

BEFORE THE INDIAN CLAIMS COMMISSION

THE DUWAMISH TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 109
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 25, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The claim in this case was filed by The Duwamish Tribe, petitioner, alleging that said tribe held, possessed and owned from time immemorial certain lands within what is now the State of Washington. The lands which petitioner allegedly held by original Indian title are a specified portion of a larger area ceded to the United States under the terms and provisions of the Treaty of January 22, 1855, 12 Stat. 927, commonly known as the Point Elliott treaty, and a small area of the lands ceded by the Treaty of September 26, 1854, 10 Stat. 1132.

2. The lands which petitioner claims to have held by original Indian title are located in the Puget Sound area of the State of Washington in the vicinity of Seattle and the Duwamish River and are described as follows (Amended Pet., Par. 4):

Commencing at a point two miles south of the town of Des Moines known as Washington State Park; thence to the northwest corner of the town of Kent; thence to the town of Kangley; thence to Little Lake which is about two miles northeast of the town of Grace; thence to the town of Grace; thence to the town of Edmonds; thence along the east shoreline of Puget Sound to the point of beginning.

3. (a) By Act of August 14, 1848 (9 Stat. 323), Congress created the Territory of Oregon within the area of which lived various Indian tribes and bands, including the Duwamish Indians. The Act made all land laws of the United States applicable to Oregon Territory, and in Section 1 provided that nothing therein contained "shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians * * *."

(b) By an Act dated June 5, 1850 (9 Stat. 437), Congress authorized the negotiation of treaties with the Indian tribes in the Territory of Oregon for the extinguishing of their claims to lands lying west of the Cascade Mountains.

(c) By the Act of March 2, 1853 (10 Stat. 172), Congress organized the Territory of Washington out of the north half of Oregon Territory, and by Section 12 of said Act provision was made that all laws of Congress relating to Oregon Territory, not inconsistent with said 1853 act, were continued in force in the newly created Washington Territory. Section 2 of the Act provided for the appointment of a Governor who was also to perform the duties of Superintendent of Indian Affairs in the Territory.

Historical

4. Apparently the first white contact made with the Indians of what is now the State of Washington occurred in 1592 when Juan de Fuca reached the Straits named after him. Captain George Vancouver visited the area in 1792 and the Hudsons Bay Company and the Northwest Company soon became active in the region. The report of Indian agent E. A. Starling

in 1852 appears to be the first to mention the Duwamish Indians. The agent listed them as the "Nee-wam-ish", located them on the "Nee-wam-ish river, bay, and vicinity" and estimated their number at 60 (Def. Ex. 199). Lieutenant De L. Floyd in 1853 reported the Duwamish to number about 60 and located them "on the Duwamish river and vicinity of the small town of Seattle." Jones also reported the Sah-ma-mish Tribe numbering about 100 in the "country bordering on a lake bet. Nee-wa-mish and Sno-he-mish rivers." (Def. Ex. 187).

5. On December 26, 1853, Isaac Stevens, the first Governor and ex-officio Superintendent of Indian Affairs of Washington Territory, wrote to the Commissioner of Indian Affairs suggesting the urgent necessity for making treaties immediately with the Indians west of the Cascade Mountains in Washington Territory. He pointed out that these tribes lived on different water courses or bays and inlets of Puget Sound, and they had selected spots that were their permanent homes which they wished to reserve, but would sell the rest of their lands to the whites.

By Act of July 31, 1854 (10 Stat. 315, 330) an appropriation was made by Congress for expenses of making treaties with the Indians in Washington Territory to extinguish their claim to lands. Thereafter, on August 30, 1854, the Acting Commissioner of Indian Affairs notified Governor Stevens of his official appointment to negotiate treaties with all tribes in Washington Territory by which the United States would extinguish their "claim of title" to all their lands, except such limited areas as might be assigned them for future occupancy. Stevens was also directed that in making the treaties he should endeavor to

unite the "numerous bands and fragments of tribes into tribes," and to furnish the Commissioner of Indian Affairs a skeleton map of Washington Territory, showing the location of the different tribes and bands, and the boundaries of the regions claimed by each.

In carrying out his duties as Superintendent of Indian Affairs, Governor Stevens had previously, on March 22, 1854, appointed Colonel Simmons as Indian Agent for the Puget Sound District wherein the claimed lands were located, and directed him to visit the various tribes in his District, make a census of the tribes and bands, ascertaining as nearly as possible the boundaries of the territory claimed by each, and at the same time organize the small bands into tribes and appoint chiefs for each.

6. Dr. George Gibbs who assisted Governor Stevens in arranging treaties with the Indians of Washington Territory reported on March 11, 1854, that (Def. Ex. 81):

March 11th the Indians were called together for a talk. There were present Potkanan with part of the Snoqualmoos and Seattle with those of the Duwamish in town, also George Seattle his son who is in effect chief of the Suquamish, his father's tribe proper * * *. * * * The following were then recognized as chief and sub chiefs of the Duwamish, Suquamish and other tribes connected with them. Seattle, head chief; Schwoo-yehim, or George Seattle; Sgoodahtl or Jake; Nah-wa-chais; Wil-lak or Jack; * * *

7. On September 16, 1854, Governor Stevens reported as follows to the Commissioner of Indian Affairs (Def. Ex. 11b):

One cause of the over-estimate so frequently made of Indians is their habit of moving about, gathering in bodies--one day at one place, and in another at the next--thus leaving the impression of great numbers in each.

* * *

Upon Puget's sound, and the inlets communicating with it, are several small bands, the remnants of once larger tribes, * * *

Of these the Squally-ah-mish or Nisqually, is the most numerous, * * *. To the north of this group another may be found of those inhabiting the shores of Admiralty inlet, from Pu-gal-lup river to Su-quamish Head, including Washon's and Bainbridge's islands, Port Orchard, Elliott bay, and Dwamish river and Port Madison. Most of them are nominally under a chief named Se-at-tle, belonging to the Lu-qua-mish tribe, but residing principally with another, the Dwamish. This last is the one called on the charts of Puget's sound the No-wa-mish; and it should be mentioned that a very considerable difference exists in the spelling of almost all the names, arising from the fact that several letters of their alphabet are convertible, as D and N, B and M, Q and G. For instance, the band are indifferently termed N'wa-mish and Dwa-mish; another clan of the same tribe, Sa-ma-mish, are also called Sa-ba-bish; and the name Suqua-mich is frequently changed into Luguamish. The Dwa-mish are the best known of this connexion from their neighborhood to the rising town named after their chief, Se-at-tle; and the whole generally bare this name, though they are by no means the most numerous. Their proper seat is the outlet of a large lake emptying into the Dwamish river, and not on the main branch. At that place they and some others have small patches of potato ground, amounting altogether to perhaps thirty acres, where it is stated they raised, during the last year, about three thousand bushels, or an average of one hundred bushels to the acre. Of these they sold a part, reserving the rest for their own consumption. Each head of a family plants his own; the quantity being regulated by the number of his women. Their potatoes are very fine, though they have used the same seed on the same ground for a succession of years. * * *

In this report (pages 457-458) in his "Estimate of Indian Tribes in Washington Territory west of the Cascade Mountains," he gave the following figures and information:

Names of tribes and bands	: Where located	:M: :a: :l: :e: :s:	W: o: m: e: n:	: : To- tal tribes
To-an-hooch.....	Hood's Canal	123	109	265
Sho-Komish.....	Hood's Canal, upper end	-	-	200
* * *				
Suqua-mish.....	Peninsula between Hood's and Admiralty Inlet	215	270	485
S'Ho-ma-mish.....	Washon's Island	16	15	33
Dwa-mish.....	Lake Fork, Duwamish river	89	73	162
Sa-ma-mish....)	Duwamish Lake, etc.	71	30	101
S'ke-tehl-mish)				

Smel-ka-mish.....	Head of White R.	8
Skope-ah-mish....	Head of Green R.	50
St-ka-mish.....	Main White River	<u>30</u>

351

8. Pursuant to the Act of July 31, 1854, supra, and the instructions of the Commissioner of Indian Affairs, Governor Stevens negotiated the treaty of January 22, 1855 (12 Stat. 927) between the United States and twenty-two named tribes "and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington * * *." The treaty, commonly referred to as the Point Elliott Treaty, was not ratified by the United States Senate until March 8, 1859, and was proclaimed April 11, 1859. The Dwamish, Sk-tahl-mish and Samahmish Indians were named in the treaty preamble as parties and some of the signatories are those of the Dwamish chief and sub-chiefs. No one signed as Sk-tahl-mish or Samahmish chiefs or sub-chiefs. By its terms the said tribes and bands ceded, relinquished and conveyed all their right, title and interest in and to a described area of land in northwest Washington Territory "occupied by them," reserving to themselves four small designated areas as reservation. The area ceded, which includes the claimed area, is shown as Tract 347 and the reserved areas as Tract Nos. 348, 349, 350 and 351 on Royce's Map 1 of the State of Washington. Since Article 15 of the treaty provided that the "treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States," the treaty did not become effective until March 8, 1859, the date the treaty was ratified by the Senate. See Bush v. The United States and Klickitat Indians, 29 C. Cls. 144.

9. On December 30, 1855, Agent M. T. Simmons reported as follows

(Def. Ex. 201, p. 2):

On the 28th inst I arrived at Seattle, at first found a strong determination among the Indians not to cross over to their reservation Port Madison to receive their goods. They were anxious to have them at Seattle. I informed them that they must go over or they should receive nothing. Finally they obeyed my wishes and those of their head chief. 29th arrived at the Duwamish and Suquamish reservations in Port Madison at the entrance to Agaline Passage. Here I found a large assemblage of their tribes. Here they have a large house said to of been put up by Chief Seattle some 40 years ago; it is 525 feet long, 60 feet wide, 18 feet high.

* * *

Simmons reported 737 Indians of both the Duwamish and Suquamish present with 70 absent.

10. Indian Agent D. S. Maynard reported as follows on September 17, 1856 (Def. Ex. 80, pp. 86-87):

On the 7th of November, 1855, I received an appointment over your signature to act as local Indian agent, to look after and take charge of the friendly Indians within the limits of the county of King, Washington Territory, embracing the Dwahmish, Gualtshkanam, chief, numbering about 312; the Tsa-bah-bish, Sah-wich-ol-gahdwh, chief, numbering about 64; the Ska-whamish Chatskanam, chief, numbering 16; and the Suquamish, numbering about 550; Seattle, Snow-chise, Chil-whale-ton, and Tswil-at-sap, chiefs, over whom Seattle usually presides as head chief in council; total number under my charge 942, of which about 434 were on the east side of the Sound, and 508 scattered upon the bays of the west side,-- with instructions to gather and rendezvous at the town of Seattle all friendly disposed among them residing on the east side of the Sound, and there so provide and care for them as to encourage them to remain neutral, if not really friendly.

* * *

On the 9th of November I started up the Dwahmish and Black Rivers, thence along the east coast of Lake Washington, among the settlements of the Skawahmish and the Tseh-bahbish tribes, and obtained a promise from Sawichol-gahdwh, the chief of the Tseh-bahbish, that they would come in and rendezvous with the others in a short time, as soon as Elk-klah-kum returned from a visit among the Klikatats, where they said he had gone to get blankets due him for a horse. I returned on the 13th with a

few families of the Dwahmish tribe, whom I found scattered on the banks of the Dwahmish and Black rivers. I was soon afterwards informed by the Indians in camp that Elk-klah-kum was among the Lake Indians at the time I visited them. I thereupon returned to them, when they made reply much as at first, and appeared uneasy about Elk-klah-kum. * * *

11. On September 26, 1856, Indian Agent G. A. Paige reported (Def. Ex. 80, pp. 82-83):

I have charge over two tribes, viz: the Suquamish or Seattle Tribe, belonging on the shores of the Sound, numbering 442, and the Duwamish tribe belonging to the river of the same name, as small portions of this latter tribe are from the vicinity of the lakes east of Seattle, and are called among themselves Tsah-bah-bobs, or Lake Indians.

Paige also reported he had moved the "Dwamish" tribe to the eastern shore of Bainbridge Island but only after much unwillingness on the part of the Indians and then to satisfy them he moved them to Holderness Point, on the west side of Elliott bay "this being a favorite fishing ground of theirs at certain seasons of the year." Paige was of the opinion that "the difficulties heretofore encountered in the management of this tribe, arise partly from their aversion to removing on to lands occupied by another tribe."

12. Indian Agent James H. Gouty reported on November 21, 1856, to Agent Paige as follows (Def. Ex. 202):

Maurer had a long talk with William at his camp on Black river and he says that he will not come down or will he let any of his people come back as long as he can stop them. * * * He says his people went to the west side of the sound last fall and they were promised to be feeded and they got nothing and came near starving to death and he has better preparations to live now can get plenty of salmon and can buy flour and the Snoqualmie Indians will furnish them with all the potatoes they want * * *. He says that none of the Duwamish tribe will cross the sound as it is not their land but the country on Black river is theirs and they will not sell it but they would live and die on it. * * * Maurer also says there is several families of the Snoqualmie tribe stopping at this camp of Williams and they have a good deal to say to the Indians to prevent their coming down here again.

Of the band of lake Indians he only saw one family but the other Indians told him that they with some others were stopping back on the lake some place. The number of the Duwamish tribe that he saw at this camp of Williams he thinks was about 150.

Indian Agent M. T. Simmons on October 21, 1856, reported the following Indian tribes and their numbers under the jurisdiction of the Fort Ketsap (Madison) reservation: Dwahmish, 312; Tshahbahbish, 64; Skaquahmish, 16; Suquamish, 550 (Def. Ex. 80). Agent Paige in 1857 wrote that the Duwamish Indians living on and claiming the land on the Duwamish river were in his charge and he urged a reservation be set aside for them on or near the "lake fork of the D'Wamish river." Paige stated, "This tract of land has been cultivated many years by them, * * *."

In 1860, Agent Simmons wrote that the Dwamish Indians were living on the river of that name which is formed by the junction of the White and Black rivers and he recommended a reservation be set aside for them (Def. Ex. 67). As late as August 1865, Agent S. D. Howe reported that "A portion of the Indians belonging to the Port Madison reservation now live on Black river, which was their place of residence at the time of the making of the treaty" (Def. Ex. 204). In 1877 Agent Mollett wrote that:

The reservations provided for in the treaty were located in the vicinity of the most numerous tribes. The Dughdwabsh, (D'wamish) tribe, with the subordinate tribes, viz, Swo-Kwabish, Sk-kabish, S'tsa-babsh, and Rha-cho-abish; the Etak-bush with its subordinate tribes, viz, S'yi-lal-ko-absh and St-ka-bish, were assigned to the Port Madison reservation.

Although the Duwamish were assigned to the Port Madison reservation the findings previously made show that the majority wanted to remain in their own country and today reside throughout the northwest with some descendants still living in the vicinity of their ancestral lands (Tr. 6-36; Def. Ex. 186).

Ethnological

13. Doctor George Gibbs (see Finding 6) in 1877 made a comprehensive report on the Puget Sound Indians although his data was obviously obtained during his presence in the Territory of Washington in 1853-55. He wrote (Def. Ex. 6, pp. 178-179) in part as follows:

There remains on these waters what may be termed the Niskwalli nation, which is thus divided, pursuing the geographical order:

1st. The Skokomish * * *

2d. The bands occupying Puget Sound and the inlets opening into it as far down as Point Pully. * * *

* * *

Below these is the division of which the Dwamish and Sukwamish are the principal bands, occupying Elliott Bay, Bainbridge Island, and a portion of the peninsula between Hood Canal and Admiralty Inlet. Their head chief is Se-aa-thl, or, as it is usually pronounced, Seattle, from whom the town on Elliott Bay has been named. In this connection are also the Samamish, Skopahmish, Sk'tealmish, St'kamish, and the other small bands lying upon the lakes and the branches of Dwamish River, who are claimed by the others as part of their tribe, but have in reality very little connection with them. A very few of these last possess horses, but the majority are river Indians. The aggregate number of the whole was by census 807, which probably falls a little short of the truth. They differ but slightly from the Niskwalli in language. These tribes were included with all the others of the eastern shore and the islands in the treaty of Mukletech, or Point Elliott. A reserve of two sections was retained for them at Port Madison.

14. In his "The North American Indian (1913)", Doctor Edward S. Curtis included under the Puget Sound Tribes the "Tdwabsh (Dwamish), the southern end of Lake Washington, the valley of Duwamish river, and the shore of Elliott Bay" and the "Sababsh (Samamish), the shore of Lake Sammamish and the eastern shore of Lake Washington." Doctors Herman Haerberlin and Erna Gunther in "The Indians of Puget Sound" (1930) reported:

The Duwamish (Duxuduwa'bc) lived about the present site of Seattle, their territory extending from the Muckleshoot lands in the south to the Suquamish territory in the north. They were also called Tanton Indians.

Doctor Frederick W. Hodge, (Handbook of American Indians, B.A.E. Bulletin 30, Part 2, 1910) states that the name Duwamish "being well known has been improperly applied collectively to a number of distinct bands in this neighborhood. Their population about 1856 is variously given from 64 to 312. The remnant is incorporated with the Snohomish and others under the Tulalip school, N. W. Wash., altogether numbering 465 in 1904."

15. In 1940, Doctor Marian W. Smith published her work "The Puyallup-Nisqually." In discussing the Duwamish Doctor Smith in her publication notes that most of the material presented with respect to these Indians was collected by Arthur C. Ballard, who appeared before this Commission as an expert for petitioner in this case. Doctor Smith wrote as follows (Def. Ex. 3):

Duwamish. * * * The drainage was divided into four sections each of which was named and each of which included one or more separate villages: (a) the river from its mouth up to and including the Black and Cedar Rivers, villages 1-9; (b) from where the Black River flows into the Duwamish to the junction of the White and Green Rivers, villages 10-11; (c) the Green River, villages 12-14 (Puyallup-Nisqually informants, however, tended to place village 12 with the White River people); and (d) the White River, village 15. The people of these four sections are called today the Duwamish. The "real" Duwamish were those of section (a), the tuduwabc. This name was also extended to include the people of section (b) and perhaps also those of the entire drainage, in accord with its present usage. The people of the Green River villages, section (c), were known collectively as the sqwapabc or Green River people. The Indians of Muckleshoot reservation, primarily the people of the White River, section (d), included also Green River groups and the South Prairie, Puyallup village. There seems little doubt that these represented a distinct division (see page 32). The Lake Washington peoples (16) were separate villages which were probably considered as distinct.

Doctor Smith had published "The Coast Salish of Puget Sound" in 1941 and wrote in part as follows (Def. Ex. 14, pp. 206, 207):

* * * for the sake of convenience, I have described extended villages as single territorial units: in these cases it must be understood that each of the villages listed had its own section of territory.
* * *

Duwamish

A. Duwamish or tuduwabc: Duwamish River, up to and including the Black River, and neighboring beach

B. Katilbabc: Cedar River

C. _____ White River from the mouth of Black River to its confluence with Green River

D. luwitabc: Eastern Lake Washington

E. _____ Western Lake Washington. These and the other people of the lake were sometimes called xatcoabc. "Lake people," a term similar to those of topographical meaning already listed.

F. Sammamish: Sammamish Lake and River.

16. Mr. A. C. Ballard, who has studied the Indians in the Puget Sound area since about 1910, appeared as an expert witness for petitioner. On a map (Pet. Ex. 7) Mr. Ballard marked some 18 village sites which he testified were within the area claimed by petitioner. The witness stated that a few of them were probably post treaty sites and that some of the sites were vacant at times. Witness Ballard was in doubt as to whether Sammamish Lake should be included in Duwamish or Snoqualmie territory but stated he would include the east shore of Lake Washington (Tr. 44). He included the Sammamish village at the north end of Lake Washington with the Duwamish as they "definitely had Duwamish affiliations. They were oriented toward the Duwamish," although he evidently was not sure of this connection and he was uncertain of Duwamish occupation of the territory between Lake Washington and Lake Sammamish. The witness did not locate any Duwamish villages east

of Lake Washington. (Tr. 46-48; Pet. Ex. 7). Doctor June McCormick Collins, anthropologist, also appeared as an expert witness for petitioner. Doctor Collins stated that in part her village sites on the map introduced into evidence (Pet. Ex. 9) are based on information received from Mr. Ballard as well as other sources (Tr. 6-11, Hearing, Seattle, Washington, August 12, 1953). This expert witness includes two villages on the eastern shore of Lake Washington not mentioned by Mr. Ballard. Doctor Carroll S. Riley, defendant's anthropologist, reported (Def. Ex. 1, page II-11) that "it is uncertain as to how many villages existed at treaty time for the population lists of early writers (the Handbook estimates 64 to 312) suggest that what was called Duwamish may have been one or at most two or three villages of Indians. The other villages noted for this area were either small autonomous units which died out or completely lost their identity in post-reservation times or they represent settlements deserted before the treaty period."

17. In aboriginal times village autonomy prevailed in the area claimed by petitioner, and since these Indians obtained a major part of their subsistence from the bays, streams, and lakes of the area where they lived, their villages were generally located on the lands adjacent to their main fishing places. These villages were also located to give the Indians access to other means of support needed to supplement the food obtained from the waters and large areas away from the villages were also utilized by the villagers for gathering of berries and roots and for fishing and hunting. In each of the several villages in part of the area claimed were concentrated Indians, sharing a common culture and common dialect, who were linked with the Indians of the other

villages of that part of the area by means of social and economic ties also. Even prior to the necessity of some semblance of political organization between these villages to permit them to deal with the agents and officers of the United States, they were known collectively as Duwamish because of the ties between the villages, and as such were an identifiable group historically. For the same reasons these villagers shared the gathering, hunting and fishing spots in the outlying contiguous areas distant from their villages. It is found, therefore, that petitioner's ancestors did exclusively use and occupy at least part of the lands within the area claimed.

18. That as of the date of the Treaty of January 22, 1855, there were a number of autonomous villages of Indians known collectively as Duwamish using and occupying land in the vicinity of the Black River at the southern end of Lake Washington and on the shores of the Duwamish River and Elliott Bay. That although the name Duwamish has been used at times ethnologically or historically to include other village groups such as the Samamish, and the Skopemish and Smulkamish (see Muckleshoot Tribe v. United States, 3 Ind. Cl. Comm. 658), the use of the word in such manner has been a geographic term. The group of villages that came to be known as the Duwamish Tribe were those which had their permanent camps in the vicinity of the lower end of Lake Washington and on the Black and Cedar Rivers near Renton. There is no substantial evidence to support a finding that petitioner is the successor in interest to the claims, if any, of the Samamish or St-kah-mish Indians.

19. The Commission finds that the petitioner, The Duwamish Tribe, is the successor in interest to those village-tribes which aboriginally used and occupied lands on the southern end of Lake Washington, the Black

Cedar and Duwamish rivers, and Elliott Bay; that these village-tribes composed the entity that was a party to the Treaty of January 22, 1855; that this entity was the Duwamish Tribe administered to by agents and officials of the United States following said treaty; and that descendants of said entity have continued to reside in and near the lands of their ancestors since said treaty and until the present time. The Commission finds therefore that petitioner is an identifiable tribe of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049), and as such is entitled to maintain this cause of action.

20. The Commission finally finds that the Duwamish Tribe, petitioner herein, held original Indian title as of the date of the Treaty of January 22, 1855, to the lands within the following boundaries:

Commencing at Point Pully on Puget Sound; thence north along the shoreline of said Sound to Fourmile Rock, north of Elliott Bay; thence in a direct line to the western shoreline of Lake Washington; thence south along the west shoreline of said Lake Washington to the entrance of May Creek on the southeastern side of said Lake; thence in a southeastwardly direction to the bend in the Cedar River just south of McDonald Lake; thence in a direct line to the place of beginning at Point Pully.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner