

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

Appearances:

Ernest L. Wilkinson, with whom were Glen A. Wilkinson, John W. Cragun, Robert W. Barker, Carl S. Hawkins, and Donald C. Gormley, Attorneys for Plaintiffs

Leland L. Yost, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

The plaintiffs herein are known as the Uintah Ute Indians of Utah and are a constituent part of the Ute Indian Tribe of the Uintah and Ouray Reservation in the State of Utah. They are represented before this Commission under a duly executed and approved contract with the Ute Indian Tribe of the Uintah and Ouray Reservation for and on behalf of its constituent members, the Uintah Band of Ute Indians.

The original petition filed by plaintiffs included the Yampah-Ute, Cummum-Bah, and Weber-Ute Bands. This was later amended to omit the above

bands and add the fifth band known as the Seuvarits. The plaintiffs now allege that the present Uintah Band is composed of the descendants of the Uintah, Timpanoag, Pahvant, Sampitch, and Seuvarit Bands of Ute Indians who were an aboriginal entity and who exclusively used and occupied a definable area of land within what is now the State of Utah. They further allege that the defendant deprived the ancestors of plaintiffs of their Indian title to the land without the payment of just compensation and they assert their claim therefor under section 2(3), (4), and (5) of the Indian Claims Commission Act (60 Stat. 1049, 25 U.S.C., sec. 70a).

The principal issues raised by the pleadings and the evidence in this case are: (1) What area or areas, if any, were occupied by the ancestors of plaintiffs? (2) Were the ancestors of plaintiffs such an aboriginal entity as to enable them to hold Indian title to these lands? (3) Are plaintiffs the descendants or successors in interest of the original owners of these lands? (4) Did the ancestors of plaintiffs divest themselves of whatever interest they may have had in the claimed area by being parties to any treaties or agreements? (5) Have plaintiffs been estopped to assert their alleged claims either by administrative ruling, prior litigation, or their conduct in accepting a share of the proceeds of various treaties and agreements? (6) What were the boundaries of the lands allegedly occupied by the ancestors of plaintiffs? (7) What was the date of taking of the land, if any? These questions will be discussed in the same order as set out above.

The area for which plaintiffs are claiming is described in paragraph eight of their amended petition, as follows:

Commencing on the northeast at the headwaters of Pot Creek in the Uintah Mountains; thence down the Pot Creek to its juncture with the Green River; thence down the Green River in a southerly direction to its juncture with the San Rafael River; thence in a westerly direction from the juncture of the Green River and San Rafael River to the southernmost point of the House Mountains; thence north along the summit of the House Mountains to Notch Peak; thence in a northeasterly direction from Notch Peak to the southernmost point of the Oquirrh Mountains; thence north along the summit of the Oquirrh Mountains to the Butterfield Peaks; thence east from the Butterfield Peaks along the summit of the mountain range separating the drainage area of the Utah and Great Salt Lakes to the summit of the Uintah Mountains; thence east along the summit of the Uintah Mountains to the point of beginning.

The above description runs very slightly into northwestern Colorado and includes the small area between the Colorado-Utah border and the juncture of Pot Creek and Green River. The balance of the land described includes nearly all of eastern and central Utah. The presently existing Uintah and Curay Reservation is included within this description. However, the claim of plaintiffs for compensation for a portion of that reservation is brought under Docket No. 45 which was consolidated with this case for the purposes of trial. The total area claimed in this case, as described above, is approximately 11,000,000 acres, which does not include the Uintah and Curay Reservation area.

The evidence in this case, as with most of these cases, is voluminous and yet leaves much to be desired at certain points. The degree of proof necessary to sustain a claim of Indian title has been discussed by the Court of Claims in the case of "The Snake or Piute Indians of the Former Malheur Reservation in Oregon v. The United States," 125 C. Cls. 241, and does not need further discussion here beyond the reminder of the

inherent difficulty involved in the undertaking from the viewpoints of both plaintiffs and defendant.

As indicated in the findings made herewith the occupancy of a major portion of the claimed area is adequately established by the record. There can be no doubt that the Timpanoag, Pahvant, and Sampitch Utes exclusively used and occupied the central portion of Utah to the west of the Wasatch Mountains, and the defendant admits the occupancy although questioning the definability of the area. The fact of the occupancy of the claimed portion to the east of the Wasatch Mountains by the Seuvarits is not thought sustained. When the Seuvarits were first mentioned by Brigham Young and Agent Day early in the 1850's they were said to be a roving band who roamed through the other nations. When Chief Walker of the Seuvarits was met by Ashley on or near the Sevier River in the 1840's, he was on his way to meet the California caravan and levy tribute. Nearly all of the evidence indicates that Walker's band were primarily raiders and apparently drew followers from throughout the other bands as testified to during the trial. All of the early mention of the Seuvarits places them to the west of the Wasatch Mountains and indicates that they were probably younger Indians from the other bands who joined Walker for the purpose of raiding. Beginning in about the 1860's the Seuvarits began to be identified with the southeastern part of Utah and especially so when Black Hawk became chief and the Black Hawk war began. Walker had often fled across the Wasatch Mountains after his raids on the Mormons and Black Hawk continued this method of warfare. It is plain from the evidence that Black Hawk and the Seuvarits used the southeastern

part of Utah as a retreat. Even so, there is insufficient proof that the area used was within the area claimed. On the contrary, Superintendent Head reported in 1866 that Black Hawk and his band wintered near where the Grand and Green Rivers unite to form the Colorado, which is outside of the area claimed. He also confirmed the idea of this as a group of raiders made up of anybody who wanted to fight when he reported that Black Hawk's band consisted of about half Navajoes from New Mexico. There are also some contemporaneous reports which might indicate that the Seuvarits did live within the area claimed, east of the Wasatch Mountains.

The Powell and Ingalls report of 1873 mentions the Seuvarits. They stated that upon meeting some 31 lodges of them on the Sevier River, west of the Wasatch Mountains, they claimed to live east of the Wasatch between the San Pete and Sevier valleys on the west and the Green and Colorado Rivers on the east. They also reported that the Seuvarits were breaking up and joining four different groups of Indians. Hodge, in the Handbook of American Indians, B.A.E. 30, pt. 2, p. 514, locates them in the Castle valley country in w. [sic] central Utah. Hodge also equates the Seuvarits with Elk Mountain Ute and Fish Ute. Dr. Swanton in B.A.E. 145, p. 373 in speaking of the subdivisions of the Ute says that the Seuvarits or Sheberetch lived in the Castle valley country and on the headwaters of the San Rafael River in east central Utah. He also places the Yampah Ute on and about the Green and Colorado Rivers in eastern Utah. Dr. Julian H. Steward, defendant's witness, wrote in 1938 that the entire country east of the Wasatch Mountains and south of the Uintah

Mountains was held by Ute Indians within historic times, and that the region of Utah Lake, Sevier Lake, and central and eastern Utah was unquestionably Ute. He also stated that the portion of southern Utah lying east of the mountains consisted largely of arid mesas and almost impassable canyons and that it probably supported a small Ute population which had little or no contact with their kin either to the east or west. In the map accompanying his publication he shows the Yampah Ute south of the Uintah Valley and the Sheberetch (i.e. Seuvarits) Ute south of the San Rafael River in a position which would place them within the claimed area, east of the Wasatch. Despite the above writings none of the contemporaneous writings of the early settlers and officials place the Seuvarits anywhere but west of the Wasatch Mountains. It may be said that this is so because the settlers themselves were all west of the mountains during this period. On the other hand, if the Seuvarits had a permanent home on the eastern side of the mountains they certainly didn't spend much time there. When settlement caused a scarcity of land and game and friction between the Indians and settlers became more serious, you find more and more mention of the Seuvarits being in the southeastern part of Utah. These reports, however, are never quite clear as to whether they refer to the Seuvarits, Fish Utes or Elk Mountain Ute. Nor are they consistent in their location of the groups referred to. As noted before, Hodge equates the three groups and Swanton places the Yampah Ute in eastern Utah. In addition to those facts, the country in southeastern Utah within the claimed area would appear to be a highly questionable area for subsistence purposes. The

Seuvarits did use the southeastern part of Utah but just where in the southeastern part remains a question. It is highly possible that they used the portion around the La Sal Mountains which is outside of the area claimed. In fact, the evidence indicates that they did use the area beyond where the Grand and Green Rivers meet. This use of the southeastern part of Utah partakes more of the nature of a guerilla retreat than a primary subsistence area. When conditions in the settled area became too dangerous as a result of the raids, then the Seuvarits retreated east across the Wasatch to safety. The Powell and Ingalls report of 1873 is not to be disregarded as absolutely incorrect, but it does not contain an inherent guarantee of exclusive aboriginal use and occupancy of the area east of the Wasatch as claimed by the Seuvarits. It is not supported by sufficient background evidence to justify its acceptance as clear and adequate proof of exclusive aboriginal occupancy. The other references appear to be too confused as to band affiliation and location between the Seuvarits and Elk Mountain Ute.

It is not the desire of this Commission to ignore the recognized authorities in the field of ethnology. However, in considering the exhibits and testimony introduced in this case, we are unable to conclude that the plaintiffs have carried the burden of proof necessary to establish exclusive aboriginal use and occupancy of a definable area east of the Wasatch Mountains as claimed for the Seuvarits.

The defendant denies the occupancy of the Uintah Valley by Ute Indians in aboriginal times. This denial seems to be based solely on the information supplied by Escalante. However, it seems that before

the Commanche could have pushed the Ute out of the Uintah Valley the Ute would have to be in there. They were discovered there by Ashley in 1825, and remained in that area from that time on. Undoubtedly, the Shoshoni (Commanche) did raid the Ute country. There is evidence of such a raid by the Arapahoe into the Middle Park in Colorado in the late 1860's. However, that does not alter the fact that it was Ute country and the Ute remained there or reentered the area and held it. We feel that the evidence supports the claim of occupancy of the Uintah Valley by the Ute Indians who came to be known as Uintahs.

Another allegation of defendant goes to the lack of an aboriginal entity which was capable of holding Indian title to the area claimed. Of course, this must necessarily go back beyond the period of white settlement to where the information becomes extremely scarce. Since there is so little information available then it becomes necessary to take the situation as it existed at the time the reports start and make whatever inferences seem justified thereby. In making those inferences it is necessary to bear in mind the various factors, economic, social, and political, which go to make up the cultural pattern of the occupants of any given area. In other words, the criteria must be reasonably adapted to the situation which exists in the particular area under consideration.

The evidence, as embodied in the findings, indicates that there was a certain amount of cohesion among the five groups which eventually went in whole or in part, on to the Uintah Reservation, and whose descendants are plaintiffs herein. Early in the settlement period it was

indicated that the Provo River area was the great spring gathering place of the Ute Indians in the area and the names of chiefs who were prominent throughout the territory were mentioned as being there. Sowiette, who was called chief of the Uintahs, appears to have exercised control over the various bands. He is credited with stopping Chief Walker from attempting to drive the Mormons from the country when they first settled there. At the time of the Spanish Fork Treaty in 1865, Kan-osh referred to Sowiette as "* * * the father of all the Utes, Sow-e-ett. He used to be the great chief and father of us all, but now he is very old. * * * We want Sow-e-ett to talk and all to listen, both Utes and Whites." This is certainly a good indication that there was an overall organization even prior to white settlement. Also, in 1851, the reports referred to Walker as the war chief of the various bands and said that all the groups appeared to show deference to him, but that Sowiette's word prevailed over Walker's. When Sowiette became too old to continue as chief, about the time of the principal movement to the reservation, Tabby replaced him as chief. It was reported that while some individual tribal organization was maintained, Tabby was still recognized as chief by the other bands.

The evidence with reference to the distinction between the Ute and Southern Paiute is both lengthy and involved. However, that may be, it would appear that the most telling argument against the defendant's contention that there is no distinction is that in the past the separate classification of the Ute and Paiute seems to have been accepted by nearly everybody, including defendant's expert witness.

The testimony of the ethnologists and their previous studies of the Ute and Southern Paiute apparently led them to distinguish between these two groups. Whether that distinction was the result of acquisition of the horse or what does not seem to be important. Escalante noted a difference in the dialect of what he called Parusis as opposed to that of the Timpanoags to the north. Early travelers when they crossed "the rim" going south noted a difference in the Indians on the south side. When Powell and Ingalls discussed the placing of the Paiute on the Uintah Reservation, they concluded that it would be necessary to use force to get them there because of their fear and dislike of the Ute. This is the same Ute with whom the Seuvarits and Sampitches merged. There are several instances of Utes capturing Paiute children and selling them into slavery to the Mexicans. With regard to the question as to when the Utes acquired horses and thereafter plains Indian traits, it does not appear to make any difference. So far as the evidence shows these Indians, whatever they were called, had been in this area since time immemorial. If at some indeterminate period prior to the coming of the white man, certain of them acquired horses and thereby changed their mode of living so as to make them a distinct group and that group, with whatever component parts it might have, exclusively used and occupied a definable area of land, then they are entitled to pursue their claim before this Commission and to recover thereon if they present the proper proof to sustain their allegations with regard to the aboriginal area claimed.

The question of the eventual amalgamation or coalescence of the five groups of Indians of the Uintah Reservation is one covering a

long period of time. When the reservation was first established by Executive Order in 1861 there was no serious attempt to remove the Indians to it. It was established for the purpose of keeping the Mormons out of the Uintah Valley. After the war between the States, when the westward expansion began in earnest, there was considerable demand for the extinguishment of Indian title in Utah as well as elsewhere. In Utah this demand culminated in the Act of Congress (13 Stat. 432), authorizing the negotiation of the Spanish Fork Treaty of June 8, 1865. Under the terms of that treaty the Indians who were parties thereto gave up a defined area which included the land presently claimed and much more that is not involved in this case; Utah Territory then being considerably bigger than the present State. In return the Uintah Valley Reservation previously established by Executive Order and confirmed by Congress in the Act of May 5, 1865 (13 Stat. 63) was again reserved to the Indians who were parties to the treaty.

Beginning after the signing of the treaty there was an effort made to establish a reservation headquarters at Uintah Valley. The reports of the Superintendent of Indian Affairs and agents for the next ten to fifteen years deal with the efforts to get the Indians throughout the Utah area concentrated on the reservation. It was very much of a see-saw affair. Indians came and went whenever they saw fit and at one period nearly all of them left the reservation and it took considerable effort to get them back without a fight. These conditions existed because of the failure of defendant to adequately provide for the needs of the Indians once they had been placed on the reservation. The findings herein reflect

the problems facing the agents in their attempt to maintain the Indians at Uintah Reservation. The Uintah Valley did not afford sufficient natural resources to permit the Indians to maintain themselves and when the agents had nothing to supply them they broke up into small groups and left the reservation to avoid starving.

The number of Indians and their normal tribal affiliations is not always too clear. The reports of the agent at Uintah show a variance at nearly every report. Powell and Ingalls reported 556 Indians on the reservation in 1873, and Agent Critchlow said that while that might be the maximum at a given time it was not the total number served. He estimated 800 as the number who made the agency their headquarters. The more important question, however, is, which Indians eventually did make the reservation their home and whether or not those Indians were the ancestors of the ones known today as the Uintah Utes, plaintiffs herein.

It is not claimed by plaintiffs that all members of the five groups ever went to the reservation. The evidence shows that Kan-osh and his Pahvants apparently had not gone on the reservation as late as 1877, and Captain Joe's band of some 75 Sampitches were off the reservation after having been on at one time. Apparently, the Mormons exerted considerable influence on some of these Indians to persuade them to remain away from the reservation. Agent Critchlow reported in 1878 that about 75 or 100 Indians had left and taken up land in San Pete County after professing to give up their tribal affiliations. This could have been Captain Joe's band of Sampitches. The Powell and Ingalls report of 1873 stated that the

population of the Uintah Reservation was made up of Seuvarits, San-pits, Timpanogots, and Uintahs, in addition to three other groups which remain unidentified. The Pahvants were still off the reservation at that time. None of the groups mentioned by Powell and Ingalls are reported separately in the census of 1890 except the Uintah, and it may be presumed that they are all a part of the 435 Indians called Uintahs in the census. In 1886, it was reported that the population of the Uintah Reservation was made up of Pavant, Uinta, Yampa, Grand River, and White River Utes. It will be noted that the Pavants are included. The census of 1890 states that the larger number of Pavant had been on the reservation for many years and had not been reported separately. There were still Pahvant Indians off the reservation and on February 11, 1929, Congress established a reservation of 920 acres of land in Millard County, Utah for the Kanosh Band of Indians. In 1945, there were some 21 Utes at Kanosh Reservation.

There isn't much doubt but that virtually all ancestors of the Indians who are plaintiffs herein were eventually removed to the Uintah Reservation and consolidated under the name of the Uintah Utes. In 1881, the White River Utes had been placed on the Uintah Reservation under the Act of June 15, 1880 (21 Stat. 199), which approved the agreement under which they had ceded the remainder of their reservation in Colorado. At the present time the Uintahs, White Rivers and Uncompahgre are all occupants of the Uintah and Ouray Reservation, as it is now called.

The evidence indicates that while some of the members of plaintiffs' original bands did not stay on the reservation, or did not go on originally, there were sufficient members who did so that it can be said

that the present Uintah Utes, plaintiffs herein, are the descendants of the Uintah, Timpanoag, Pahvant, Sampitch and Seuvarit Indians who aboriginally used and occupied certain lands in what is now the State of Utah. The fact that there may have been a few Indians who were not members of those original bands but who went on the Uintah Reservation does not appear to the Commission to be sufficient reason to deny a recovery to those who presently reside there and whose ancestors were members of the original bands.

Defendant contends that the Uintah Band of Ute Indians were parties to the treaty of March 2, 1868 (15 Stat. 619), entered into at Washington D. C. between defendant and the Tabogauche, Muache, Capote, Weeminuche, Yampa, Grand River, and Uinta Bands of Ute Indians. Plaintiff contends that the Uintah Band of Indians in Colorado was no part of the Utah Indians and that the Uintah Band of Utah had nothing to do with the Treaty of March 2, 1868.

There is a lot of evidence concerning the various agreements entered into with the Utes of Colorado. To attempt to discuss every phase of it in this opinion would be too much of an undertaking to justify the result. It is the opinion of the Commission that the Uintah Band of Ute Indians in Utah were not parties to the Treaty of March 2, 1868, and that they were a separate and distinct group from the Indians of Colorado who came to be known as the Grand River, Yampah, and Uintah Bands, and eventually as the White River Utes.

There is naturally some confusion between these Indians because they were all Utes and prior to the coming of the white men there was

no reason for them to avoid contact and also they were probably common victims of the raids by the Shoshonies to the north. In other words, there was a common plane of interest upon which they undoubtedly met. However, with the establishment of Utah Territory in 1850, and Colorado in 1861, there came a definite division between the two groups as a result of the establishment of two superintendencies for the two groups of Indians. We do not mean to say that there was not a separation prior to that time but rather that such separation became a matter of record through the reports of the respective superintendencies.

Utah Territory included all of the present State of Colorado west of the Rocky Mountains when it was established in 1851. Brigham Young then had in his charge a portion of what later became Indians of the Colorado Superintendent in 1861. When Simeon Whitely was appointed agent for the Utes in Colorado in 1862, he took over these Indians living in the Park area of Colorado and up to what is now the present border between Utah and Colorado. A certain degree of confusion resulted from this artificial division because of lack of knowledge on the part of Whitely. Whitely and Curtis reported that the Colorado Indians claimed a large area of land and that only about one-third of it lay in Colorado. Curtis was familiar with these Indians and the only explanation for his report as to the area claimed is that Curtis, who had found the Indians near Spanish Fork in Utah, was talking about the Uintahs of Utah, who were being visited by the Grand River Utes of Colorado. Curtis reported at the same time that the Indians he was bringing in had gone into Utah to visit their friends who received presents at Spanish Fork. This seems to have been a part of the

typical situation where in later years the Indians from both Superintendencies visited back and forth whenever presents were being distributed.

One of the confusing points about the distinction between the Indians of Utah and Colorado is the presence in Colorado of certain Indians who were identified more with the Utah groups. Antero, or Anthro, and Douglass were both pretty much identified with Utah Utes, particularly Antero. Antero was in Colorado in 1866 at Empire where there was a distribution of presents. In 1867, Antero and several subchiefs of the Grand River and Uintah Bands came in to Denver and told Governor Hunt that because they were afraid of being drawn into the war between their relations and the Mormons in the Great Basin they had decided to come east of the Rockies. In August of that year, Douglass came to Denver for the same reason to join his brother, Nevara, or Nevava. Nevara was definitely a Colorado Ute and Douglass stayed in Colorado and became a part of the White River Utes.

When the Commissioner of Indian Affairs authorized the bringing of a delegation of Tabogauches, Uintahs, Grand Rivers, and Yampahs to Washington for the purpose of negotiations, nothing was said about Utah Indians. The authorization was addressed to Governor Hunt of Colorado. The Treaty of March 2, 1868 grew out of these negotiations and none of the Indians who signed it are designated as Uintahs of either Colorado or Utah. The Senate ratified the treaty and made certain amendments which necessitated the signatures of the Indians. Governor Hunt went out to get these signatures and among others, got the signatures of five Indians designated as "Uintahs."

Antero is the only one of the five who is identified as a Utah Ute. Three of the five are not otherwise identified. The fifth one, Yah-mah-me, is always called a Denver Ute or White River Ute. He is last identified as a sub-chief in Douglass' band of White River Utes. Of course, Douglass apparently had been at one time in Utah. He is mentioned as being chief of a group of 21 lodges of "Salt Lake Utes" by Governor Hunt in 1867. It is possible to surmise that the Uintahs who signed the amendment were all at one time Utah Utes, but those with Douglass had abandoned Utah for Colorado and stayed there. Antero did not remain in Colorado, but went back to Utah where he was reported on the Uintah Reservation by Powell and Ingalls in 1873. Antero had long been a sub-chief in Utah but had never had the power to speak for the Utes of Utah. His signature on the treaty amendments in 1868 could not deprive the Utes of Utah of their lands any more than that of any other one of many sub-chiefs could have done.

The Commissioner of Indian Affairs urged in the same report for 1868 in which he reported the negotiation of the Treaty of March 2, 1868, that the Spanish Fork Treaty with the Utes of Utah be ratified or a new treaty held with them. This indicates that the Utes of Colorado and those of Utah were considered as separate entities and that the ones in Utah were not considered to be parties to the Treaty of March 2, 1868. On March 13, 1868 the Commissioner wrote to the Secretary of the Interior that the Treaty of August 29, 1866, with the Uintah and Yampah or Grand River bands of Ute Indians which was still before the Senate need not

be ratified if the Treaty of March 2, 1868 was ratified, since the parties were the same in both treaties. Governor Hunt wrote in 1868 that there were 900 Uintahs under a separate agent in Uintah Valley and that those in Colorado were simply an offshoot of the Uintahs in Utah and had decided to attach themselves to the Colorado Superintendency. The whole tenor of the correspondence throughout the history of Indian Affairs in Colorado and Utah indicates that the Indians therein were considered and handled as separate groups and that the Uintahs of Utah had no part in the Treaty of March 2, 1868, and that the Colorado Utes had no part in the Spanish Fork Treaty of June 8, 1865.

The same situation as outlined above prevailed with regard to the Brunot Agreement of 1873, which was negotiated under the Act of Congress of April 23, 1872 (17 Stat. 55). The act limited the negotiations to the Indians of Colorado and the cost of the negotiations was charged to the Indians of Colorado. The preamble of the Brunot Agreement mentions the Uintah Band along with the other bands of Colorado and refers to them as the "confederated bands of the Ute Nation." The whole subject of the Brunot Agreement dealt with Colorado land and Colorado Indians under the 1868 treaty and the Utes of Utah had nothing to do with it, nor were they consulted about it as they would have had to be if the terms of the 1868 treaty were to be complied with insofar as the number of signatures required under Article 16 were concerned. Brunot himself stated in his report that he had dealt with Colorado Utes.

The one time that the Uintah Utes of Utah or Uintah Valley Reservation were consulted about transactions in Colorado came when the

agreement of 1878 with the Muache, Capote, and Wesminuche Bands was negotiated, and they relinquished their interest in the 1868 treaty reservation. There was apparently an attempt to follow the terms of Article 16 of the 1868 treaty which required the signature of three-fourths of the male Indians occupying or interested in the reservation created thereunder. The Uintah Utes of the Uintah Valley Reservation signed a "release" which consented to the action of the residents of the reservation in Colorado in ceding their interest therein. The Uintahs were looking forward hopefully to sharing in the money to be paid the three bands for their cession. This does not appear to the Commission as adequate proof that the Uintahs were a party to the treaty of 1868 or to the Brunot Agreement of 1873. The only explanation for obtaining the signature of the Uintahs is the continued mixup between these bands because of the name. This agreement of 1878 was never ratified.

Finally, when the settlers' demands for land became too great, the defendant entered into an agreement with the Utes in Colorado, known as the confederated bands of the Ute nation. This agreement of 1880 (21 Stat. 199) ceded the remainder of the Colorado Reservation created by the Treaty of 1868 and stipulated as to the placement of the Indians who were residing thereon. The White River Utes were placed on the Uintah Reservation. The Commission created to carry out this agreement had its chairman, George W. Manypenny. He assumed that the Uintah Utes of Utah were a party to the 1880 agreement and that their signatures should be obtained. He was informed by the Acting Commissioner of Indian Affairs that the Uintahs of Utah were parties to the 1868 treaty and the Brunot

Agreement of 1873, but had never been recognized as being entitled to any of the benefits thereof and that they had not been recognized or consulted about the 1880 Agreement, thereby making their signatures on the agreement unnecessary. In their final report in 1881, the Commission repeated these statements and mentioned the signing of the release under the unratified agreement of 1878 where the Uintahs of Utah had agreed to the disposal of a part of the Colorado Reservation by the Kuache, Capote, and Weeminuche Bands.

In August 1881, the movement of the White River Utes to the Uintah Reservation was begun. This whole transaction had taken place without the knowledge or consent of the Uintah Utes. The records indicate that they disapproved of placing the White River Utes on the Uintah Reservation without consulting them or paying for the land given the White Rivers. The White River Utes had just recently been involved in the Meeker massacre and yet were still receiving annuities under the several agreements with defendant while the Uintah Utes were getting only a small gratuity each year. This was cause for concern to the agent and the Commissioner of Indian Affairs. The findings indicates the background of this situation and the events which led to the ruling of Secretary of the Interior Teller in July 1882 that the Uintah Utes of Utah had participated in the Treaty of 1868 and the Brunot Agreement of 1873. He stated that while they had not participated in the Agreement of 1880, they were nevertheless entitled to share in the proceeds of that agreement. In accordance with the ruling he directed that the Uintah's share of the annual distribution be withheld from the shares of the other tribes and paid to the

Uintahs. He stated that it was not necessary to make up any back payments and cautioned the agents not to make the decision known to the Indians. In 1897, the whole record was reviewed by the Commissioner of Indian Affairs at the request of the office of the Secretary of the Interior. The Commissioner came to the conclusion that the previous ruling had been wrong and that, in fact, the Uirtah Utes of Utah had not participated in the Treaty of 1868 or the Brunot Agreement, but had always been a separate and distinct group from those of Colorado.

This Commission feels that the decision of 1897 was the correct one and that the ruling of Secretary Teller in 1882 was simply a necessary expedient to the maintenance of friendly relations among the Indians on the Uintah Reservation and the ultimate protection of the white people in the area. This being so, then the Uintah Utes of Utah have not ceded their aboriginal title to the lands used and occupied by them in Utah and the defendant has never compensated them or taken a cession from them in any manner other than by the unratified Spanish Fork Treaty of 1865, and consequently, without the consent of the ancestors of plaintiffs.

This Commission feels no reluctance in denying the correctness of the administrative ruling of Secretary Teller. The ruling was purely an ex-parte decision of which the Indians were not told and does not conform with any of the ideas of administrative procedure so as to give us pause in setting it aside. Neither do we feel that the acceptance by the Uintah Utes of Utah of the benefits under that ruling can now be used by the defendant as a weapon. The Indians were perfectly justified in accepting these benefits without inquiring as to their origin. They had previously been getting a small

gratuity each year and the fact that it was increased to more nearly what the White River Utes were getting undoubtedly appealed to the sense of justice of the Uintahs who had been peaceable while the White Rivers had been engaged in the Meeker massacre and other trouble.

The case of "Blackfeet Nation v. United States," 81 C. Cls. 101, is applicable to the situation now before us. In that case the Court of Claims said:

* * * The Court would hesitate to apply the doctrine of estoppel to tribal Indians, in the absence of positive proof that the tribe as such comprehended its rights and was accepting benefits from the government with full knowledge of and in pursuance of rights created by treaties between the parties.

The Ute Indians have been engaged in extensive litigation in the Court of Claims under special jurisdictional acts in past years. In 1897, when an attorney was hired to press their claims before Congress and the courts, the Uintah Utes who are plaintiffs herein signed an agreement with the attorney wherein they asserted that they were parties to the Treaty of 1868 and the agreements of 1873 and 1880. The White River Utes did the same. Out of this contract came the case of "The Ute Indians v. The United States," 45 C. Cls. 440. In this case and the jurisdictional act making it possible, the references are all to the Utes of Colorado. The only evidence of the Uintahs of Utah being included is in the census figures where the Uintah Utes are listed as having 427 members. The figure is undoubtedly that of the Uintahs of Utah because it coincides reasonably with other census figures. The next reference to the tribal affiliations in the same finding in that case refers to the

group as Utes of Colorado and says that they are also known as White River Utes, Southern Utes and Uncompahgre Utes. The Uintahs of Utah have always been separate from these three groups who are unquestionably Colorado Utes. It is the same confusion that has been evident throughout the history of the Utes of Colorado and those of Utah. The fact that the Utes of Utah compounded this confusion with their Resolutaion of 1897 does not alter their present right to prosecute this suit. The original confusion came through Secretary Teller's ruling in 1882 and the position of the Uintah Utes of Utah has not changed since that time. The defendant has suffered no loss that it would not have suffered as a result of Teller's ruling and to hold now that because the Uintah Utes continued a practice established by defendant they are to be penalized by not being permitted to assert a valid claim to compensation for their lands would not be commensurate with the purpose of the Indian Claims Commission Act nor with justice.

It is to be noted that when the facts concerning the true situation began to come to light as the result of the litigation of later years, the Uintah Utes of Utah disclaimed any interest in the recoveries under that litigation. Specifically, when the issues of the 1910 case were litigated again in 1943 and final judgment was had in "The Confederated Bands of Ute Indians v. The United States," 117 C. Cls. 433 in 1950, the Uintah Utes filed disclaimers in all dockets in which recoveries were had. Also, in these later cases the error of the description, if such it was, which appeared to include the Uintah Utes of Utah in the 1910 case, was corrected.

The intertribal agreement between the Uintah Utes, White River Utes, and Uncompahgre Utes of the Uintah and Ouray Reservation whereby each tribe agrees to share any recoveries had, including the two cases before this Commission, is of no interest herein. The fact that they will share the proceeds does not detract from the merits of their respective cases.

The description of the definable area which the evidence substantiates as having been used and occupied by the ancestors of plaintiffs from time immemorial is set out in Finding No. 3 made herewith. The boundaries as found by this Commission are very similar to the boundaries set out by plaintiffs so far as the northern, western, and part of the southern boundaries are concerned, and they differ only so far as the eastern and part of the southern line are concerned. The description of the area as set out in Finding No. 3 does not include the Uintah Valley Reservation since that area is considered in Docket No. 45.

Plaintiffs' contention with regard to the eastern boundary cannot be accepted by the Commission in view of the fact that there was not established a definable area used and occupied in the usual Indian manner within the south-central and southeastern part of Utah. The Green River is undoubtedly a natural boundary because of the roughness of the terrain, but the fact that it is such a natural boundary doesn't lessen the requirement that the land within it be used and occupied by the Indians claiming it. See the Quapaw Tribe of Indians v. The United States, 128 C. Cls. 45.

The northern boundary of the Uintah Utes, starting at the northwest corner of Uintah Valley Reservation, is formed by a part of the Uintah

Mountains. The boundary on the north as found by the Commission starts at the northwestern corner of the reservation and follows the crest of the Uintah Mountains to the south of the town of Oakley and continues to the Butterfield Peaks in the Oquirrh Mountains. As it proceeds southwesterly, the country opens up into valleys and there is no natural barrier. However, the location of the Shoshoni to the east of Great Salt Lake and around present Salt Lake City as opposed to the location of the Ute to the south around Utah Lake and Provo seems to indicate a sufficiently definite boundary to justify the division line being placed where it is. In other words, the evidence indicates a boundary but the placement thereof becomes a matter of some speculation. We feel that the placement made is logical.

The western boundary can be called a natural barrier in that it follows the peaks of the mountains and the edge of the Sevier desert to Notch Peak in the House Range of Mountains and along the crest of those mountains to the south end of Sevier Lake.

The Southern line running from the south end of Sevier Lake to Mt. Terrel in the Wasatch Mountains is not a natural barrier. The evidence indicates a distinction between the people on the two sides of the line but the breaking point is nothing more than a drainage area divide. The people who traveled through the country reported that after crossing "the rim," as it was called, they met Paiute Indians. The placement problem here is the same as it was to the north in Provo and American Valleys. There is a division of peoples here but the line can be placed

at different points. Once it appears to the Commission that the line as found herein is a logical one. We cannot refuse to place a boundary because it is possible that it might vary a few miles one way or another. It would seem that "a reasonably definable boundary" would not be defeated by a relatively small variance in one direction or another so long as the evidence justifies a boundary within that area.

The eastern boundary is again a relatively natural barrier running from Mt. Terrel to Wasatch Peak and to Seeley Mountain through the Wasatch Plateau and on in a northeasterly direction along the summit of the eastern range of the Wasatch Mountains to where it intersects with the line of Uintah Reservation near Indian Head Summit at its southwest corner. From there it follows the western line of the reservation to the point of beginning.

According to the allegations of the petition and statements of plaintiffs' counsel (Trans. p. 307) liability of the defendant is based upon alternative theories. One is that the Indians were removed from their aboriginal lands as a result of the 1865 unratified treaty and placed upon the Uintah Reservation.

The other theory is that the Indians were deprived of their lands when the defendant disposed of part to settlers and others under the public land laws of the United States and converted parts of the area to its own use. Such deprivation necessarily extended over a period of many years and the plaintiffs at the time of the hearing were not prepared to show all disposition of their lands by defendant but did show disposition of a substantial part of the area described in Finding No. 3 and it

was agreed by counsel (Trans., p. 310) for the parties that insofar as the interlocutory determination of liability was concerned, the showing of such disposition by plaintiffs was sufficient, leaving to the plaintiffs the right to offer proof at a later hearing of other disposition of lands within the area described in Finding No. 3 should the Commission hold defendant liable.

We, therefore, are of the opinion, and so hold, that the defendant is liable to plaintiffs for the value of such part of the lands within the area described in Finding No. 3 as the plaintiffs may hereafter prove to have been disposed of or converted to its own use by defendant, the time of such deprivation to be determined when the proof thereof has been submitted. Inasmuch as the disposition of said lands or the taking thereof by defendant are undoubtedly matters of record, it is suggested that counsel make a serious effort to agree upon the acreage of the lands disposed of by defendant and those retained by it and also agree upon an average value to avoid burdensome detailed computation of value as of the date of disposal of each separate tract. See *Creek Nation v. United States*, 302 U.S. 620, 622.

Edgar E. Witt
Chief Commissioner

Concurring:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner