south of the lands now claimed by the plaintiffs. Dr. Taylor, plaintiffs' ethnologist, testified that in the early part of the 19th century the Shoalwater Chinooks were virtually destroyed and the Willipa Indians seemed to have been destroyed by smallpox, intermittent fever, and other "blessings of civilization." As a result "The Chehalis moved into areas formerly occupied by the Willapa and the Shoalwater Bay Chinooks." Taylor testified "The area around Willapa and Shoalwater Bay was occupied by the Chehalis between 1820 and 1850 or '60. The area of the Willipa Hills was occupied at that same time." (Tr. 95, 96; see also Pet. Ex. 12 - Taylor's Map - broken shading showing movement). Dr. Taylor also testified that seven villages are recorded for the Chehalis Indians in this territory which was prior Chinook country and that "Inferentially there
were more, but we only have the names of these seven." (Tr. 200). In the case of The Chinook Tribe and Bands of Indians v. The United States, Docket No. 234, before this Commission, Dr. Taylor testified (Tr. 65, 69 therein) that "in the period between 1800 and 1850 the Lower Chehalis moved into the Chinook area after the Chinook died out." In that case Taylor further testified to a movement of the Upper Chehalis into the Cowlitz area. Plaintiffs' expert further testified in the Chinook case that he did not include the area into which the Chehalis expanded as Chehalis territory for two reasons: "Firstly, because the base year 1800 seemed a much better year to use than 1850, before the white man began to work his will on the Indian. Secondly, because the tribal groups themselves maintained the tradition of those belonging to the previous owners." (Tr. 69-70, therein). Dr. Verne F. Ray in his "Lower Chinook Ethnographic Notes" also noted this movement and wrote that "Before 1850, when the Chinook numbers were already thinning, Chehalis began to drift into the northern bay region. This resulted in a great confusion among early writers as to what people held this territory. But Chinook chiefs continued to represent the various villages and to the native mind it remained Chinook territory without question."

Land Use and Sustainability

22. The region appears to have been one of abundance. The natives obtained their daily needs mostly from the sea and rivers, fish and shellfish being the main source of food. Of the Lower Chehalis, Curtis wrote that "Their activities were almost altogether concerned with obtaining
a livelihood from the sea." This diet, of course, was supplemented by roots and berries but these were close at hand and easily obtainable by the villagers. Hunting was not important. Venison was the principal flesh food according to Curtis who also added: "Generally the tribes living close to the shoreline were indifferent hunters, the ease with which sustenance could be drawn from the sea and the rivers being sufficient to prevent them from engaging extensively in the more arduous pursuit of land game." The Upper Chehalis, Curtis points out, living in the vicinity of the foothills, however, became excellent hunters. (Def. Ex. 17). Potatoes seen to have been raised by the Indians in this area even prior to 1850. There is evidence of common use of parts of the claimed area by Indians living outside the area (see Findings 1, 5, 11, 15, 16). In any event the Indians of the claimed area depended mostly on marine life for sustenance and this in turn resulted in sparse use of other portions of the region not close to their villages.

23. The Commission, based upon the foregoing findings of fact and all the evidence of record, concludes that within the area claimed by plaintiffs there was aboriginally a number of autonomous villages, or tribelats, which were known as the Copalis Tribe, the Humptulip Tribe, the Satsop Tribe, the Lower Chehalis (proper) Tribe, the Sachal Tribe, the Staktarish [Upper Chehalis] Tribe and possibly other village tribes on the Hoquian and Wynochee rivers. The Commission further finds that there is no evidence that aboriginally and prior to 1855 there was
a merger of the village-tribes in the claimed area into either a "Chehalis Tribe" or into two tribes — the "Lower Chehalis" and the "Upper Chehalis."

24. The Commission further finds, based upon the findings of fact herein made and the record as a whole, that these village-tribes whose main source of subsistence was fish and shellfish were making but limited use, if any, in 1855 of the larger area now claimed, except in the immediate vicinity of their villages which areas of exclusive use and occupancy are not shown and that the claimed area aboriginally supported three or four times as many Indians as may have been located therein in 1855. The movement of Chehalis Indians into the Shoalwater Bay and Willapa Hills regions between 1820-1850 also limited the use and occupancy being made of the claimed area. The Commission finds also that other Indians from without the area contended for by plaintiffs either used and occupied lands within the area or claim parts of said area, (Findings 4, 5, 11, 15, 16) and that the Upper Chehalis were by 1855 intermixed with the Cowlitz and Nisqually Indians and the Lower Chehalis proper were becoming intermingled with the remnants of the Chinook Indians.

25. The Commission finds that there is no substantial evidence that plaintiffs are the successors in interest of the village-tribes mentioned in Finding 23. The proof does not show that Indians from the Satsop, Cowlis, Huruptulip, Wynoochee, Lower Chehalis (proper), Sachal, or Upper Chehalis tribes were removed to the Chehalis reservation. The proof does not show from what predecessor tribes or bands "The Confederated Tribes of the Chehalis Reservation" were organized or formed. There is proof
that Chehalis Indians were upon the Chehalis reservation but there is also substantial proof that the Humptulip tribe refused to go on the reservation, that the Gray's Harbor Band (undoubtedly Lower Chehalis) did not go on the reservation and also that the Satsop (of whom there is testimony that there are none living today) were living off the reservation and under the jurisdiction of the Quinault agency.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner