

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 132

Decided: March 25, 1957

FINDINGS OF FACT

1. This cause came on for hearing at Seattle, Washington, at which hearing the parties stipulated that the cause would be tried on the limited issues raised by the defendant as to whether or not the petitioner has capacity to use, whether or not it exclusively used and occupied its claimed area of land in aboriginal times, and if so, whether or not the defendant unlawfully deprived petitioner thereof, postponing until after such determination, should such determination be favorable to petitioner, proof as to value thereof, the consideration defendant paid therefor, or as to any other questions of fact raised by the pleadings not herein or heretofore determined by the Commission.

2. The parties stipulated that each might use documentary evidence and testimony introduced in other cases of neighboring tribes of petitioner, such as that in Docket No. 46 and Docket No. 97, the same as if introduced in evidence in this case, such evidence to be carefully identified by reference in findings and briefs submitted by the parties.

3. The lands and appurtenances which petitioner claims to have held by original Indian title are set forth in the amended petition and are located in the northwestern part of the present State and former Territory of Washington, and are described as follows: (Amended Petition, Par. III).

That portion of the area described and ceded in the Point Elliott Treaty made at Muckilteo, Washington, January 22, 1855 (12 Stat. 927) lying on the west side of Puget Sound and more fully described as follows:

Commencing at Suquamish Head which is now known as Foulweather Bluff; thence southwesterly, through the Peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage (which is the narrow neck of land between the east toe of Hood's Canal and the north end of Gig Harbor); thence northeastwardly to Point Southworth; thence around along the eastward shore of Blake Island to Restoration Point at the southeast point of Bainbridge Island; thence along the eastward shore of Bainbridge Island to Point Monroe at the northeast end thereof; thence northeastward to Jefferson Head on the peninsula; thence northward along the east shore of the peninsula to the point of beginning.

4. (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 Suquamish 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 negotiations 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

5. Apparently the first white contact made with the Indians of what is now the State of Washington occurred in 1752 when Juan de Fuca, a Spanish captain, reached the straits named for him. Captain George Vancouver visited the area in 1792, and the Hudsons Bay Company soon became active in the region. In May of 1792, Vancouver explored Sinclair Inlet, and saw some unnamed Indians moving, presumably to a summer camp site (Dft. Ex. 1a, p. II-1). In 1824, the explorer John Work wrote "We stopped at the Socuamis village situated in the bay [apparently Port Madison] of the same name, it consists of 4 houses. We saw only 8 or ten men, but understand several of the inhabitants were off fishing." (Dft. Ex. 161, pp. 213, 225). Captain Charles Wilkes, who headed the United States Exploring Expedition through the Northwest Coast through 1838-1842, reported "On entering the canal [Hood Canal], they encamped near some Suquamish Indians, who had received as visitors a party of 50 Clallams * * * after leaving the Suquamish, they met the Toandos, a small tribe inhabiting the mountains * * *" (Dft. Ex. 29, pp. 410, 411). Wilkes also reported (Dft. Ex. 29, p. 510):

The Indians frequenting this port [Port Orchard] called themselves of the Je-ach-tac tribe ... The Indians from various parts of Admiralty Inlet...were found to occupy various points, each tribe keeping distinct. Their names were, the Scocomish, Suquamish, Clalams, and Sachets, who live in harmony with each other...

Wilkes' map of Washington shows the name "Nisqually" in the areas claimed (Dft. Ex. 112). His census report noted: "Hoods Canal (Suquamish and Toanda Tribes) * * * 500 * * * Skwale or Nisqually * * * 600 * * * between Fort Neesqually and Frasers River--Sukames, Susrahumes * * *" (Dft. Exs. 133, pp. 7-8; 21, pp. 220-221; 11b, p. 459).

6. Missionary Francis N. Blanchet probably referred to "Suquamish" Indians when, in 1840, he mentioned Sockwamish Indians headed by Tslalakom, attending a meeting on Widbey's Island with various other Indians (Dft. Ex. 1a, p. II-1). Thomas J. Farman, writing in the 1840's, noted: "Hood's Canal (Suquamish and Toando [Twana] tribe)" and gave a combined population of 500 (Dft. Ex. 1a, pp. II-1-2). In 1844, W. F. Tolmie, of the Hudsons Bay Company, made a census report in which he listed "Suquamish" Indians with a population of 525 (Dft. Ex. 11b, p. 463). He apparently included the Duwamish River Indians in this total.

7. On October 13, 1849, Joseph Lane, Superintendent of Indian Affairs, Oregon Territory, reported (Dft. Ex. 131, p. 173):

The Snoquamish Indians occupy the country about Port Orchard, west side of Whidby Island. Total number about 300; well disposed; live by fishing and labor; they have a few horses.

Agent E. A. Starling reported, in 1852, that the "Tuancoch" were located at the mouth of Hood Canal and their "supposed number" was "150." He located the "Skokomish" at the head of Hood's Canal with a supposed

population of "150", and he placed the "Snoquamish" at "Port Orchard, Elliots bay, and vicinity" and noted their "supposed number" at "400" (Dft. Ex. 199, p. 460). In May of 1853, General A. V. Kautz wrote (Dft. Ex. 84, pp. 181-184): "A fair wind carried us a mile beyond Point no Point * * * some Snoqualmie Indians who had come from Hood's Canal visited us * * * a large number of the Suquamish Indians engaged in gathering camas were encamped on the bay [Admiralty bay]." A map apparently made by George Gibbs in 1853-1854, shows the name "Suquamish" between a point near Camp Union and a point south of Port Gamble.

8. On September 1, 1853, Lieutenant De L. Floyd Jones reported the "Snoquamish," with a "supposed number" of "30 or 40," were located at "Port Orchard, Elliot's bay and vicinity." He noted the "Snoshomish and Tuanocch," with a population of "300," at the "head of Hood's canal" (Dft. Ex. 187, p. 5). Jones stated "In locating the tribe, I have taken that point at which they made their winter quarters; for in the summer they have no permanent location but travel from point to point, stopping at those places which furnish them most readily the necessary supply of food." (p. 6). He also noted that "each family uses about one-quarter of an acre of ground" for potatoes (p. 7), and that they reside "upon the water" and depend "almost entirely upon its products for their subsistence" (p. 9). On March 11, 1854, Dr. George Gibbs reported (Dft. Ex. 81, pp. 20, 22) that he had recognized certain Indians as chiefs and subchiefs and stated: "There were present Potkanan with part of the Snoqualmcoos and Seattle with those of the Dwamish in town, also George Seattle his son who is in effect chief of the Suguamish, his father's tribe proper * * *."

9. Governor I. I. Stevens, who was also Superintendent of Indian Affairs for Washington Territory, on September 16, 1854, reported (Dft. Ex. 11b, p. 453):

To the north of this [Nisqually] group another may be found of those inhabiting the shores of Admiralty inlet, from Pu-gal-lup river to Su-quamish Head, including Vashon's and Bainbridge's islands, Port Orchard, Elliott bay, and Dwamish river and Port Madison. Most of them are nominally under a chief named Seattle, belonging to the Lu-qua-mish tribe, but residing principally with another, the Dwamish. * * * another clan of the same tribe, the Sa-ma-mish, are also called Sa-ba-bish and the name Suqua-mich is frequently changed into Lugua-mish. 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 * * *.

Stevens located the Suquamish on the "Peninsula between Hood's Canal and Admiralty Inlet" and estimated these Indians at 485 people. The Governor also located the S'Ho'ma'mish on Vashon's Island and estimated them at 33 persons.

10. Stevens' map of September 16, 1854, shows the word "Nisqually" over a large area including many other names, among which appears the word "Suquamish" east of Hood Canal between Seabeck or Crosby and the head of Port Gamble (Dft. Ex. 105). On December 30, 1854, Stevens reported that "whilst" the Indians "cultivated small patches of potatoes, their principal food is fish and roots and berries * * *" (Dft. Ex. 200). He also noted that the Indians of the islands and the eastern shore of the Sound raised 6,400 bushels of potatoes. A map apparently

made in the summer of 1855, by Captain George Stoneman and 1st Lt. W. H. C. Whiting, engineers, shows the "Suquamish Tribe" in an area northeast of Port Gamble and also in an area between Seabeck and Silverdale; Bainbridge Island bears the names "Duamish [Duwamish] and Sub-aumish [Su"]; south of Port Gamble and just west of the Port Madison Reservation appear the words "Dwamish Tribe."

11. 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.

12. 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 Suquamish Tribe of Indians was named in the treaty preamble as a party and seven of the eighty-two signatures are those of the Suquamish chief and 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.

13. During the period between the execution of the Point Elliott Treaty in 1855 and its ratification in 1859, the Suquamish Indians were placed under the charge of the Indian agents on the Port Madison Reservation at Suquamish, Washington, along with the Duwamish Indians.

14. On December 30, 1855, Agent M. T. Simmons reported (Dft. Ex. 201, p. 2):

29th arrived at the Duwamish & Squamish 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 have been put up by Chief Seattle some 40 years ago. It is 525 feet long, 60 feet wide, 18 feet high. On the post are carved imitations of the human figure. Had the Indians arranged in files, then counted them, there being 51 old and 176 young men, 68 old and 181 young women, 85 boys, 80 girls, 38 male and 58 female babies.

A map apparently made by Lt. G. H. Mendell, a topographical engineer, and Dr. George Gibbs, in 1856, bears the name "Suquamish" between a point near Keyport and a point near Sheridan.

15. On March 3, 1856, Mr. H. H. Tobin reported that he had removed 150 Indians from the Seattle area "to a small bay selected by themselves situated on the east side of Bainbridge Island about 3 miles from its head, at what is known as 'Baun's Point'" (Dft. Ex. 81, p. 32). Agent D. S. Maynard reported on September 17, 1856, that he had taken charge

of the "Suquamish," numbering about 500 (Dft. Ex. 80, pp. 86-88). On September 26, 1856, Indian Agent G. A. Paige reported that he had charge "over the Suquamish or Seattle Tribe belonging on the shores of the Sound, numbering 442 * * * of this tribe there are some 6 families, in all about 40 persons living in the vicinity of Port Orchard Mills, some 10 miles from this place, who, having refused to move into this reservation are not included in the census" (Dft. Ex. 80, pp. 82-83). Agent M. T. Simmons gave the following census as of October 21, 1856 (Dft. Ex. 80, p. 70):

<u>Names of Indian Tribes</u>	<u>Census of Tribes</u>	<u>Names of Reservations</u>
Dwahmish.....	312)	
Tsahbahbish.....	64)	
Skaquahmish.....	16)	Fort Ketsap
Suquamish.....	550)	

On December 29, 1856, Simmons reported that he had distributed goods to Indians at the "Fort Ket-Sap Reservation" and that "Seattle and Nowchise, the head chiefs of the Suquamish and D'Wahmish Tribes were present at the distribution" (R. 758, Duwamish No. F-275). On December 30, 1856, Governor I. I. Stevens published a map which shows the word "Nisqually" over a large area including many other names, among which appears the name "Suquamish" east of Hood Canal between Seabeck and the head of Port Gamble (Dft. Ex. 114). In March or April 1857, Stevens published a map which has the word "Suquamish" between a point north of the town of Silverdale on Kitsap Peninsula and a point north of Ferncliff on Bainbridge Island (Dft. Ex. 111).

16. Agent Paige reported from the Fort Kitsap or Port Madison Reservation on March 31, 1857, that the Suquamish "are all either on or in the

immediate vicinity of the reservation (Dft. Ex. 167, p. 5). On June 30, 1857, Paige reported from the Port Madison Reservation that he had 750 Indians "one band of about 450 being encamped at this place and the remainder * * * near the mouth of the Duwamish River" (Dft. Ex. 202, p. 6). Agent Simmons reported on July 1, 1857, that the "Snchomishes inhabit the country around Seattle" (Dft. Ex. 66, p. 620). Agent Paige reported on August 1, 1857, that "The Suquamish * * * claim all the land lying on the west side of the Sound, between Apple Tree Cove on the north, and Gig Harbor on the south" (Dft. Ex. 66, page 617). He noted that the "Duwamish" and "Suquamish" Indians were "intermarried, and frequently visited one another, and from their proximity are frequently thrown together."

Ethnological

17. Apparently the earliest ethnological work relating to western Washington was done by Horatio Hale, the philologist with the United States Exploring Expedition in 1838-1842 (Dft. Ex. 21). Hale obtained the name "Sukwames" from a Canadian trapper who located them north of Fort Nisqually (pp. 220, 221). Hale's maps designate the areas claimed as "Skwale" or "Nisqually" and the word "Suquamish" does not appear thereon (Dft. Exs. 112; 192).

18. In 1851-1857, Dr. Henry R. Schoolcraft located a "Loquamish" Tribe on "Hoods reef" with a population of 485; a "Toanhooch" Tribe on "Hod's Hood canal" with a population of 245, and a "Shokomish" Tribe with a population of 200 also on "Hod's Hood canal" (Dft. Ex. 170, pp. 490-491). As cited by Schoolcraft, Achilles de Harley reported

that "The Noostlalums consisted of 11 tribes or Septs living about the entrance of Hoods Canal * * * the Soquamish * * * occupied the country about Port Orchard and neighborhood, and the west side of Whitbey's Island * * * total 519 * * * the Tuanoh and Skokomish Tribes reside along the shores of Hoods Canal" (Dft. Ex. 170, pp. 700-701).

19. Dr. George Gibbs, in 1854, includes within one group the Indians "inhabiting the shores of Admiralty Inlet from Puyallup River to Suquamish head, including Vashores [Vashon] and Bainbridge Islands, Port Orchard, Elliot Bay and the D'Wamish River and Port Madison." He notes that "Most of them are nominally under a chief named Seattle, belonging to the Suquamish Tribe, but residing principally with another the D'Wamish." In his census, Gibbs, shows the "Toanhooh" on "Hoods Canal" with a population of 265; the "Skokomish" on "Hoods Canal--upper end," with a population of 200 and the "Suquamish" on the "Peninsula between Hoods Canal and Admiralty Inlet" with a population of 485 (Dft. Ex. 189, p. 465). A map dated 1856, apparently drawn by George Gibbs, bears the name "Suquamish" between a point on Kitsap Peninsula about one mile north of Silverdale and a point on Bainbridge Island about one mile north of Ferncliff (Dft. Ex. 176).

20. The W. H. Dall map, based upon the work of Dr. George Gibbs, which was published in 1876, does not show the name "Suquamish" in the areas claimed, but shows the following names in said areas: "Skwawksnamish," "Dwamish" and "Tsemakum" (Dft. Ex. 193). In 1877, Gibbs makes a division (Dft. Ex. 6, p. 179) of which the "Dwamish and Sukwamish are the principal bands, occupying Elliott Bay, Bainbridge Island, and a portion of the

