

BEFORE THE INDIAN CLAIMS COMMISSION

THE KOCTENAI TRIBE OR BAND OF)
 INDIANS OF THE STATE OF IDAHO,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 154

Decided: August 9, 1957

FINDINGS OF FACT

Preliminary Statement

By the agreement of counsel and the direction of the Commission the initial hearing in this cause is confined to the issues: (1) the identity of the petitioner and its right to assert the claim set forth in the amended petition; (2) the lands which the petitioner occupied and used at the time they were appropriated by the United States; and (3) the date on which the lands were taken by defendant.

The defendant does not question the identity of the tribal claimant or that it has the right to assert the claim. And as to the lands involved, the main contention of the defendant is as to the extent of the area the petitioner claims to have aboriginally used and occupied.

The Commission makes the following findings of fact:

1. Petitioner is an identifiable band or group of Indians within the territorial limits of the United States with the capacity and authority to maintain this action under Section 2 of the Indian Claims Commission Act (60 Stat. 1049). ^{1/}

^{1/} T. 595, 598

2. The Kootenai, or Kutenai, Indians were composed of several bands, or tribes, politically independent of each other. Culturally, these bands are divided into two groups--the Upper and Lower Kootenai. The Upper Kootenai were those eastern bands living near the western face of the Rocky Mountains and these were more under the influence of the Bison hunt and other plains traits. The Lower Kootenai lived on the lower reaches of the Kootenay River, subsisted more on fish, were a canoe people and seldom participated in hunting the buffalo.^{2/} Schaeffer states that aboriginally the Upper Kootenai consisted of seven groups, the agiskanakinek (Windemere, British Columbia), the agamnek (Ft. Steel, B. C.), the gakawakamitukinik (Plains Kutenai, Alberta, Canada), the agukuatsukinik (Tweek-Warland, Montana) and the agiyinik (Jennings, Montana). Schaeffer also lists three groups of Lower Kootenai, the yakokwanik, the hatsalnik and the agakawukinik.^{3/}

3. The Lower Kootenai group was composed of two and possibly three separate distinct and independent bands, i.e., the Bonners Ferry Kootenai, the Creston, British Columbia Band and possibly the Nelson Band, which held lands aboriginally independently of each other. The only Lower Kootenai band holding lands in the United States was the Bonners Ferry Band, petitioners in this case, and this band was independent and

^{2/} Pet. Ex. 33

^{3/} Pet. Ex. 34; Def. Exhibits 37-41; (Dr. Claude E. Schaeffer, anthropologist, now curator of the museum of the Plains Indians at Browning, Montana, and employed by the Bureau of Indian Affairs, Dept. of the Interior; his deposition is Pet. Ex. 62-A; Compare Pet. Exs. 26, 27, 32.

separate from any of the bands within the cultural group known as the Upper Kootenai. 4/

4. The Kootenai Indians have also been known as the Kutenai, the Flatbows, Lakes, Au Platte, Arcs-a-Plats, and Skalzi. The names Flatbows, Lake, Au Plattes and Arcs-a-plats were appellations applied to the Lower Kootenai as distinguished from the Upper Kootenai. 5/

5. The first known white contact with the Kootenai Indians was made in 1808 or 1809 when David Thompson, a fur trader, of the Northwest Company came upon a camp of Kootenai and Flatbow Indians at Bonners Ferry, in what is now the State of Idaho. 6/ In 1811, Alexander Henry, the younger, who also worked for the Northwest Company, wrote that the Flat Bow frequently came up the Kootenay River as far as the Falls (on the Montana-Idaho border) but seldom attempted to proceed farther. Henry stated the Flat Bows or Lake Indians dwelt on the borders of Kootenay Lake. 7/ John Work, a trader for the Hudson's Bay Company, in 1825, mentions the Au Plattes (the Au Platte Portage was between Pend d'Oreille Lake north to Bonners Ferry), and of furs being received from the Indians at Bonners Ferry and narrates his attempt to set up a trading post at Kootenay Falls to serve both the Au Plattes (Lower Kootenai) and the Kootenai proper (Upper Kootenai). 8/ Work believed the Kootenai to

4/ Pet. Ex. 62-A, pp. 94-96; Pet. Ex. 33 (Turney-High)

5/ Pet. Exhibits 16, 17, 18, 19, 23; T. 447-475

6/ Pet. Exhibit 16

7/ Pet. Ex. 18; T. 454

8/ Pet. Ex. 19, 20, 21, 22

consist of two tribes, the Silagwilguc (Flat Bows) and the Callescuik. ^{9/}
 Beside the fur traders the Kootenai Indians were found in the region of Kootenai River by the missionaries. Father de Smet visited not only the Upper Kootenai but also the Lower Kootenai in about 1846. Father de Smet wrote of his journey to visit the Arcs-a-plats (Lower Kootenai) on the Kootenay River. This missionary reported "The Flatbows and Kootenais now form one tribe, divided into two branches. They are known throughout the country by the appellation of the Skalzi." ^{10/}

6. The Bonners Ferry Kootenai was a sedentary band of about 350 persons with permanent villages within their territory. These Indians gained their sustenance mainly from fishing although other activities such as berry picking, hunting, trapping and root digging were also necessary to supply their needs. In their quest for food the Indians scoured their territory making temporary camps at the sites where the seasonal activity was to take place. In many of these food-gathering activities the Bonners Ferry Kootenai participated only in family groups while in others most of the band were so engaged such as in the communal winter hunts and deer drives. ^{11/}

7. (a) The Act of July 31, 1854, 10 Stat. 315, 329-330, authorized the negotiation of treaties with Indian Tribes in the Territory of Washington.

^{9/} Pet. Ex. 21

^{10/} Pet. Ex. 23; see also Pet. Ex. 22

^{11/} Pet. Ex. 62-A, pp. 61, 62, 78-86, 95, 96

On August 30, 1854, the Commissioner of Indian Affairs by letter of that date, notified Isaac Stevens of his appointment to conduct the negotiations for treaties with the Indians in said territory and he was instructed with respect thereto as follows:

It is the expectation of the Department that the sum appropriated, will prove sufficient to defray all expenses incurred in and incident to making conventional arrangements designed to be permanent, with all the Tribes and fragments of Tribes within your Superintendency, by which the United States will extinguish their claim of title to all the lands within the Territory, excepting such limited districts as it may be necessary to assign them for their occupancy in future; * * *

(b) On July 16, 1855, at Hell Gate, Montana, Isaac Stevens of Washington Territory, concluded a treaty with the confederated tribes of the Flathead, Kootenai and Upper Pend d'Oreilles Indians. By Article 1 of said treaty (12 Stat. 975, II Kapp. 722) the Indians, parties to the treaty, ceded, relinquished and conveyed to the United States all their right, title and interest in and to the country occupied or claimed by them and described as follows: (Royce Cession No. 373)

Commencing on the main ridge of the Rocky Mountains at the forty-ninth (49th) parallel of latitude, thence westwardly on that parallel to the divide between the Flat-bow or Kootenay River and Clarke's Fork, thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude, (115°) thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to the divide between the head-waters of the Koos-koos-kee River and of their southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

Article 12 of said treaty reads:

This treaty shall be obligatory upon the contracting

parties as soon as the same shall be ratified by the President and Senate of the United States.

The Senate ratified said treaty by resolution on March 8, 1859, and it was proclaimed by the President on April 18, 1859.

The lands so ceded in the northwestern part of the cession included the lands claimed by petitioner herein to have been exclusively used and occupied by the Bonners Ferry Kutenai and the Bonners Ferry Band was not a party to or represented in the treaty of July 16, 1855.^{12/} Although government officials later recognized the fact that no treaty had ever been made with the Bonners Ferry Band of northern Idaho, no action was ever taken to compensate said Indians for the loss of their lands.^{13/} There is no evidence that the Government in later years made allotments of some of the lands within the area claimed by petitioner to some Bonners Ferry Indian families.^{14/}

8. The Commission, based upon all of the evidence and testimony of record, finds that the Bonners Ferry Band (now known as the Kootenai tribe or band of Indians of the State of Idaho) has by substantial evidence proven that it aboriginally exclusively used and occupied the following described lands within the present states of Idaho and Montana:

Beginning on the northwest on the International Boundary at the crest of the Selkirk Mountains and running along the crest of said mountains in a southeasterly direction to the headwaters of Ross Creek, thence in a northeasterly direction

^{12/} T. 257 (Defendant's counsel so stipulates).

^{13/} Pet. Exhibits 39, 43-46; T. 511-517

^{14/} T. 525, 526

along the crest of the mountains between Ross Creek and Bull River to the crest between Bull River and Libby Creek, thence along said crest to Kootenay Falls, thence in a direct northerly direction to the International Boundary, thence westerly along said boundary to the point of beginning.

The boundaries of the area found to be exclusively used and occupied by the Bonners Ferry Kootenai are the same as are depicted on Petitioner's Exhibit 7, with the exception of the eastern boundary which is changed to run directly north from Kootenay Falls to the International Boundary. There is evidence to the effect that the Upper Kootenai (Tobacco Plains) also hunted in the Yaak River valley. ^{15/}

9. The Indian title to the lands described in Finding 8 was acquired by defendant under and by virtue of the treaty of July 16, 1855, and the defendant has never compensated the petitioner, its members or the ancestors of its members for the value thereof.

^{15/} Pet. Ex. 62-A - Schaeffer deposition - p. 104. He testified that the Tobacco Plains Kootenai hunted in the Yaak River valley and that he did not know what the division line between them and the Bonners Ferry Band was. Ethnologist Turney-High (Pet. Ex. 33) wrote that the dividing line between the Upper and Lower Kootenai would be a broad and somewhat vague and wavy belt passing north and south through about Libby, Montana. Defendant's ethnologist Forbis also points out, Def. Ex. 54, p. 7, that the Upper Kootenai also "utilized the Yaak River Valley, the upper reaches of it being rich in deer, caribou, and elk." See Pet. Ex. 62.

10. We, accordingly, find that the defendant is liable to petitioner for the value of the lands within the boundaries described in Finding No. 8, such value to be determined as of March 8, 1859.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner