

BEFORE THE INDIAN CLAIMS COMMISSION

THE UINTAH UTE INDIANS OF UTAH,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 45
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 21, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Plaintiffs timely filed ^{1/} this claim pursuant to the Indian Claims Commission Act of August 13, 1946 (c. 959, 60 Stat. 1049, 25 U.S.C., Sec. 70), and asserted the claim as one arising (a) under the Constitution of the United States, or (b) from the taking by the United States of lands owned or occupied by the plaintiffs without the payment of compensation therefor, or (c) from unfair and dishonorable dealings on the part of defendant.

2. Plaintiffs are a band or group of American Indians commonly known and recognized by defendant as the Uintah Ute Indians who 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). (Pl. Exs. 1 and 2).

^{1/} The original petition was filed on January 14, 1949; an amended petition on October 12, 1949, and amendments to the amended petition to conform to the proofs were filed February 2, 1952, by leave of the Commission. The amendments have been placed on the amended petition by means of "pasters."

3. Prior to the coming of the white man, there commenced an amalgamation, merger, or coalescence of Ute groups (since collectively known as Uintahs, plaintiffs), which groups occupied an area wholly within what is the present State of Utah. That portion of plaintiffs who resided generally in the area of the Uintah Valley (the area subsequently established as the reservation involved herein) were called "Uintahs," those around Utah Lake "Timpanoags," or variations thereof, those around Sevier Lake, Corn Creek and Sevier River "Pahvants," those east of the Pahvants, in the area known today as San Pete County, Utah, as the "Sampitches." Another group of Utes known as "Seuvarits" seemed to roam in the area west of the Wasatch Mountains.

The process of amalgamation, merger or coalescence of these groupings was accelerated by the coming of the white man, and was wholly completed when, following the year 1864, plaintiffs were settled on what is now the Uintah and Ouray Reservation.

To the east of plaintiffs' original habitat, in the area which is now the State of Colorado, were other Ute Indians. In aboriginal times these Colorado Utes were divided into several groups or bands. Those occupying the area immediately east of plaintiffs were the White River Utes (designated Yampa, Grand River and Uintah Bands in the treaties and agreements between the Colorado Utes and the United States). (Pl. Ex. 339, p. 16). Those Utes occupying the area in Colorado to the south of the White River Utes were known as the Tabeguache, Muache, Weeminuche, and Capote Bands.

Pursuant to Article IV of the 1868 treaty negotiated with the Confederated Bands of Utes of Colorado (Fdg. 8, infra), the White River Utes were located on a reservation on the White River in Colorado. The Colorado Utes were distinct and separate from plaintiffs and did not permanently use or occupy any of the lands located in the area established as the Uintah Valley Reservation, now known as the Uintah and Ouray Indian Reservation.

4. By the Organic Act of September 9, 1850 (c. 51, 9 Stat. 453), the Territory of Utah was created, and was described (Section 1) as follows:

* * * all that part of the territory of United States
 * * * 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, * * *

Eleven years later, by the Organic Act of February 28, 1861 (c. 59, 12 Stat. 172), the Territory of Colorado was created, and was described (Section 1) as follows:

* * * commencing on the thirty-seventh parallel of north
 latitude, where the twenty-fifth meridian of longitude west
 from Washington crosses the same; thence north on said meri-
 dian to the forty-first parallel of north latitude; thence
 along said parallel west to the thirty-second meridian of
 longitude west of Washington; thence south on said meridian
 to the northern line of New Mexico; thence along the thirty-
 seventh parallel of north latitude to the place of beginning,
 * * *

As thus established, the Territory of Colorado included that part of what had previously been a portion of the Territory of Utah between the 109th meridian of longitude (approximately the present boundary

between the States of Utah and Colorado) and the summit of the Rocky Mountains. Colorado Territory did not include any of plaintiffs' original lands.

5. The first official Indian reservation in the Territory of Utah was established by Executive Order on October 3, 1861 (1 Kappler 900) as a reservation for Indians, as follows:

DEPARTMENT OF THE INTERIOR
Washington, October 3, 1861.

Sir: 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.

As thus originally established and as maintained until 1888, the reservation embraced an area of 2,487,474.83 acres. (Pl. Exs. 320, 321).

Until after 1864, and except as some of the plaintiffs may have continued to occupy it as part of their original habitat, no Indians were removed to the Uintah Valley pursuant to the 1861 Executive Order. This situation existed until additional steps were taken by defendant, subsequent to 1864, to remove plaintiffs to the reservation.

6. On May 5, 1864 (c. 77, 13 Stat. 63), Congress confirmed the Uintah Valley as a permanent reservation for those Indians of Utah Territory induced to inhabit the same, in the following language:

An Act to vacate and sell the present Indian Reservations in Utah Territory, and to settle the Indians of said Territory in the Uinta Valley.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be and he is hereby, authorized and required to cause the several Indian reservations heretofore made, or occupied as such, in the territory of Utah, excepting Uinta valley, to be surveyed into tracts or lots, not exceeding eighty acres each, under the direction of the commissioner of the general land-office, and upon the completion of such surveys shall cause said tracts or lots to be sold, upon sealed bids, to be duly invited by public advertisement, for a period not less than three months, in a newspaper of general circulation published in the territory of Utah, and also a newspaper published in Washington, to the highest and best bidder; said bids may be filed with the governor of said territory at the seat of government thereof, and with the Secretary of the Interior in Washington; such bids as may be received by said governor shall, without opening the same, be forwarded to the Secretary of the Interior, when the same, with the bids filed with him, shall be opened in the presence of the Secretary of the Interior, the commissioner of public lands, and the commissioner of Indian affairs, and any bidders who may choose to be present at the opening thereof; and the Secretary of the Interior shall apply the proceeds of such sales to the construction of improvements upon the reservations which may be established under the provisions of this act, or by other lawful authority, or to the purchase of stock, agricultural implements, or such other useful articles as to him may seem best adapted to the wants and requirements of the Indians: Provided, That no tract of land shall be sold under the provisions of this section for

less than its appraised value in cash, to be duly ascertained by commissioners appointed by the Secretary of the Interior for that purpose.

Sec. 2. And be it further enacted, That the superintendent of Indian affairs for the territory of Utah be, and he 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.

Sec. 3. And be it further enacted, That, for the purpose of making agricultural improvements in the Uinta valley for the comfort of the Indians who may inhabit the same, and to enable them to become self-sustaining by means of agriculture, there is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of thirty thousand dollars, which sum shall be expended by the superintendent of Indian affairs for said territory, under the instruction of the Secretary of the Interior.

The area established as a reservation under Section 2 of the above-cited act was the area previously set apart by the Executive Order of October 3, 1861. (Pl. Exs. 298, 321, Royce M. 1, area 431). The plaintiffs were the only Indians of Utah Territory induced to inhabit the reservation. The defendant made some efforts to encourage, or induce, other Indians (Paiutes and Shoshones) resident within the Territory of Utah to go to the reservation, but failed in its attempts.

7. Pursuant to authorization contained in the Act of February 23, 1865, c. 45, 13 Stat. 432, a treaty was negotiated with the plaintiffs which provided, inter alia, for establishment of the following reservation:

Art. 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. (V Kappler 695).

Following the Act of May 5, 1864, supra, and negotiation of the Treaty of 1865, the plaintiffs were induced to remove to and inhabit the Uintah Reservation. The foregoing treaty failed of ratification.

8. By the Treaty of March 2, 1868 (15 Stat. 619, II Kappler 990), negotiated in Washington, D. C., the United States agreed to establish, wholly within the Territory of Colorado, reservations for the use of the "Confederated Bands of Ute Indians." By Article III of that treaty, the Indian signatories relinquished all claims and rights in and to any portion of the United States or territories except such areas as were embraced within the limits of the reservation established by the treaty. Under Article IV of the treaty, it was provided that one reservation would be established for the Grand River, Yampa, and Uintah Bands on the White River, and one for the other bands at Rio de los Pinos.

At this same time, March 2, 1868, plaintiffs were living on the Uintah Reservation in Utah. They had not, and did not thereafter, assert any claim to lands in Colorado. No authorized representatives of

plaintiffs took part in the negotiations leading up to the execution of the 1868 Treaty. As originally concluded, it bore only the names of Utes of the various Colorado bands. When the treaty was considered by the Senate, an amendment, which did not relate to the land cession was appended. This was returned to the Indians for their approval and the amendment 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-nauch, and Yah-mah-na. None of those names appears on the treaty itself, and only two, Antro and Yahmahna, appear elsewhere in the evidence. Yahmahna was a White River Indian from Colorado and was not associated in any way with plaintiffs. Antro was a Uintah Ute from Utah, (Pl. Ex. 350, Trans. pp. 164, 187), but he was never a principal chief of plaintiffs, did not sign the Spanish Fork Treaty of 1865 and was never officially identified at any time above the station of "sub-chief."

It was clear to the government agents who negotiated the 1868 Treaty that plaintiffs were a separate and distinct group of Indians who were not involved in that treaty and had no interest therein.

Neither the plaintiffs nor the government officials in the Utah Superintendency, who had jurisdiction over plaintiffs, were consulted on negotiations leading up to the 1868 Treaty or the amendment thereto. Instructions on negotiation of the 1868 Treaty were sent only to Governor A. C. Hunt of Colorado Territory. (Pl. Exs. 164, 350). After the treaty was negotiated and the Senate had ratified it, as amended, the amendment,

with directions for presenting it to the Indians to obtain their agreement thereto, was sent only to the Governor of Colorado Territory.

(Pl. Exs. 170-1, 174). Only Colorado officials signed the certification of the treaty amendment. (Pl. Exs. 165, 180-A, p. 465).

9. At the time of and following the Treaty of 1868 with the Confederated Bands of Utes, officials of defendant understood that the Treaty of 1868 affected only the Colorado Utes and that the cession of lands in Article III did not relate to plaintiffs or to the lands they occupied. Both before and after the execution of the 1868 Treaty, the executive and legislative branches of defendant consistently and uniformly regarded plaintiffs as in rightful occupancy of the lands within the Uintah Valley Reservation in Utah. The Uintah Agency, in existence during and prior to 1868, has been maintained ever since. Following ratification of the 1868 Treaty, Congress continued to make appropriations for the Uintah Utes in Utah and to enact special legislation affecting the Uintah Reservation, whereas appropriations enacted pursuant to the 1868 Treaty were made and expended for the sole benefit of the Colorado Utes. (Pl. Ex. 339).

10. By an agreement approved by the Act of June 15, 1880 (c. 223, 21 Stat. 199) between the Confederated Bands of Ute Indians of Colorado and the defendant, it was provided that the White River Indians of Colorado should be removed to and settled upon the Uintah Valley Reservation in Utah. The pertinent provisions of the Act approving the agreement are:

The White River Utes agree to remove to and settle upon agricultural lands on the Uintah Reservation in Utah.

Allotments in severalty of said lands shall be made as follows: . . . /stating amounts of land to be given heads of families, single adults, orphans and minors/.

Sec. 2. That the President of the United States be, and he is hereby authorized and empowered to appoint, by and with the advise and consent of the Senate, five commissioners, . . . It shall be their duty to take a careful census of said Indians, separating them under said census as follows:

First. Those known in the agreement above referred to as Southern Utes.

Second. Those known as Uncompahgre Utes.

Third. Those known as White River Utes.

Said census shall also show . . . /details as to names and size of family, etc./ and they shall also select lands and allot them in severalty to said Indians, as herein provided, and superintend the removal, location, and settlement of the Indians thereon, and do and perform such other services as the Secretary of the Interior may consider necessary for them to do in the execution of the provisions of this act.

And . . . they shall make a full report of their proceedings to the Secretary of the Interior, which shall set forth, among other things, the name of each person to whom they may have apportioned and allotted lands as herein provided for . . .

Sec. 3. That the Secretary of the Interior be, and he is hereby, authorized to cause to be surveyed, under the direction of said commissioners, a sufficient quantity of land in the vicinities named in said agreement, to secure the settlement in severalty of said Indians as therein provided. And upon the completion of said survey and enumeration herein required, the said commissioners shall cause allotments of lands to be made to each and all of the said Indians, in quantity and character as set forth in the agreement above mentioned, and whenever the report and proceedings of said commissioners, as required by this act, are approved by the President of the United States, he shall cause patents to issue to each and every allottee for the lands so allotted, with the same conditions, restrictions and limitations mentioned therein as are provided in said agreement; and all the lands not so allotted, the title to which is,

by the said agreement of the confederated bands of the Ute Indians, and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States and subject to disposal under the laws providing for the disposal of the public lands, at the same price and on the same terms as other lands of like character, except as provided in this act: Provided, That none of said lands, whether mineral or otherwise, shall be liable to entry and settlement under the provisions of the homestead law; but shall be subject to cash entry only in accordance with existing law; and when sold the proceeds of said sale shall be first sacredly applied to reimbursing the United States for all sums paid out or set apart under this act by the government for the benefit of said Indians, and then to be applied in payment for the lands at one dollar and twenty-five cents per acre which may be ceded to them by the United States outside of their reservation, in pursuance of this agreement. And the remainder, if any, shall be deposited in the Treasury as now provided by law for the benefit of the said Indians, in the proportion hereinbefore stated,

11. Pursuant to the Act of June 15, 1880, supra, in or about August 1881, the White River Utes were removed by defendant from the White River Reservation in Colorado to the Uintah Valley Reservation in Utah.. The White Rivers have continued since that time to reside thereon and have been acknowledged by defendant as having an undivided interest with the plaintiffs in the use and occupancy of that reservation. Prior to the Act of June 15, 1880, the White River Utes had no interest whatsoever in the Uintah Reservation, and did not willingly settle thereon. (Pl. Exs. 271-2, 280).

The White River Indians were removed to the Uintah Reservation without the prior knowledge or consent of the plaintiffs. (Pl. Ex. 280). The plaintiffs were not a party to the 1880 Agreement (Pl. Ex. 289) and they did not consent to the settlement or allotment of the White River Indians on the Uintah Valley Reservation. (Pl. Exs. 284; 292, p. 201).

12. Plaintiffs have not been compensated by defendant for the undivided interest in the Uintah Reservation taken by defendant for the benefit of the White River Indians pursuant to the Agreement of 1880, supra.

13. The removal of the White River Utes by defendant under the Agreement of June 15, 1880, 21 Stat. 199, began in August 1881, and continued thereafter for two or three years until the number of White Rivers permanently settled on the reservation approximately equaled the number of Uintahs permanently residing thereon. So on the basis of the record we find that the White Rivers occupied an undivided one-half of the area of the reservation, or 1,243,737 acres as of August 15, 1882, to use a date that may fairly be considered midway between the time the White Rivers began to occupy the reservation and when their removal to it was probably completed.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner