

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 125
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: November 21, 1956

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Snohomish Tribe of Indians, petitioner herein, is 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. Code Sec. 70(a)), and as such is entitled to maintain this cause of action.
2. Petitioner claims that it had exclusive aboriginal use and occupancy of the following described territory within the area ceded to the United States in the Point Elliott Treaty of January 22, 1855, 12 Stat. 927, II Kapp. 669; (Pet. Req. Fdg. 4).

Commencing at the Town of Richmond Beach; thence north-eastward to Crescent Lake; thence eastward to High Rock Mountain; thence due north to Lake Champlain; thence north-eastward to Echo Lake; thence southeastward to Public Camp; thence northeastward to Gilbert Creek; thence northwestward to Pilchuck Mountain; thence to Granite Falls; thence along the Granite Falls-Arlington Highway to its intersection with the Seattle Skagit Power Line; thence west to Lakewood; thence northwestward to the shore of Puget Sound one mile north of Birmingham; thence northwestward to Point Demock; thence down

the center of Saratoga Passage to Greenbank Experimental Farm; thence south along the west shore of Whidby Island to Richmond Beach, the place of beginning. (See Pet. Exhibits 7 and 8).

3. The Indians who lived along the Snohomish River in the State of Washington and on southern Whidby Island opposite the mouth of the Snohomish River have long been called Snohomish Indians. Perhaps the first account of the natives in this area came from the Vancouver explorations in 1792. In June of that year, Whidby, one of Vancouver's officers, was sent to chart the region of Possession Sound and Saratoga Passage. He mentioned Indian settlements on the southeastern side of Whidby Island and on the mainland opposite the island. At the latter place, Whidby counted a hundred natives with some 40 wool-bearing dogs. A little further to the north, in Possession Sound or at the mouth of Port Susan, he encountered a hundred more Indians in canoes, carrying most of their belongings, including mats for the construction of temporary houses. According to defendant's expert witness, Carroll S. Riley, Whidby was probably contacting Snohomish or Stillaguamish Indians who were moving from winter settlements to berrying, fishing, or clamming grounds as part of a seasonal round. (Def. Ex. 1, page II-1).

4. In 1841, a missionary, Blanchet, mentioned a Snohomish chief, Witskalatche. According to Riley, the group with this chief "either lived at, or were camped near enough to, Penn Cove (?) [Whidby Island] to attend Blanchet's missionary services on rather short notice."

Duflot de Mofras (Travels, Vol. 2, page 175), 1840-1842, wrote that the Sinahoumez (Snohomish) consisted of "12 tribes" with territory extending from Frazier River to Puget Sound with a population of 2500. Harley (Statistics of Oregon) wrote in 1849 that the Snohomish lived "on the Sinahemish River (falling into Possession Sound) and the southern extremity of Whidby's Island. Males, 95; females, 98; children under 12 years, 110; slaves, 30; total 333." In 1849, Superintendent of Indian Affairs for Oregon Territory reported the Snohomish Indians as "living on a river of that name, and southern extremity of Whidby's Island; total number about 330; friendly and well disposed; live by labor and fishing." (Def. Ex. 1, pp. II-2, II-3). Indian Agent Starling for the district of Puget Sound in 1852 reported the "Sah-ma-mish" to be located in the country bordering on a lake between the "Nee-wam-ish" and Snohomish rivers; that the Snohomish tribe was on the south end of "Whitney's" Island, Snohomish river, bay and vicinity and numbered about 250; that the "Skea-wa-mish" tribe was on the north fork of the Snohomish river called the "Skea-wa-mish" river; that the "Skuck-stan-a-jumps" tribe was on a river of that name, a branch of the "Skea-wa-mish" river and the supposed population was 100; that the "Sno-gual-a-muke" tribe was on the south fork of the Snohomish river called "Sno-gual-a-muke" river and number about 225 and that the Ska-git tribe was located on the north end of "Whitney's Island, Skagit river and vicinity."

5. Governor Isaac I. Stevens of the Territory of Washington, relying upon a report by George Gibbs (Def. Ex. 8) who has since become noted

for his Indian writings, reported to the Commissioner of Indian Affairs in 1854 that:

The southern end of Whitby's island and the country on and near the mouth of the Sin-a-ho-mish river belong to the Sin-a-ho-mish tribe. These number, including the bands connected with them, a little over three hundred. Their chief is S'Hoot-soot, an old man who resides chiefly at Skagitshead.

Above them, and upon the main branch of the river, is another band, not under the same rule, the Sno-qual-moos, amounting to about two hundred souls. Their chief Pat-ka-nam, has rather an evil celebrity among the whites, \* \* \*.

\* \* \*

The tribes living upon the eastern shore possess also territory upon the islands, and their usual custom is to resort to them at the end of the salmon season; that is, about the end of November. It is there that they find the greatest supply of shell-fish, which form a large part of their water stock, and which they dry both for their own use and for sale to those of the interior. The summer and fall they spend on the main, where they get fish and put in their potatoes. (Pet. Ex. 10, pp. 13-14).

In 1853, Governor Stevens urged upon the Government the necessity of making treaties with the Indian tribes west of the Cascade Mountains. These tribes, he estimated, as some forty in number and stated that they lived on the different water courses or bays and inlets of the sound. He further reported "They have all . . . a few spots . . . which . . . are not only permanent places of residence, but, are hereditary. Near them are the graves of their relatives and friends \* \* \*. Those are their homes, and from them they roam about the Sound in every direction, going where the fish roots and berries abound most at the different seasons of the year." Stevens recommended that thorough consideration should be given to establishing reservations

for the different tribes in their own territory and joining as many of the tribes as possible under one head. Governor Stevens, in March 1854, informed Agent Simmons of his appointment as special Indian Agent for the District of Puget Sound. The Governor instructed Simmons to visit the various tribes in his district to prepare them for future negotiations. Simmons was told to organize "the small bands, not at present united, by gathering them into tribes, and by procuring the selection of head chiefs and of assistant or lesser tyees." (Pet. Ex. 10, pp. 27-28).

6. Congress by Act of June 5, 1850 (9 Stat. 437) had authorized the negotiation of treaties with the Indian tribes in the Territory of Oregon (of which Washington Territory was then a part thereof) for the extinguishment of their claims to lands lying west of the Cascade Mountains. On August 30, 1854, the Acting Commissioner of Indian Affairs instructed Governor Stevens who was also Superintendent of Indian Affairs for Washington Territory, that funds had been appropriated by Congress for the expenses of negotiating treaties with Indian tribes in that territory. Stevens was directed to attempt to unite the numerous bands, and fragments of tribes into tribes and to provide for the concentration of one or more of such tribes upon the reservations which might be set apart for their future homes. Governor Stevens commenced negotiating treaties within the territory. In December 1854, he reported to the Commissioner of Indian Affairs that the next treaty he intended to hold would be at the mouth of the Sno-ho-mish river where he would bring together the Indians of the islands and the eastern shore of

Puget Sound. "These tribes," Stevens said, "have a population of 2223, own 425 canoes and raise 6,400 bushels of potatoes." Stevens said he would attempt to establish these Indians on a single reservation near the mouth of the Snohomish river. (Def. Ex. No. 127).

7. On January 22, 1855, Governor Stevens entered into a treaty with the chiefs, head-men and delegates of the Dwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalk-kamish, Skope-ahmish, St-kah-mish, Snoqualmoo, Skai-wha-mish, N'Quentl-ma-mish, Sk-tah-le-jum, Stoluck-wha-mish, Sno-ho-mish, Skagit, Kik-i-allus, Swin-a-mish, Squin-ah-mish, Sah-ku-mehu, Noo-wha-ha, Nook-wa-clah-mish, Mee-see-qua-guilch, Cho-bah-ah-bish, and other allied and subordinate tribes and bands of Indians. By Article 1 of the treaty, these Indians ceded certain described lands within the Territory of Washington within which larger area were contained the lands now claimed to have been within the exclusive use and occupancy of petitioner. Certain reservations were provided for in the treaty including the following:

Article 3. There is also reserved \* \* \* thirty-six sections, or one township of land, on the northeastern shore of Port Gardner, and north of the mouth of Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon an agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory.

By Article 6 of said treaty, the United States agreed in consideration of the cession to pay to the tribes and bands the sum of \$150,000 which sum was to be expended over a twenty-year period under the direction of the President of the United States who was given the discretion to

determine for what beneficial objects to expend the same. The United States further agreed to spend \$15,000 for the removal and settlement of the Indians upon the reservations (Article 13) and to establish and support for 20 years an agricultural and industrial school, to provide instructors and to furnish other aid, such as physician, carpenter, farmer, and blacksmith (Article 14). The treaty, according to Article 15, was to be obligatory on the contracting parties "as soon as the same shall be ratified by the President and Senate of the United States." The treaty was ratified March 8, 1859, which is therefore the effective date of the treaty (Bush v. United States, 29 C. Cls. 114), and proclaimed on April 11, 1859 (12 Stat. 927, II Kapp. 669). The treaty (Def. Ex. 54) is commonly known as the Point Elliott Treaty. The area ceded by said tribes and bands is shown as Tract 347 and the reserved areas as Tract Nos. 348, 349, 350 and 351 on Royce's Map of the State of Washington. The Skai-wa-mish named as parties to the treaty are the Skykomish; the N'Quentl-ma-mish are the Kwehtl-ma-mish or Pilchuck River Indians; the Sk-tah-le-jum are the Stk-ta-led-jedc or Sultan Creek Indians and the Stoluck-wa-mish are the Stillaquamish Indians.

8. At some time following the execution and ratification of the Point Elliott treaty of 1855, the Tulalip Reservation was established as required under the provisions of said treaty. In 1876, the Tulalip Agency reported 900 Snohomish Indians under its jurisdiction. Edmond Mallet, agent at the Tulalip agency reported to the Commissioner of Indian Affairs in 1877, as follows:

The S'do-ho-bish (Snohomish) tribe with its subordinate tribes, viz. Sto-lo-qua-busk, Nugh-kwettle-babish, Sdo-do-ho-bish, and Stak-ta-le-jabsh; the Sdo-qual-bush with its subordinate tribes, viz. Sulet-damsh and Stak-tabsh were assigned to the Tulalip Reservation.

The Annual Report of the Commissioner of Indian Affairs for the year 1877 reports for the Tulalip Agency "Snohomish, Snoqualmoo, Skaiwhamish . . . . 2,900." The 1890 report lists the "Tulalip (Snohomish)" as 443 persons. Hodge in "Handbook of American Indians," B.A.E. 30, part 2, p. 606 (1910) states the remnant of the Snohomish tribe was on the Tulalip Reservation, mixed with other broken tribes. (Pet. Ex. 10).

9. Ethnological sources are important in locating the Snohomish. Upchurch, in his "Swinomish People" published in the Pacific Northwest Quarterly, states that the Skagit Indians occupied Whidby Island from Dugula Bay south to Holmes Harbor where they met the Snohomish. The Kikiallis, he wrote, occupied the northern end of Camano Island to the village of Camano where they met the Snohomish (Def. Ex. 6 a). Marian W. Smith, in "The Coast Salish of Puget Sound" (1941) has a section devoted to Tribal and Village Distribution. Under the heading the author states that "for the sake of convenience I have described extended villages as single territorial units; in these cases it must be understood that each of the villages listed had its own section of territory. The position of the village indicates the section of the drainage system of which it made particular use, this section being regularly upriver from the village site and on the neighboring banks of bays, lakes, etc." The following location for the Snohomish extended



villages are listed by Miss Smith: (A) Skwilsidabc: from Preston Point, above Everett, to southern tip of Camano Island with village sites at Marysville at the mouth of Kwilcedar Creek and opposite Tulalip on Tulalip Bay; (B) Snohomish or Sadahobc: Port Gardner Bay and Snohomish River as far up as Snohomish with village sites at Everett on the south side of the mouth of the Snohomish River and on the north side of the mouth of the same river; (C) sdugwadxabc: on the southern portion of Whidby Island with villages opposite Mukilteo on Whidby Island and at Newell on Useless Bay; (D) tgwetbabc: Snohomish River from Snohomish to Monroe with village sites at Snohomish at the mouth of Pilchuck Creek and another below Monroe two miles from the confluence of the Skykomish and the Snoqualmie (Def. Ex. 12). Miss Smith, in her work "The Puyallup-Nisqually" (1940) gives four villages for the Snohomish: (1) sadahobc - at Everett at the mouth of the Snohomish River; (2) skwilsidiabc - at Marysville; (3) tgwetlabc - at Snohomish City; and (4) staktaledjabc - a village above Monroe (Def. Ex. 1 a).

10. In "The Indians of Puget Sound" (1930) by Haeberlin and Gunther it is stated that the Snohomish had four principal villages: one on the shore of the Sound, four miles south of Tulalip; another, the largest, at Priest Point; a third on the southern point of Whidby Island; and one at Sandy Point, opposite Tulalip. These ethnologists also found that for hunting and fishing they roamed through the territory to the east of these villages and that "tangible evidence of their occupation of the Snohomish River valley exists at Ebey's Slough on the westernmost branch of the Snohomish River about two miles from Marysville." The authors

stated that the Snohomish did not hunt deer and elk but bought the dressed skins from the Snoqualmie as they did mountain goat wool.

"In summer," Haeberlin and Gunther wrote, "the Snohomish left their large winter houses to go hunting and fishing. They did not leave their own lands, unless they had friends or relatives elsewhere. Although there were no sharp dividing lines between the territory of neighboring tribes, it was taken for granted that a person straying too far into the country of another tribe was looking for trouble." (Def. Ex. 96).

11. A paper (Def. Ex. 21) published by M. Eells, who had lived among the Indians of the Sound, in Vol. IX, "The American Antiquarian" (1887) locates the Snohomish "south of the Stillaguamish river to the Snohomish river and on both sides of it and its branches." Eells reported that the Indians spoke of four bands, one lived on the southern part of Whidby Island; another on the Snohomish proper whose home was near the mouth of the river; the "Ske-hwa-mish" on the north fork of the Snohomish river (Skykomish river); and the Snoqualmie, who lived on the southern branch of the Snohomish river (the Snoqualmie river). George Gibbs, who explored the Sound country and became intimate with the composition and characteristics of the Sound Indians wrote in 1856 (not published until 1877 in "Contributions to North American Ethnology," Vol. I, Department of the Interior) that the Snohomish, with whom he included the Snokwahlmu, Skiwhamish [Skykomish] Sktah-le-jum, Kwehtl-ma-mish, and Stolutswhamish [Stillaguamish], lived on the Snohomish and Stolutswhamish Rivers. "The Snohomish tribe itself," Gibbs said, "occupies only the country at its

mouth and the lower end of Whidbey Island; the upper part of the river belonging to the Snokwalmu, etc. They number 441 souls, and the other bands, collectively, 556. At the time of the treaty they were all placed under Patkanam, the chief of the latter." (Def. Ex. 4 a).

12. Edward S. Curtis in "The North American Indian," Vol. 9, (1913) wrote as follows: (Def. Ex. 42)

Sdohobsh (Snohomish), the valley of Snohomish river, the mainland coast between a point a little north of Edmonds, Washington, and the northern line of Tulalip Reservation, and the south half of Camano island and of Whidbey island, extending up the west coast of the latter as far as Mutiny bay. In the winter the Snohomish assembled in three principal villages: Hibolub, near the site of Everett, Washington; Chtalaks, "Rocky Point," on Priest Point opposite the site of Everett; and Digwadsh, on the sandpit at the southern end of Whidbey island extending into Cultus bay.

Dr. Leslie Spier in his "Tribal Distribution in Washington" (1936) based upon a consideration of all available historical and ethnological data pertaining to the Snohomish, states: (Def. Ex. 3 a)

While Gibbs, and Eells in palpable imitation, include Snuqualmi and Skykomish, together with some less well-known groups, with the Snohomish, there is good reason for separating at least these three. \* \* \* [Spier then quotes from Gibbs - see Finding 117]. Elsewhere Gibbs writes that the Snuqualmi are quite separate.

\* \* \*

\* \* \* On the mainland this [territory of Snohomish defined by Curtis - see above] overlaps with the territory of the Suquamish as defined by Haeberlin and Gunther. Curtis relegates the Suquamish wholly to the islands and western shore of the sound.

"The Du-gwads-habsh, who lived on the southern part of Whidbey's," are named by Eells as a band coordinate with "the Snohomish proper, whose home was near the mouth of that name."

An unidentifiable group of Gibbs' mentioned above, Kwehtl-ma-mish, appears in Mallet's roster of "subordinate" tribes of the Snohomish in the form Nugh-kwettle-babish.

Spier's map of Washington tribes locates the Snohomish on the Snohomish river to the junction with the Snoqualmie and Skykomish rivers, and on the southern part of both Whidby and Camano Islands. Of the southern boundary of the Snohomish, Spier wrote as follows:

The Suquamish occupation of the east side of the sound appears only in the statement of Haeberlin and Gunther: "The Suquamish (Suk!wa-bc), according to one informant, lived south of Everett, about Mukilteo, and on the islands opposite; another claims that they lived only on the islands, west of Seattle and not around Mukilteo." I have modified Gunther's map in the direction of Mukilteo to suit the description. Their territory is made to take in part of Whidby Island in a statement [Harley, in Schoolcraft, Information, V, 700]: "They occupy the country about Port Orchard and neighborhood, and the west side of Whitby's Island."

The Kwehtlmanish, mentioned in Spier's pamphlet, were, according to Hodge (Handbook of American Indians, B.A.E. 30, Part II, p. 747) a Salish division on the upper branches of the Snohomish River "now officially included under the Snohomish on Tulalip reservation" and numbered 66 in 1870.

13. The Snohomish, according to Hodge (B.A.E. 30, Part II, p. 606), was a Salish tribe formerly on the south end of Whidby Island and on the mainland opposite said island at the mouth of the Snohomish river. "The remnant," Hodge reported, "is now in Tulalip res., Wash., mixed with other broken tribes." John R. Swanton, "The Indian Tribes of North America," (B.A.E. 145), published in 1952, locates the Snohomish on the lower course of the Snohomish river and on the southern end of Whidby Island. This ethnologist lists four subdivisions for the Snohomish: (1) on the south portion of Whidby island with two villages; (2) from Preston Point above Everett, to the southern tip of Camano Island with a village at Marysville and at Tulalip Bay; (3) a subdivision at Port

Gardner Bay and on the Snohomish river as far up as Snohomish, including two villages at the mouth of the river; and (4) a subdivision on the Snohomish river from Snohomish to Monroe, including villages at Snohomish at the mouth of Pilchuck Creek and below Monroe two miles from the confluence of the Skykomish and the Snoqualmie. Swanton includes the Skykomish Indians as a subdivision of the Snoqualmie and also the Staktaledjabsh, who resided on the Skykomish river as far up as Sultan, including Sultan Creek, as a subdivision of the Snoqualmie.

14. In 1855, and in aboriginal times, each of the Snohomish villages appear to have been largely autonomous in a political sense, which was the type of political organization then found among the Indians throughout the Puget Sound area. Each village was made up of a number of families and had a chief or leader called a Tyee, Seab, or Seam, but there was no strong central organization or chief with complete authority in a political sense over all the Snohomish villages. Between the villages there were, however, ties of kinship, their village areas were more or less contiguous, and they shared a common culture and dialect of the Salish language different from that of adjacent village groups and considered themselves a distinct group and were so considered by defendant and the neighboring groups. It was also largely on account of their characteristics, as well as the Government's policy in effect in 1854 of regarding and designating such village groups as the Snohomish as tribes, that subsequent to 1855 the Indians living in villages on the southern end of Whidby Island and on and near the mouth of the Snohomish

River were known and designated by Government officials, and others, as the Snohomish Tribe (Pet. Req. Fds. 9; see The Nooksack Tribe v. The United States, 3 Ind. Cl. Comm. 479, 483; The Muckleshoot Tribe v. The United States, 3 Ind. Cl. Comm. 658, 662, 672-674).

15. This Commission has previously found that 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; that such use as was made of the area away from the immediate vicinity of the village was seasonal and the seasonal uses were confined as far as possible to the closest area; that hunting excursions were infrequent; that there was customary non-exclusive use pattern of lands away from the villages and the streams adjacent thereto; that the Indians of the Sound area had no conception of land boundaries as such but did have 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 and that this feeling of exclusive "use area" did not extend beyond the immediate area of the village; and finally, that non-village areas were open to all who cared to use them. (The Muckleshoot Tribe of Indians v. The United States, 3 Ind. Cl. Comm. 658, 663-666, Fdgs. 12-21, incl.).

16. The Commission finds that petitioner is the successor in interest to the extended village groups which used and occupied contiguous territory on and near the Snohomish River in the State of Washington and that these village groups which have become amalgamated since the Point Elliott treaty were the Sdohobc (Snohomish proper) on and near the mouth of the Snohomish River and on the southern end of Whidby Island; the Sdocohobc (from

Snohomish City to Monroe); and the N'Qentl-ma-mish (Kwehtl-ma-mish on the Pilchuck River).

17. The Commission, based on all the evidence of record and the above findings of fact, finds that petitioner has substantially proven aboriginal Indian title to the lands on that part of the southern end of Whidby Island lying south of a line drawn between Sandy Point on the east side and Bush Point on the west side of said island; also, to the lands on that part of Camano Island lying south of a due east line from Camano City (see Map, Claimant's Ex. 7); also, to the lands on Gedney (Hat) Island; and to those lands on the mainland commencing at Mukilteo, thence north along the coast line to Warm Beach, thence east to the City of Granite Falls, thence in a southwesterly direction to the mouth of the Pilchuck River where it empties into the Snohomish River, thence in a southeasterly direction up the Snohomish River to Monroe and thence in a northwestwardly direction to the place of beginning at Mukilteo.

18. Any rights which the petitioner or their ancestors may have retained or acquired to any lands within the boundaries as set forth in Finding 17, may be made the subject of inquiry at the further hearing respecting the consideration paid to petitioner or petitioner's predecessors in interest and the value of said lands as of the effective date of the treaty, March 8, 1859.

Edgar E. Witt  
 \_\_\_\_\_  
 Chief Commissioner

Louis J. O'Marr  
 \_\_\_\_\_  
 Associate Commissioner

Wm. M. Holt  
 \_\_\_\_\_  
 Associate Commissioner