

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAN JUAN TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 214
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 30, 1957

Appearances:

Warren J. Gilbert, Frederick
W. Post, Harwood Bannister
and Malcolm S. McLeod,
Attorneys for Petitioner.

Donald R. Marshall with whom
was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

Petitioners herein, The San Juan Tribe of Indians, allege aboriginal possession of an area of approximately 120,000 acres of land. Said land comprises the county of San Juan in the present State of Washington. Petitioners further allege that they are a tribal organization recognized by the Secretary of the Interior and as such recognized group are entitled to pursue this claim under Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

They are claiming damages in the amount of \$3,000,000 for the deprivation of their alleged area without benefit of treaty and an additional

\$1,000,000 for failure to provide each of the 250 members of the tribe with an allotment of 80 acres of land, which they allege defendant should have done because the course of dealing between various Indian tribes and defendant lead the Indians to so believe. They cite the 6th Article of the Treaty of Omaha (10 Stat. 1043) of March 16, 1854, which was cited in Article 7 of the Point Elliott Treaty of January 22, 1855, as authority for such belief. Petitioner cites the whole of Section 2 of the Act as grounds of suit but appears to rely primarily on Section 2(5).

At the outset of this case and that of the Lummi Tribe, Docket No. 110, petitioners moved the Commission to consolidate the two dockets for the purpose of trial. This motion was granted and the cases were heard together. The evidence introduced was made applicable to both cases and has been considered in that manner.

At the conclusion of petitioner's evidence, defendant moved the Commission for a dismissal of the claim of the San Juan Indians based upon the fact that the evidence showed that no such aboriginal entity as the San Juan Tribe existed and therefore could have no descendants or successors in interest with a right to prosecute a claim (Tr. pp. 280-282).

Since this question will be decided on the motion made by defendant it is not necessary to go into any other phase of the defense.

It seems to be almost indisputable that the San Juan Indians did not exist as an aboriginal tribe, band, or group. They are shown by the evidence to be descendants of various groups, most probably of the Samish and Lummi Indians. Accepting, arguendo, that the present group might be considered as an identifiable group for the purpose of suit

under the Indian Claims Commission Act, it is nevertheless an inescapable fact that without having ancestors who composed a single identifiable group with a claim for a definable area, there is no way in which the San Juan Indians can recover. You cannot assert a claim for that which never existed. Under the circumstances which did exist, as shown by the evidence, it is apparent that the San Juan Indians are asserting not one, but at least two different claims under the Indian Claims Commission Act. These are claims which most probably should be asserted by the Lummi Tribe and the Samish Tribe. That is exactly what is being done in this instance. The Lummi have a claim in Docket No. 110 which overlaps about 75% of the area claimed by the San Juan Tribe (Tr. 2, p. 45). The Samish have a claim pending for land in the same area in Docket No. 261. Those members of the San Juan Tribe who are descendants of either of these groups will be eligible to participate in whatever recovery may be had by the respective tribes.

As stated by the Court of Claims in the case of Duwamish, et al., vs. The United States, 79 C. Cls. 530, to which the San Juan Indians were a party:

* * * However, if we are not correct, the record does disclose such a preponderant doubt as to tribal status of these Indians that we would be unable to find that they constituted what was known as a separate and distinct Indian tribe, but acquired a name due more to location of their villages upon the San Juan Islands, in association with other tribes of the same locality, and it is not disputed that the San Juan Islands were within the territory ceded to the United States in the Point Elliott Treaty of 1855. We think the claim is without merit.

This Commission has this day rendered an opinion in the Consolidated case of The Lummi Tribe of Indians vs. The United States, Docket No. 110,

in which the claim of the Lummi Indians to a part of the San Juan Islands was upheld. The ethnological and historical evidence in that case was sufficient to convince this Commission of the merit of the claim to the islands of Lummi, Orcas, and Shaw. At the same time that evidence, which was also a part of this case failed to show any indication of an aboriginal entity on the San Juan Islands which was known as the San Juan Tribe of Indians. We have no doubt that the San Juan Indians are for the most part the descendants of Indians who lived in the area aboriginally. There is no affirmative proof as to which of the several groups they may have belonged to and it is quite possible that some of the present San Juan Indians are descendants of tribes that lived on the Canadian side of the Puget Sound at the time the Treaty of Point Elliott was negotiated on January 22, 1855 (12 Stat. 927).

It is the opinion of this Commission that petitioners have failed to establish that they are the descendants and successors in interest of a tribe or group which existed at the time of the negotiation of the Point Elliott Treaty of January 22, 1855, and which had used and occupied a definable area of land from time immemorial until that date. (See the Suiattle-Sauk Tribe of Indians vs. The United States, 2 Ind. Cls. Comm. 324; aff'd., 133 C. Cls. 57).

Attention is called to the fact that there is filed only one proposed findings of fact in the consolidated cases, Dockets No. 110 and No. 214; that this pleading is signed only by Frederick W. Post, who is an Attorney of Record only in Docket No. 110, but he also appears as one of the attorneys for petitioners in Docket No. 214, and that in the said proposed

findings of fact (Finding 21) it is recited that "The so-called San Juan Tribe of Indians * * * is composed of descendants of members of the Lummi Tribe, Samish Tribe and perhaps other tribes;" and it is stated in proposed Findings 22 and 23 that the members of the San Juan Tribe, who are descendants of the Lummi Tribe, etc. will be beneficiaries of any award that might be made in Docket No. 110 and that any members of said San Juan Tribe, who are descendants of the Samish Tribe, etc. will be beneficiaries of any award that might be made in the case of the Samish Tribe pending before the Commission under Docket No. 261.

It is understood that defendant does not care to file any further pleadings in the case.

For the above reasons the motion made by defendant at trial herein that the petition in Docket No. 214 be dismissed is granted and said petition is hereby dismissed.

A final order to that effect will be entered.

Edgar B. Witt
Chief Commissioner

Concurring:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner