

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,  
 Petitioner,  
 vs.  
 THE UNITED STATES OF AMERICA,  
 Defendant.

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Docket No. 125

Decided: November 21, 1956

Appearances:

Frederick W. Post and  
 Malcolm S. McLeod,  
 Attorneys for Petitioner

Donald R. Marshall, with  
 whom was Mr. Assistant  
 Attorney General, Perry W.  
 Morton, Attorneys for  
 Defendant

OPINION OF THE COMMISSION

Witt, Commissioner, delivered the opinion of the Commission.

The petition in this case presents the claim of the Snohomish Tribe of Indians. Petitioner is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act (60 Stat. 1049) and as such is entitled to maintain this cause of action (Finding 1).

Petitioner contends that the United States by the Point Elliott Treaty of January 22, 1855 (12 Stat. 927, II Kapp. 669) secured a cession of the aboriginal Indian lands belonging to said petitioner for an unconscionable consideration. The land ceded to the government in the Point Elliott treaty by various tribes and bands of Indians consisted of a large area in what is now the northwestern part of the State of

Washington and petitioner's claim is based on but a specified portion of the lands so ceded to the United States.

The only issues to be determined at this time are (1) whether petitioner has the capacity under the provisions of the Indian Claims Commission Act to maintain this action, and (2) whether petitioner held aboriginal Indian title to the lands described in the amended petition (Tr. 2-A, 2-B). Petitioner was permitted to amend its petition changing the description of the lands claimed to have been exclusively used and occupied by petitioner by Order of the Commission dated October 24, 1955. The amended description enlarged the area claimed in the east.

Since the first white contact with the native inhabitants of the Puget Sound area historical sources have referred to the Snohomish Indians as being located on and near the mouth of the Snohomish river and on the southern end of Whidby Island (Findings 3, 4, 5). Ethnological sources also locate the Snohomish Indians in the same areas (Findings 9 to 14).

With the settlement of the country west of the Cascade Mountains gaining impetus in the early 1850's it became necessary for the United States to extinguish the Indian title to the lands used and occupied or claimed by the Indians in that region. Governor Isaac Stevens of Washington Territory, who was also Superintendent of Indian Affairs for the territory, was instructed 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 reservations. In carrying out his orders to negotiate with the Indians for the extinguishment of their Indian title

and claim to lands, Governor Stevens entered into a treaty with certain tribes and bands of Indians on January 22, 1855, at Point Elliott, Washington Territory. Among the parties named in the treaty were the Snoqualmoo (Snoqualmie), Skai-wha-mish (Skykomish), N'Quentl-ma-mish (Pilchuck River Indians), Sk-tah-le-jum (Sultan Creek Indians), Stoluck-wha-mish (Stillaguamish), and the Snohomish. Among the signatures on the treaty appear chiefs or sub-chiefs signing on behalf of the Snohomish, Skykomish, Snoqualmie and the Sk-tah-le-jum. At some time following the ratification of the treaty in 1859, the Tulalip reservation (sometimes called the Snohomish reservation) was established as required by Article 3 of the treaty. It is upon this reservation that many of the Snohomish Indians settled following its creation and it is where many of their descendants still live today (Findings 5-9).

To determine the extent of the lands aboriginally used and occupied by petitioner it is first necessary to determine what Indians comprised the Snohomish "tribe" as of the date of the treaty. Defendant contends that village autonomy existed aboriginally in the area; that the village was the basic land-using entity; and that the "Snohomish Tribe" named in the treaty "was one land-owning, political, social and economic 'entity' only--not seven such entities--and this was the village at the mouth of the Snohomish River known as 'Sadahobe' or 'Snohomish.' The other six entities are not parties to this case." (Def. Br., page 2).

The seven entities mentioned were developed in the testimony of petitioner's expert witness, Colin Ellidge Tweddell (Tr. 30, 83-104). From his study of the Snohomish, Tweddell was of the opinion that seven groups should be united into one group and called the Snohomish Indian

Tribe. These groups were: (1) The Sdohobc, the inhabitants of Whidby Island, Camano Island and the mainland on the coast from a little north of Warm Beach to a little south of Edmonds and in this group the villages each had their own separate names and only the village at Snohomish city was called "Sdohobc"; (2) the Sdodohobc whose village he locates at Monroe; (3) the Tkwetlibubc or Pilchuck river inhabitants who had villages at Machias and near to Snohomish city; (4) the Sqexwubc, living upriver on the Skykomish River from Sultan to above Index, Washington (these are the Skykomish Indians); (5) the Stktalidubc, although information as to their location is "somewhat confusing" and they have been placed by other ethnologists on Sultan River according to Tweddell, he believes they should be located just above Monroe; (6) the Kwatsakwbix, living north of Warm Beach; (7) Besxuxuxultc, living between Index and the Cascades. Twedell does not include the Skykomish lands within the boundaries for the Snohomish on his map (Pet. Ex. 8) because the Skykomish have a separate action with the Snoqualmie pending before the Commission.

It is difficult to ascertain from the historical and ethnological material of record whether the Skykomish should be considered a part of the Snohomish. As Dr. Leslie Spier points out (Finding 12), George Gibbs seemed to include the Snoqualmie and Skykomish and some less well-known groups with the Snohomish. Spier was of the opinion that there was good reason for separating the three. Swanton on the other hand includes the Skykomish and the Staktaledjabsh as subdivisions of the Snoqualmie. A careful study of the historical and ethnological material of record

precludes extending the application of the term "Snohomish Tribe" to include all the groups listed above by Tweddell. The Point Elliott treaty enumerates specific entities as parties to the treaty and among them are the Skai-wha-mish (Skykomish), the N'Quentl-ma-mish (Pilchuck River Indians), the Sk-tah-le-jum (Stktalidubc-Sultan River Indians (?)) and the Snoqualmie (see Pet. Ex. 10, pp. 29-30).

Pertinent to a determination of the issue as to use and occupancy of the area claimed is the question of whether petitioner; the Snohomish Tribe of Indians, is the successor in interest to the claims of any of the above enumerated entities as well as those other groups not named in the treaty of 1855 but considered by Tweddell to be part of his Snohomish Tribe. According to George Gibbs (1856) the Snohomish tribe itself occupied only the country at the mouth of the Snohomish river and the lower end of Whidbey Island (Def. Ex. 1, page II-4). Haeberlin and Gunther in their study of the Snohomish list four principal villages for these Indians - one four miles south of Tulalip, one at Priest Point and two on the southern part of Whidbey Island. This group of villages undoubtedly is the entity that was named as a party to the 1855 treaty. There is substantial evidence that this group went upon the Tulalip reservation following the treaty and have been reported resident thereon to the present time. The N'Quentl-ma-mish named in the treaty are the Kwehtl-ma-mish or Pilchuck river Indians who also eventually went to the Tulalip reservation where they have since been amalgamated with the Snohomish. Although Haeberlin and Gunther list only four principal villages for the Snohomish at or near the mouth of the Snohomish river

and on Whidbey Island, other ethnologists include as Snohomish those Indians who lived upon the river from Snohomish City to Monroe. Marian Smith lists this group as Tgwetlbabc with village sites at Snohomish at the mouth of Pilchuck creek and another below Monroe (see also Swanton, Finding 13). This is Tweddell's Sdodohobc group. The Commissioner of Indian Affairs in 1877 reported the "Sdo-do-ho-bish" as a subordinate tribe to the Snohomish and assigned to the Tulalip reservation. The record with respect to the Sk-tah-le-jum who were named a party to the treaty is far from satisfactory with respect to their identification and location of their villages or lands. Tweddell calls this group the Stkalidubc and locates them above Monroe although admitting that his location for them is tentative. (Pet. Ex. 10, pp. 180 and 215; Tr. 199). The record does not justify finding the petitioner to be the successor in interest to the Sk-tah-le-jum nor is the record clear as to the location of the Sk-tah-le-jum villages or lands.

It is unnecessary to dwell at length again on the existence of village autonomy and the economy of the Indians of these villages on and near Puget Sound. (Findings 14 and 15; Pet. Req. Fdg. 9; see also 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). Although the extended village groups found to have been living within the boundaries of the land held in Finding 17 to have been exclusively used and occupied by petitioner's predecessors in interest were autonomous, 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 and have been so designated by ethnologists and historians who have studied the Snohomish. In those areas distant from the villages where there was a sharing of the resources with other Indians from without the area claimed such as at Holmes Harbor (Tr. 79; Fdg. 9), on Camano Island north of Camano City (Fdg. 9) and south of Mukilteo (Tr. 198; Fdg. 12) the record does not justify finding the exclusive use and occupancy necessary to include such claimed areas within the aboriginal possession of petitioner's ancestors.

Defendant alleges (Answer, par. 2) that petitioner's claim is barred by the decision of the Court of Claims in Duwamish, et al., v. United States, 79 C. Cls. 530 (cert. den. 295 U. S. 755). This Commission in The Nooksack Tribe v. The United States, 1 Ind. Cl. Comm. 333, held that the decision in the Duwamish case, supra, did not bar the Nooksack who were petitioners therein from presenting a claim based on original Indian title before this Commission. In its decision in the Nooksack case the Commission was of the opinion that the Court of Claims dismissed the Nooksack claim on the ground that it had no jurisdiction under the Jurisdictional Act to entertain a claim for the value of land based on original Indian title. The same reasons for denying defendant's plea of res judicata is applicable in the instant case. The claims of the treaty tribes under the Jurisdictional Act (43 Stat. 886) were limited to those claims "growing out of said treaties."

In conclusion the Commission is of the opinion that as of the date of the Point Elliott treaty, January 22, 1855, the ancestors of petitioner held original Indian title to the land described in Finding 17. Such questions as the consideration paid to petitioner, the acreage and value of said lands, and the rights of said ancestors retained or acquired in such or other lands must await a further hearing and additional evidence.

Edgar E. Witt  
Chief Commissioner

We concur in the foregoing:

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner