BEFORE THE INDIAN CLAIMS COMMISSION

THE UINTAH UTE INDIANS OF UTAH, Plaintiffs,	)	
v.	)	Docket No. 44
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: February 21, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact: 1/

1. Plaintiffs timely filed this claim pursuant to the Indian Claims Commission Act of August 13, 1946 (c. 959, 60 Stat. 1049, 25 U.S.C. Sec. 70). The claim asserted, pleaded on alternative grounds under the 1946 Act, supra, is for compensation for the taking, by the defendant, of lands occupied by plaintiffs.

2. Plaintiffs are a band or group of American Indians commonly known as the Uintah Ute Indians and are resident on the Uintah and Ouray Reservation in the State of Utah. Since 1936, plaintiffs have been a constituent part of the "Ute Indian Tribe of the Uintah and Ouray Reservation," a tribe organized under the Indian Reorganization Act of June 18, 1934 (c. 576, 48 Stat. 984, 25 U.S.C. Sec. 461 et seq.).

1/ This case was consolidated for hearing before the Commission with The Uintah Ute Indians of Utah v. United States, Docket No. 45, "to the extent that documentary /evidence/ and oral testimony may be taken for both cases at the same time and considered in either case." Tr.. 2 Plaintiffs' proposed findings of fact and documentation in Case No. 45 are sometimes referred to herein, for purposes of brevity as "Uintah 45."

Plaintiffs are known as Uintahs and are a distinct and identifiable group on the Uintah Reservation, on which also reside the White River (formerly Yampa and Grand River), and Uncompahgre (formerly Tabeguache) bands of Ute Indians.

3. That at the time plaintiffs were deprived of their lands by defendant they were in the exclusive use and occupancy of lands lying within the following boundaries:

> Commencing at the northwest corner of the Uintah and Ouray reservation in the Uintah Mountains and running thence along the crest of said mountains through Clayton, Sunset and Lone Peaks and across Jordan Narrows, where Jordan river cuts through the mountains separating Salt Lake and Utah Lake valleys; thence along the crest of such mountains to Butterfield Peaks; thence along the crest of the Oquirrah Mountains to a point thereon due east of the town of Lofgreen; thence southwesterly to Notch Peak in the House Mountains; thence along the crest of the mountains or hills lying immediately west of Sevier Lake to a place west of the south end of Sevier Lake; thence easterly to Mount Terrel in the Wasatch Mountains; thence northeasterly through Wasatch Peak and Seeley Mountain, to the southwest corner of said reservation, as originally established, near Indian Head Summit; thence along the west boundary of said reservation to the place of beginning. (Note - The location of the above lines can be followed by referring to U.S. Department of the Interior map of Utah, 1943, which is in evidence as Defend. Ex. 13).

4. The lands described in Finding No. 3, supra, were inhabited in pre-white times by people who were all Utes. In earlier aboriginal times, five names occurred most consistently in describing the Ute groupings in Utah; that portion of plaintiffs found in the Uintah Valley were called Uintahs; those around Utah Lake were called Timpanoags, or variations of that name; those around Sevier Lake, Corn Creek and Sevier River were the Pahvants; east of the Pahvants, in the area known today as San Pete County, Utah,

were the Sampitches; and there was another Ute group which roamed in the area described in Finding No. 3, known as Seuvarits. However, the use or occupancy of the lands described in Finding No. 3 was not at any time divided or separated by Internal boundaries as among plaintiffs, and the Ute people known in aboriginal times by the above-mentioned names ultimately became merged or amalgamated under the common name of "Uintah Utes."

In earlier aboiriginal times the groupings referred to above were made up of even smaller groups or clusters of families throughout the area occupied by plaintiffs. This was the type of social organization then found throughout most of the Great Basin area. These small groups of families gathered roots, nuts, and berries, and hunted in the area with which each was most familiar because they could exploit most effectively the resources of familiar terrain. However, they made seasonal trips to other parts of the territory for the purpose of hunting, fishing, and visiting. The individual membership of the groups of families who customarily roamed together in search of food fluctuated as between the groups from time to time. Any of the plaintiffs moved about at will from one part of the territory to another, using and occupying the lands in the most efficient manner known to them. Even during this early aboriginal period, individuals or families associated themselves from time to time with certain leaders as their desires or interests dictated.

Later, during aboriginal times and following the acquisition of the horse in large enough numbers to affect their habits, the leaders attracted as followers individuals from various of the small groupings; the mounted

Ute (mostly young men) raided for horses under the leadership of a chief, while the older people, women and children remained in their accustomed habitat seeking out a meager existence. The acquisition of horses in greater numbers enabled these Ute groups to gather together in greater numbers for the purpose of food-gathering activities (fishing and hunting) and of social visits, participation in sports, and the celebration of their annual Bear Dance. As a result, certain chiefs came to assert a subtantial degree of authority and influence over all the plaintiffs. After the coming of the white man, in the only two attempts by the government to negotiate with these Indians (the unratified Spanish Fork Treaty of 1865, and the 1878 release), the Indians who were recognized as the chiefs or headmen were the same individuals who acted as the leaders of plaintiffs in other activities during the same period.

Throughout the various stages of their aboriginal or historical development the plaintiffs shared a common language and culture, whereas on all four sides of their original lands they were bounded by Indian peoples of a different language, or culture, or both.

The separate identity of plaintiffs is demonstrated by the following distinguishing characteristics:

(1) All of the individuals included within the aboriginal groupings were Ute;

(2) Individual Ute Indians of whatever of the groupings of plaintiffs lived and moved at will over all the subject lands;

(3) The subject area was not inhabited by Shoshone, Paiute, or Colorado Ute;

(4) There were no boundaries between the Ute groupings, all of the people being free to move about and use or occupy the area at will;

(5) Among the plaintiffs were chiefs, or leaders, who commanded, and received, a following and allegiance from members of all groupings; and

(6) Substantially, all Ute occupying the area ultimately merged or amalgamated under the common name "Uintah."

5. To the south of the plaintiffs lived the Southern Paiutes. Their cultural characteristics marked them as a people different from the plaintiffs, and their language, although of the same linguistic stock, differed to a noticeable extent. The Southern Paiutes and plaintiffs were hostile toward each other; and in 1865 the Southern Paiutes would not remove to the Uintah Valley Reservation, because of their fear of the plaintiffs and recognition that they were a different people.

To the west and north of the original habitat of the plaintiffs lived various bands of Shoshone Indians. The language of those people differed from that of the plaintiffs to the extent that they could not understand or be understood by each other. The Shoshone did not use or occupy any of the lands involved in this case, and authorities agree that they are separate and distinct people.

The nearest peoples to the east of the plaintiffs in Colorado were also Utes. They were, however, distinct and separate from the plaintiffs, as was understood by officials of the defendant. The Colorado Utes did not use or occupy the lands claimed herein, nor have they at any time claimed or asserted any rights in those lands.

The plaintiffs and the Colorado Utes were distinct and separate in other aspects besides their relative locations and the lands they habitually exploited. They were governed by separate chiefs, and the chiefs of one did not purport to act for the other. Due to the fact that the Utes in Colorado acquired the horse approximately 100 years before those in Utah, the Utes in Colorado had acquired many material culture traits of the Plains Indian type of aboriginal culture, which set them apart from the plaintiffs.

6. From time immemorial and until after their removal to the Uintah Valley Reservation following negotiation of the unratified Treaty of June 8, 1865, plaintiffs used and occupied the lands described in Finding No. 3. Plaintiffs used or occupied those lands to the exclusion of other tribes, bands or groups of Indians. Plaintiffs were deprived of lands by the defendant within the area described in Finding No. 3, without the payment of any compensation whatsoever, but the extent thereof and the time of such deprivation is to be determined at a later hearing herein. (Tr. p. 310).

7. The Wasatch Range of Mountains, which bounded the plaintiffs' lands on the east, presented not only a natural boundary but was also a natural barrier. This eastern boundary is marked by steep cliffs, canyons, and gorges.

8. The northern boundary of plaintiffs' lands as described in Finding No. 3, for much of its length was formed by the Uintah Mountains, one of the most formidable ranges of mountains in the United States. In native times it seems those mountains effectively separated the areas of permanent

residence of the Ute and the Shoshoni. The northern boundary runs approximately south of the present town of Oakley, Utah, to the Butterfield Peaks through where the Jordan River cuts through the mountains separating Salt Lake and Utah Valleys.

9. The southern boundary of plaintiffs' original lands is established as a substantially straight line running east from near the southernmost point of the House Mountains to Mount Terrel in the Wasatch Range. This boundary, unlike the northern and eastern boundaries, was not delineated by a geographical or topographical line, but is based upon ethnological data and the documentary accounts of the habitual and immemorial locations of the plaintiffs and the Southern Paiute Indians. The line west from near the southern tip of Sevier Lake largely follows the geographical division of the drainage areas.

10. The western boundary of plaintiffs' aboriginal lands, from near the southermost point of the House Mountains to Notch Peak, thence to the Oquirrh Mountains and Butterfield Peaks, formed a natural boundary between the use and occupancy of lands by the Shoshoni and Gosiute Indians on the west and the plaintiffs on the east. The expanse of country to the west of this line is another virtual desert, and was occupied very little, if at all. The country between Utah Lake and Sevier Lake was an area of permanent and concentrated habitation by the plaintiffs, who were separated physically from Shoshone Indians to the west.

11. The first white people to settle permanently in substantial numbers, in the Territory of Utah were the Mormons, who arrived in the Territory in July 1847. Following their arrival, they and other settlers

immediately commenced settling and cultivating the most fertile lands in the territory, including the lands used or occupied by plaintiffs. On September 9, 1850 (c. 51, 9 Stat. 453), approximately three years after the arrival of the Mormons, Congress passed the Act creating the Territory of Utah. That territory encompassed an area within which lived various Indian tribes in addition to plaintiffs. The territory was defined as follows:

> "* * * bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, * * *"

Utah Territory, as thus defined, encompassed that part of the future Territory of Colorado /created by the Act of February 28, 1861 (12 Stat. 172/ west of the Rocky Mountains. Certain portions of the original Utah Territory were later included in the Territories of Wyoming, Colorado, Arizona and Nevada. None of these acts purported to affect the use or occupancy of plaintiffs. No provision was made for the settling of the Indians in the Utah Territory upon reservations until the Executive Order of October 3, 1861 (1 Kappler 900), which established the Uintah Valley Reservation; the Act of May 5, 1864 (13 Stat. 63), which confirmed the Uintah Valley as a reservation, and the unratified treaty of June 8, 1865 (5 Kappler 695), all of which are considered separately herein. Except for the trespass of the white settlers, the plaintiffs continued to use or occupy the lands as they had in the past, and in the meantime, government agents, territorial officers, Congressmen, and other interested white persons constantly urged defendant to treat with plaintiffs

for the extinguishment of their title to the lands, and to place them upon a reservation.

12. Following demands of white settlers (urging some disposition of the Indians) and rumors that the Mormons were going to settle the Uintah Valley on October 3, 1861 (1 Kappler, 900), President Lincoln promulgated an Executive Order establishing an Indian reservation in the northeastern part of the Territory of Utah.

The reservation was described in a letter, dated October 3, 1861, from Caleb B. Smith, Secretary of the Interior, to the President, reading as follows:

> I have the honor herewith to submit for your consideration the recommendation of the Acting Commissioner of Indian Affairs that the Uintah Valley, in the Territory of Utah, be set apart and reserved for the use and occupancy of Indian Tribes.
>
> In the absence of an authorized survey (the valley and surrounding country being as yet unoccupied by settlements of our citizens), I respectfully recommend that you order the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side, to be reserved to the United States and set apart as an Indian Reservation.
>
> Very respectfully, your obedient servant,
>
> Caleb B. Smith,
> Secretary

The President

Executive Office
October 3, 1861

> Let the reservation be established, as recommended by the Secretary of the Interior.
>
> A. Lincoln

Despite this action by President Lincoln nothing was done to encourage the Indians to move to that reservation and nothing was done to care for additional Indians who might move. As a result, those of the plaintiffs not already residing in that area did not then remove to the reservation.

As more white settlements were developed in the Territory of Utah, demands increased, from whites and Indians alike, that the Indian title be extinguished and the Indians confined to a reservation so that the white settlers might acquire title to the lands and the Indians adopt civilized pursuits.

13. On May 5, 1864, "An Act to Vacate and Sell the Present Indian Reservation in Utah Territory and to Settle the Indians of said Territory in the Uintah Valley" was enacted (c. 77, 13 Stat. 63). That act, in Section 1, required that the Secretary of the Interior cause certain Indian farms, which had been temporarily and unofficially established by one of the Indian agents, to be surveyed into tracts or lots and sold. It was further provided, in Section 2:

> * * * That the superintendent of Indian affairs for the Territory of Utah be, and is hereby, authorized and required to collect and settle all or so many of the Indians of said territory as may be found practicable in the Uinta Valley, in said territory, which is hereby set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same.

However, since no agent resided on the Uintah Reservation, and no farms or other means were provided for their subsistence, plaintiffs continued their custom of hunting and gathering over the whole of their original lands. This proved a continuing annoyance to the settlers,

and it was decided to begin treaty negotiations to achieve the cession of plaintiffs' lands and their confinement to the reservation.

The Uintah Valley (Uintah and Ouray) Reservation as established by the Executive Order of October 3, 1861 (Finding 12) and confirmed by said Act of May 5, 1864, comprised 2,487,474.83 acres.

14. On February 23, 1865 (c. 45, 12 Stat. 432), Congress passed an act "* * * to extinguish the Indian Title to Lands in the Territory of Utah Suitable for Agricultural and Mineral Purposes." Under that act, the President was authorized and directed, with the advice and consent of the Senate, to enter into treaties with the various tribes of Indians of Utah Territory. It directed:

> * * * [The treaties shall be made] upon such terms as may be deemed just to said Indians and beneficial to the government of the United States: Provided, That such treaties shall provide for the absolute surrender to the United States, by said Indians, of their possessory right to all the agricultural and mineral lands in said territory except such agricultural lands as by said treaties may be set apart for reservations by said Indians; And provided further, That all such reservations shall be selected at points as remote as may be practicable from the present settlements in Utah Territory. (Section 1).

Pursuant to the Act of February 23, 1865, several treaties (none of which was ratified) were negotiated with the Indians resident in the Territory of Utah. One was the Treaty of June 8, 1865, with the plaintiffs (5 Kappler 695), more particularly referred to in Finding 15, infra.

When Congress passed the Act of February 23, 1865, supra, Colonel O. H. Irish was Superintendent of Indian Affairs for the Territory of Utah. He was authorized and directed to act as the official

representative of the United States in the negotiation of the treaties, and was to have the assistance of the then Governor of Utah Territory, John Duane Doty, and ex-governor Brigham Young.

15. Pursuant to the Act of February 23, 1865, supra, on June 8, 9, and 10, 1865, a treaty was negotiated between defendant and the plaintiffs. That treaty is commonly referred to as the Spanish Fork Treaty. By its terms the plaintiffs were to cede "all their possessory right of occupancy" to a described area of land, reserving to themselves a designated area as a reservation. The pertinent provisions of that treaty are:

> Article 1. The said bands of Indians hereby surrender and relinquish to the United States all their possessory right of occupancy in and to all of the lands heretobefore claimed and occupied by them, as hereinafter mentioned, within the defined boundaries of the Territory of Utah as follows--to wit. Commencing at a point formed by the intersection of the thirty second degree of longitude west from Washington with the forty first degree of north latitude; thence due west on the forty first degree of north latitude to the thirty eight degree of longitude; thence due south on the thirty eighthdegree of longitude to the thirty eighthdegree of north latitude; thence due east on the thirty eighth degree of north latitude to the thirty second degree of longitude thence due north on the thirty second degree of longitude to the forty first degree of north latitude to the place of beginning.
>
> Article II. There is however reserved for the exclusive use and occupation of the said tribes the following tract of lands; viz 'the entire valley of the Uintah River within Utah Territory extending on both sides of said river to the crest of the first range of contiguous mountains on each side' which said tract shall be, so far as is necessary, surveyed and marked out, set aside and reserved for their exclusive use and occupation nor shall any white person, unless he be in the employ of the Indian authorities be permitted to reside upon the same, without permission of the said tribe, and of the Superintendent of Indian Affairs or United States Indian Agent. It is however understood that should the President of the United States hereafter see fit to place upon the reservation, any other friendly tribe or bands of Indians of Utah Territory, to occupy the same in common with those above mentioned, he shall be at liberty to do so.

> Article III. The said tribes and bands agree to remove to and settle upon the said reservation within one year after the ratification of this treaty, provided the means are furnished them by the United States to enable them to do so--In the meantime it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied if with the permission of the owner.

The lands occupied by plaintiffs as described in Finding No. 3 supra, were well within the limits of the lands described by the Spanish Fork Treaty as within the occupancy of plaintiffs.

16. Commencing immediately after negotiation of the Spanish Fork Treaty, plaintiffs were removed to the reservation described in that treaty. The movement of the plaintiffs to the reservation had progressed sufficiently by September 20, 1866, that the Indian agent at the Uintah Valley Reservation, and the Superintendent of Indian Affairs for Utah Territory were able to report to Washington that "the Uintah Utes occupy the country set apart in 1861 as a reservation for the Indian tribes of Utah."

Nothing further was done by the United States with respect to the formal extinguishment of plaintiffs' original Indian title to their lands in Utah Territory, or by way of compensation to the plaintiffs therefor. Despite repeated requests and protests of the Commissioner of Indian Affairs and of the Government agents in charge of plaintiffs, interested white citizens of Utah Territory, and the plaintiffs themselves, the Spanish Fork Treaty was never ratified, but, on March 11, 1869, was formally rejected by the Senate.

17. By the Treaty of March 2, 1868, 15 Stat. 619; II Kappler 990, between the United States and representatives of certain Confederated Bands of Ute Indians, negotiated in Washington, D. C., there was established for the said bands a reservation, wholly within the Territory of Colorado.

The Confederated Bands referred to in the treaty were named therein as "Tabequache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Ute Indians." By Article III of the treaty it was agreed that the Indians "parties hereto" relinquish all claims and rights in and to any portion of the United States or territories except such as are embraced in the limits of the reservation established by the treaty. By the 4th Article of the treaty, the United States agreed to establish two agencies on the new reservation, "one for the Grand River, Yampa, and Uintah Bands on the White River," and the other for the other named bands, on Rio de los Pinos.

18. Plaintiffs, at the time of the making of the Treaty of March 2, 1868, lived on the Uintah Reservation in Utah, and made no claim to lands in Colorado. No representatives of plaintiffs took part in negotiations leading to the signing of the treaty, and as originally concluded, the agreement bore only the names of Utes of the various Colorado bands named. After ratification of the treaty by the Senate, with an amendment which did not relate to the land cession, the ratification was assented to by a larger number of Utes than had executed the original treaty. Among the 48 Utes assenting to the amendment, five are designated "Uintah Ute Indians,"--Ah-ump, An-tro, Pah, Quir-Kauch, and Yah-mah-na. None of those names appear on the treaty itself, and only two, An-tro and Yah-mah-na,

appeared elsewhere in the evidence. The last named Indian was a White River, from Colorado, and was not associated in any way with the plaintiffs. An-tro was, no doubt, a Uintah Ute, but he was at no time the principal chief of the plaintiffs. He did not sign the 1865 Spanish Fork Treaty.

The designation "Uintah," on March 2, 1868 treaty did not include the plaintiffs. The Government agents who negotiated the treaty recognized that the plaintiffs were a separate and distinct group of Indians, who had no interest in the subject-matter of that treaty.

19. Neither the plaintiffs, nor the Government officials in the Utah Superintendency, were contacted or consulted with respect to the official transactions leading up to the 1868 Treaty, or the amendment thereto.

Instructions with respect to negotiation of the 1868 Treaty were sent only to Governor A. C. Hunt of Colorado Territory. After the treaty was negotiated, in Washington, D. C. and the Senate had ratified it with an amendment, the amendment was sent to the Governor of Colorado Territory only, with a letter directing him to present it to the Indians for their assent. Only names of Colorado officials appeared on the certification of the treaty amendment.

20. It was understood by the officials of the United States, at the time of and following the Treaty of 1868 with the Confederated Bands of Utes, that that treaty affected only the Colorado Utes and that the cession of lands outside the Territory of Colorado provided by Article III had no reference to the lands of plaintiffs.

Both the executive and legislative branches of defendant consistently and uniformly regarded plaintiffs as in rightful occupancy of lands within the Uintah Valley Reservation in Utah and as not having been relinquished by plaintiffs. The agency at Uintah, in existence prior to 1868, has been maintained ever since. Appropriations for the Uintah Utes in Utah were made in years following the Treaty of 1868, and special legislation affecting that reservation was adopted, whereas appropriations pursuant to the 1868 Treaty were intended, and expended, for the benefit of Colorado Utes. Persistently, to 1882, the officials of the United States, under whose authority the Treaty of 1868 had been negotiated, interpreted it as relating only to the Colorado Utes, and as neither burdening plaintiffs with its provisions for cession and removal nor entitling them to the money and other consideration paid from year to year.

21. Following negotiation and ratification of the 1868 Treaty, the agent at the Uintah Valley Reservation was hard put to explain to plain tiffs why the Colorado Utes were favored with large annual payments whereas plaintiffs were not entitled to payments. Then, in August 1881, pursuant to the Act of June 15, 1880, c. 223, 21 Stat. 199, 200, approving an agreement with the Colorado Utes, the White River Utes were removed from Colorado to the Uintah Valley Reservation in Utah. The consequent embarrassment over the fact that no treaty had ever been finally effected with plaintiffs and that they were not entitled to annual payments, whereas the White River Utes, even after they came upon the same reservation as the plaintiffs,

were receiving annual payments in cash and provisions, ultimately led a later Commissioner of Indian Affairs, on July 7, 1882, to express the opinion that "the Uintah Ute Indians on the Uintah Valley reservation in Utah, should have participated in all the benefits of the Ute Treaty of March 2, 1868, * * *." "* * * should have received a proportionate share of * * * /the/ twenty-five thousand dollars annually * * *" provided by the Brunot Agreement with the Confederated Bands of Utes, ratified by Act of April 29, 1874, c. 136, 18 Stat. 36, and "* * * entitled to share proportionately with the other Ute Indians, in the twenty-five thousand dollars specified in the 5th condition of the Ute agreement of 1880, * * *" (ratified by Act of June 15, 1880, c. 223, 21 Stat. 199) and that they should share equally at least, with the White River Utes in the other beneficial provisions of said agreements.

22. Pursuant to the foregoing letter of the Commissioner, the Secretary of the Interior, on July 17, 1882, instructed that in a forthcoming semi-annual distribution a sufficient sum should be withheld by the agents at Curay (for the Uncompahgres) and at Southern Ute Agency (for the Muache, Capote, and Weeminuche) to give the Uintah Utes their "due and proper share" of the benefits due under the Colorado agreements, not attempting to make up the amount due them on former payments. The Secretary specifically ordered that since "it will doubtless create some dissatisfaction on the part of the other Indians, if their /the Uintahs'/ rights are now recognized; * * * it is not at all necessary, at this time, to enter into any explanation to the other Indians, and the Agents should be cautioned

against any mention of this affair at this time. Not only was this ruling directed to be withheld from all the various Indian parties at the time, but there is no showing that it was ever communicated to plaintiffs or to the other Ute bands, or that it ever received the concurrence of any of them. Fifteen years later, upon a review of the whole history of the Utes, as then understood, the Commissioner of Indian Affairs reported to the Secretary in 1897 that, "Notwithstanding the positive statement of several officials I am convinced that the Uintah Valley Indians were not parties to the treaty of 1868, or to the Brunot agreement [of 1873]."

23. At the time the Spanish Fork Treaty was negotiated, to induce the plaintiffs to consent to the treaty, defendant employed the services of the former Governor of Utah Territory, Brigham Young, whose influence over the Indians was well recognized by the defendant. Brigham Young held no official position with the defendant at the time of the treaty, but he was specifically invited to participate in the negotiation of the treaty by Colonel O. H. Irish, on the advice of the Secretary of the Interior.

Young specifically told the Indians that:

> * * * If you do not sell your land to the Government, they will take it, whether you are willing to sell it or not. * * * and it won't make one particle of difference whether you say they may have the land or not, because we shall increase, and we shall occupy this valley and the next, and the next, and so on until we occupy the whole of them,* * *"

Statements of the same tenor and meaning were made at other times by Colonel Irish and Brigham Young.

The fact that the 1865 Spanish Fork Treaty was not a valid and binding instrument, until ratified by the Senate, was not clearly explained to the plaintiffs at the time of the negotiation of the treaty. The whole treaty was read and interpreted to the Indians one time during the entire course of the negotiations, and Colonel O. H. Irish stated:

> * * *This treaty, after being signed, is to be submitted to the great Father's counsellors at Washington, for them to agree upon it also * * *.

There is no showing that the necessity for ratification was explained to the plaintiffs subsequent to the treaty, and it does not appear that the plaintiffs were informed that the Senate formally rejected the treaty in 1869.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner