

and the other tribes, parties to said treaty, in the manner it did, acted unfairly and dishonorably and against the standards of equity and conscience.

The parties to this action entered into a stipulation which limits the present proceeding to a determination of the issues (a) whether petitioner has the capacity to maintain this action and (b) whether or not petitioner held original Indian title to the lands described in the petition at the date of taking (Tr. 2-A, 2-B, Hearing, Seattle, Washington, June 9, 10, 13, 1952).

Defendant contends that within the lands claimed to have been exclusively used and occupied by petitioner, there were aboriginally several autonomous, political, social, economic land-using units, one of which was the "Duwamish Tribe" and that this entity was the village near Renton, Washington, known as "Duwamish," "tuduwabc," "twabco" or "txwabgo." Defendant further contends that there is no evidence of a merger of the autonomous villages in the area prior to the date of taking and that there is no substantial evidence the petitioner Indians are successors in interest of any particular aboriginal tribe, tribes, band, bands, identifiable group, or identifiable groups of American Indians, or that they are the successors in interest of Indians signatory to the Point Elliott Treaty.

Defendant urges that the claim is barred by the decision of the Court of Claims in Duwamish Tribe v. United States, 79 C. Cls. 530. The Commission is of the opinion that the Duwamish case is not res adjudicata since that Court did not have jurisdiction under the jurisdictional act there involved to determine claims based on original

Indian title. See The Nocksack Tribe v. United States, 1 Ind. Cl. Comm. 333, Muckleshoot Tribe v. United States, 2 Ind. Cl. Comm. 424; Snohomish Tribe v. United States, 4 Ind. Cl. Comm. 549; and Suquamish Tribe v. United States, decided by the Commission this day.

Defendant further contends that the Commission inadvertently sustained petitioner's motion to amend its petition to include additional lands. In view of the decision herein made the contention need not be considered in this case.

Although the first white contact in the Puget Sound area in what is now the State of Washington came at an early period when Juan de Fuca in 1592 reached the Straits named after him, it was not until long after Vancouver's visit to the area in 1792 and the establishment of posts in that vicinity by the Hudsons Bay and Northwest Companies that the Duwamish Indians were first mentioned in historical accounts. Apparently the first mention appears in an account by Indian Agent Starling who in 1852 reported the "Nee-wam-ish" Indians on "Nee-wam-ish river, bay, and vicinity" and estimated their number at 60 (Fdg. 4).

In 1853 Congress organized the Territory of Washington out of the north half of Oregon Territory. Isaac Stevens was appointed Governor and ex-officio Superintendent of Indian Affairs for the new territory. Governor Stevens urged on the Commissioner of Indian Affairs the necessity of making treaties with the Indians in the territory west of the Cascade Mountains. Congress in 1854 appropriated money for the expenses of making such treaties and Stevens was appointed to negotiate with the Indians and instructed to try to unite the numerous bands and fragments of tribes in the territory into tribes and to obtain cessions of the

lands they claimed except for limited areas upon which they would be settled. Governor Stevens proceeded to have his assistants prepare the Indians for such negotiations and appointed chiefs for the tribes which were organized from the small groups or bands within the territory. (Figs. 3, 5, 6).

Governor Stevens reported in September 1854 to the Commissioner of Indian Affairs that the group of Indians inhabiting the shores of Admiralty Inlet, from Puyallup river to Suquamish Head, including Vashon and Bainbridge Islands, Elliott Bay and the Duwamish river were generally known by the name Duwamish although the Duwamish themselves were by no means the more numerous. Stevens stated that the proper seat of the Duwamish was at the outlet of a large lake (Lake Washington) emptying into the Duwamish river and not on the main branch of that river. Most of this Duwamish group, Stevens stated, were nominally under a chief named Seattle. Included within this grouping Stevens names the "Luqua-mish tribe" (Suquamish) and a "clan" of the Duwamish, the "Sa-mamish."

On January 22, 1855, a treaty was entered into between the United States with Governor Stevens as treaty commissioner and certain tribes and bands of Indians of Washington Territory represented by their chiefs and head men whereby a large amount of land in the Puget Sound area was ceded, relinquished and conveyed to the United States by the Indians, parties to the treaty. Among the parties named in the preamble to the treaty were the Duwamish, Suquamish, Sk-tahl-mish, Sam-ahmish, Smalhkamish, Skope-ahmish, and St-kah-mish. Seattle signed the treaty as chief of the Duwamish and Suquamish tribes and other signatories appear for the Duwamish

and Suquamish but none for the other parties mentioned above.

The Suquamish, party to said treaty, have been found to be an identifiable group of autonomous villages living on the peninsula between Hood Canal and Admiralty Inlet and their area of exclusive use and occupancy has been defined in this Commission's decision in Docket No. 132, this day decided. The Skope-ahmish were the Indians who lived on the upper Green River and the Smulkamish on the upper White River and these in more recent times have become known as the Muckleshoot Tribe (Muckleshoot Tribe v. United States, supra). The St-kah-mish were the Indians living on the lower White River and the Sa-ma-mish lived in the vicinity of Lake Sammamish. Although all of these have at times been grouped under the term Duwamish it is clear that they were all distinct groups and were so considered as separate entities at the time of the treaty of 1855.

The Duwamish proper were those who lived in the vicinity of the south end of Lake Washington and on the banks of the Black River. It was in this locale that agents of the Government reported many of them still residing following the treaty and it is the area that they reportedly considered their homeland and refused to leave to cross the sound to Port Madison reservation. As late as 1865 the Duwamish continued to live on the Black River and to claim this land and the lands on the Duwamish river and the Indian agents urged a reservation be set aside for them in that vicinity (Fdgs. 10, 11 and 12). No reservation was so set aside for them, however, and they continued to live in the vicinity of their ancestral home for years following the treaty. The evidence indicates that some of their descendants still do reside in the area.

It is difficult to ascertain from the evidence the exact number of villages the Duwamish proper had within the area claimed at the time of the 1855 treaty. There were apparently two or three permanent villages in the vicinity of Black River and the southern part of Lake Washington and either permanent or temporary sites at the mouth of the Duwamish River and on Elliott Bay.

The evidence in this case clearly is in line with the previous findings in Puget Sound cases, such as in the Muckleshoot, Nooksack, Snohomish, and Suquamish cases, supra, that village autonomy prevailed aboriginally in this region of what is now the State of Washington and that the village was the land-using unit. The villagers did have a feeling of ownership of the lands around their villages and the outlying areas contiguous to their villages were shared with other villages of their group for gathering, fishing and hunting. The Duwamish proper obtained much of their subsistence from the water and did raise large amounts of potatoes.

Although Doctor June M. Collins, petitioner's anthropologist, would include Samamish and Sk-tah--mish (lower White River Indians) territory within her Duwamish boundaries, the evidence will not sustain such an all-embracing application of the term Duwamish. Mr. Arthur C. Ballard, petitioner's other expert, who spent a lifetime studying the Indians of this area was not quite as certain that the Samamish should be included as part of the Duwamish Tribe although he believed that the Samamish village at the northern end of Lake Washington was "oriented" to the Duwamish and that the two "Sk-tah-mish" villages on White River were affiliated with the Duwamish. The evidence indicates that at the time

of the 1855 treaty the Samamish and Sktahmish were considered as distinct groups. There is no substantial evidence that there was a merger of these two entities with the Duwamish proper either before or after the treaty or that the petitioner, the Duwamish Tribe, is the successor in interest to the claims of the village-groups that were called Samamish and Sktah-mish.

This Commission concludes that there existed at the time of the Point Elliott Treaty in 1855 an identifiable group of autonomous villages with ties of kinship and having a common culture and common language exclusively using and occupying lands in the vicinity of the southern end of Lake Washington, the Black and Duwamish rivers, and Elliott Bay which composed the Duwamish proper and which came to be known to the agents and officials of the Government as the Duwamish Tribe. The Commission further concludes that the petitioner, The Duwamish Tribe, consists of descendants of said entity and as such has the capacity to maintain this claim.

The Commission, therefore, based on the findings of fact herein made, and all of the testimony and evidence of record, concludes that as of the date of the Treaty of January 22, 1855, petitioner's ancestors held original Indian title to the lands described in Finding 20, and that the United States acquired said Indian title to said lands on March 8, 1859, the effective date of the treaty. Such questions as the consideration paid to petitioner, the acreage and value of said

lands, and the rights of said petitioner or their ancestors acquired in such or other lands must await a further hearing and additional evidence.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner