

BEFORE THE INDIAN CLAIMS COMMISSION

THE SKOKOMISH TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
vs.)	Docket No. 296
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 6, 1958

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Skokomish Tribe of Indians, petitioners herein, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act of 1946, as amended (60 Stat. 1049; 25 U.S.C.A. 70(a)), and as such is entitled to maintain this cause of action.

The Skokomish Indian Tribe of the Skokomish Reservation was organized under the Act of June 18, 1934 (48 Stat. 984) having its constitution and by laws approved by the Secretary of Interior on May 3, 1938, and its corporate charter ratified on July 22, 1939.

2. The petitioner as the successor to and representative of the descendants of members of the aboriginal Twana Indians claims exclusive aboriginal use and occupancy of the following described area within the territory ceded to the United States in the Point No Point Treaty of January 26, 1855, subsequently ratified on March 8, 1859 (12 Stat. 933).

Commencing at Hood Head, near the mouth of Hood Canal, thence generally westward along the watershed of those streams draining into Hood Canal to the watershed of the Dugeness and Big Quilcene rivers; thence generally south-westward along the eastern summit of the Olympic range in such a way as to define the watershed of those streams emptying into Hood Canal on its west side, including the Skokomish River and its tributaries, following the height of land between the headwaters of the Skokomish and its tributaries to Lake Nahwatzel; thence generally east-northeastward along the center of the height of land between Oakland Bay and southern Hood Canal to Lake Mason; thence east northeasterly along the heights of land between the southern arm of Hood Canal and the southwestern inlets of Puget Sound, in such a way as to include Lake Mason in Skokomish territory, to a point half way between the head of Hood Canal and the head of Case Inlet; then continuing northeasterly to the summit of the Black Hills, west of Bremerton, to include the entire drainage of the Union River in Skokomish lands; thence in a general north-northeasterly direction through the interior of the Kitsap peninsula, to define the watershed of those streams flowing southward or westward into Hood Canal, to a point on the eastern shore of Hood Canal near its mouth approximately half way between the entrance to Port Gamble and Foulweather Bluff, and directly east across the mouth of Hood Canal from Hood Head; thence west across the mouth of Hood Canal to Hood Head.

3. The Commission finds from all the evidence there existed from earliest times and in 1859 a group of Indians, variously identified as the "Twana," "Toandos," or Skokomish, who shared a common dialect and way of life, and who lived on both sides and along the entire length of the Hood Canal in the State of Washington.

(a) In 1792, Captain George Vancouver, in the course of his extensive exploration of the entire Puget Sound area, encountered unidentified groups of Indians at several locations along the entire length of the Hood Canal. (Pet. Ex. 2) In 1841, Charles Wilkes, U.S.N. reported in course of his survey of the Hood Canal,

After leaving the Suquamish, they met the Toandos, a

small tribe inhabiting the mountains; who, from their own account, are able to muster one hundred and fifty warriors.

Lieutenant Case reports them as the best looking men they had met with. After passing further down the canal, they found the Scocomish tribe, who inhabit its southern end. These resemble in appearance the Toandos, with whom they are in close alliance, and have one hundred and fifty fighting men. (Pet. Ex. 4, Def. Ex. 24)

(b) An official report from the office of the Superintendent of Indian Affairs, Oregon Territory, dated October 13, 1849, states:

The Twanoh and Skokomish Indians live along the shore of Hood's Canal; number about 200; friendly and well disposed, subsist by labor and fishing. (Pet. Ex. 44, Def. Ex. 138)

An additional report from Indian Agent E. A. Starling, December 10, 1853, to Governor Isaac I. Stevens, Superintendent of Indian Affairs for the Washington Territory, places the "Sko-sko-mish and Tu-wah-noork . . . from the head to the mouth of Hoods Canal," and their number at "200" (Pet. Ex. 52). In this same report Agent Starling notes the rapid decrease in tribal population throughout the area during the past ten years as a result of widespread small pox. A map of the Washington Territory of 1854, purportedly authored by Governor Stevens shows the "Tooanhock" situated at the northern end of Hood Canal with the "Skokomish placed at the southern end." (Pet. Ex. 36) No attempt is made to delineate with any degree of accuracy the actual area occupied by either group. A map executed by Captain Stoneman in 1855 pictures the locations of the "Toandos tribe" and "Scocomish tribe" in similar fashion (Pet. Ex. 40).

Other population estimates of the Skokomish and Twana Indians varied considerably during this period. Joseph Lane, Superintendent of Indian Affairs, Oregon Territory, reported in 1850, "Twanoh, etc. 200"

(Def. Ex. 152). In 1851 Anson Dart, Superintendent of Indian Affairs, Oregon Territory reported that the "Toanoh and Skokomish" tribes were located along the shores of Hood Canal and numbered about 200. (Def. Ex. 145). Hodge in this "Handbook of American Indians" cites the Twana as a Salish division living along both sides of Hood Canal with a population in 1853 of about 264 and Curtis in Volume 9 of his "The North American Indian" numbers them less than 300 at the time of the Point No Point Treaty in 1855 (Pet. Ex. 24).

(c) On March 4, 1854, George Gibbs, who actively participated in various treaty negotiations as a member of Governor Stevens' treaty commission and who is noted for his Indian writings, stated in a report on the Indian Tribes of the Washington Territory:

Still above the Chimakum are the Toanhooch, occupying the western shore of Hood's canal. They are a branch of the Nisqually nation; but their dialect differs greatly from those on the eastern side of the Sound. They amount to about 265. With them may be classed the Skokomish, upon the head of the canal, who probably number 200. Neither of them have had as much intercourse with the whites as most of the Sound tribes. (Pet. Ex. 5, 58, Def. Ex. 6).

In his later work, "Tribes of Western Washington and Northwestern Oregon" Gibbs had the following to say about the Hood Canal Indians:

1st. The Skokomish, of whom the Toanhuck seems to be another name only, said to mean in the Klallam tongue "a portage" They occupy both sides of Hood Canal above Port Gamble and number 290 souls. . . . As already mentioned, the Skokomish were embraced in the same treaty with their neighbors, the Klallams and Tsemakums. Their language constitutes a distinct one, differing so far from that of the Niskwalli as not to be generally understood. (Pet. Ex. 6).

Edward Curtis confirms Gibbs' observations of the Twana in his treatment of the North American Indian when he states:

The entire length of Hood's Canal, a body of water about sixty miles long and two miles wide, and the valleys of its tributary streams, were controlled by the Twana. The tribe was divided into several distinct branches, yet all spoke a common dialect, which was considerably different from the dialects of their neighbors. Moreover, they possessed a collective name for themselves--Tuwaduk and in these two respects they are much more properly classed as a tribe than are those other numerous groups of independent bands to which the usage of the whites has applied tribal names. (Pet. Ex. 24)

4. In December of 1854, Governor Stevens organized his Commission to conduct treaty negotiations with the various Indian tribes of the Washington Territory. The recorded minutes of the Commission show that on January 25, 1855, treaty arrangements were begun at Point No Point with the tribes consisting "of the Clallums or Skallums, Chemakums, and Sko-komish or Too-an-hooch," and further that "on a careful enumeration they were found not essentially to vary in number from 1200." (Pet. Ex. 59)

The Treaty of Point No Point was concluded on January 26, 1855 and the "Skallams . . . the Skokomish, To-an-hooch and Chemakum tribes" ceded, relinquished and conveyed to the United States "all their right, title and interest" in and to certain described lands on the Straits of Juan de Fuca and Hood Canal (12 Stat. 933). In addition there was reserved "at the head of Hood's Canal" six sections, or 3,840 acres, "for the present use and occupation of the said tribes and bands." The treaty was finally approved and ratified March 8, 1859.

5. Thereafter, and in accordance with the provisions of the Treaty of Point No Point, the Indians, with the possible exception of the S'Klallams, removed themselves to the assigned reservation. There was some dissatisfaction with the area allotted, but the Skokomish Indians for the most part remained to make permanent their residence there.

(a) Agent W. T. Simmons reported on December 30, 1855, that he found the assembled Skokomish Tribe at "Casie" Inlet and that he proceeded to number them . . . found 44 old and 60 young men, 60 young women, 55 baby boys, 51 baby girls." (Pet. Ex. 67). Concerning his subsequent visit to the reservation, Simmons reported that ". . . the whole tract was densely timbered, and the Skokomish river so obstructed with drift wood that it was with difficulty I could reach the place. They are dissatisfied with this location and desire about two sections of land at the junction of the Skokomish River and Hood's Canal." (Pet. Ex. 70)

According to the report of B. F. Kendall, Superintendent of Indian Affairs, Washington Territory, dated January 2, 1862, the S'Klallams were dissatisfied with their lot on the reservation.

Not one half of the Indians included in the treaty will reside at the place, and will only make annual visits to receive their proportion of annuity goods, or to catch fish at their old fishing grounds. (Pet. Ex. 70)

Sub-Agent Purdy reported on July 20, 1863 that while a considerable number of the Skokomish Indians were cultivating the land within the defined areas of the reservation, few if any of the S'Klallam and Chemikum Indians have ever been on the reservation to stop. (Pet. Ex. 78)

The annual report of the Commissioner of Indian Affairs for the year 1865 states that "The Skallam Indians refuse to live on the reservation, but the Skokomish do, and will improve when sufficient land is cleared of its heavy timber for their use." (Pet. Ex. 81). An additional report made the same year by Sub Agent John T. Knox, states:

So far, it has been found impossible to induce the S'Kallams and other bands of Indians belonging to this agency to reside on the reservation. The Skokomish band, all, I believe, make this place their home, and seem to be well satisfied, and take quite an interest in the improvements going upon the reservation. (Pet. Ex. 82)

(b) Annual and supplemental reports during the years to follow point to the acceptance of the reservation by the Skokomish or Twana Indians as their permanent residence. These reports include: Report No. 3 attached to the Annual Report of the Commissioner of Indian Affairs, 1870 (Pet. Ex. 91) . . . "All of the Skokomish and about one fourth of the Skallam Indians reside permanently upon the reservation . . .", Skokomish population given as 291; Report of subagent Edwin Eells, August 31, 1872 (Pet. Ex. 96) . . . "The Twanas number about 300, and make the reservation mainly their home." Agent Eells' report of September 23, 1873 (Pet. Ex. 102), Twana population in 1873 listed as 275. (Pet. Ex. 105); Annual report Commissioner of Indian Affairs, 1874 (Pet. Ex. 106) . . . "all the Twanas are now on the reservation, wear citizen's dress, and live in houses."; Annual report of the Commissioner of Indian Affairs, 1875 (Pet. Ex. 113) . . . "Twanas . . . they are a small tribe of 275 Indians who are on the Skokomish reservation in Washington Territory."; Agent Eells report of August 15, 1876 (Pet. Ex. 114) . . . "First. The Twanas or S'Komish Indians who live on or near the reservation."; Census role of the Twanas or Skokomish Indians submitted by Agent Eells, July 31, 1877 (Pet. Ex. 115).

(c) Reverend Myron Eells, in recording his observations of Twana Indians during his twelve years as a missionary on the Skokomish reservation wrote in a series of papers published in 1887:

Twanas - Their name is spelled Too-an-hooch in the treaty which was made in 1855 . . . They originally occupied both sides of Hoods Canal for its whole length. They were divided into three bands, the Du-hle-lips, Skokomish and Kolsids. . . . Fifteen miles below Union Creek the Skokomish band, who lived around the mouth of the river of that name, where is the present reservation . . . Dr. Gibbs . . . gives this (Skokomish) as the name of the whole tribe, but it was originally only the name of one band; though now, as it is the name of the river and reservation, the whole tribe are known better to the whites on the Sound by the name Skokomish than by their original one Twana . . . At present most of these Indians live on the Skokomish reservation. About thirty live around Seabeck and Quilcene. (Pet. Ex. 12)

Eells estimated the Twana population as 500 in 1855 (Pet. Ex. 14), at 259 in 1875, 239 in 1879 (Pet. Ex. 15), and 245 in 1880 (Pet. Ex. 16, Def. Ex. 147).

6. The Commission finds from all the evidence that in 1859 and from the earliest days the maximum concentration of Skokomish or Twana Indian activity was confined for the most part to both shores of the entire length of the Hood Canal while extending inland for several miles in those areas where the principal streams drained into the waters of the canal. Confinement to this area was determined principally by the topography of the region, and the dependence upon a fish eating economy as the prime means of subsistence.

(a) Edward S. Curtis in Volume IX of his publication, "The North American Indian" (1913) places the Twana bands in five permanent villages.

Chlelapah (Tulalip) occupying both sides of Hoods Canal from its head to about Union City, Washington.

Skokobsh (Skokomish), on Annas bay and the watershed of Skokomish river.

Soatlkobsh, "Middle People", on both sides of Hood Canal from Hoodsport, Washington to Dosewallips river.

Sculsedbsh (Quilcene), on Quilcene bay and Dabop Bay.

Slchoksbish, on both sides of Floods Canal from Seabeck and Oak Harbor, Washington, to Squamish Harbor and Port Gamble. (Pet. Ex. 24)

Curtis notes that the Twana rarely if ever invaded other tribal country although they have at times clashed with Snohomish, Chimakums and Cowlitz. In addition he states, "The Twana rarely undertook trading expeditions preferring to remain at home and receive the visits of more venturesome travelers."

Speaking generally on the Salishan Tribes of the Coast, Curtis offers the following observations: (Def. Ex. 38)

"The dominating cultural influence of the tribes . . . was their dependence upon sea food.

The people were in the main sedentary, inhabiting well made wooden houses; but the long summer was spent moving from place to place where the food products of the season were obtainable. Agriculture was unknown. The lands were fertile, but heavily wooded, and the ease with which food could be had from the sea left no incentive for the development of an agricultural life. The majority of the tribes hunted little on land. The forest jungle was difficult to penetrate, and the flesh of land animals was not particularly relished."

(b) Dr. William Elmendorf who previously had conducted an intensive study of the Twana Indians and who testified in behalf of the petitioner, sets out nine permanent Twana village locations. These he terms winter villages and places them as follows: Dabob, at the head of Dabob Bay, Quilcene, at the mouth of the little Quilcene River, Dosewallips, at the mouth of the Dosewallips River, Duckabush, at the mouth of the Duckabush River, Hoodsport, at the mouth of the Skokomish River, Tahuya, at the mouth of the Tahuya River which runs into the northern shore of the

arm of Hood Canal from the Kitsap Peninsula, Dukelap, near the head of Hood Canal, Skokomish, at the forks of the Skokomish River some ten miles from the Canal, and one inland village, Vance Creek, located "on the southern tributary of the Skokomish a short distance up from the forks where the stream joins the Skokomish River." (Tr. 44, 45, Pet. Ex. 131).

Each of these village communities according to Elmendorf consisted of a group of houses, two or three of which normally were large gamble roof plank houses, some of them more than one hundred feet long. (Tr. 45) Joint family households composed of four to six family groups all lived together in one structure. (Tr. 46) Seasonal activity among the village groups for food gathering and other purposes followed a pattern of family group movements along both shores of Hood Canal with the bulk of the food products being obtained from the water inlets and the shore areas of the canal. (Tr. 51, 52, 53).

"The number and kinds of food, which is what this map (Pet. Ex. 135) indicates, were very much greater for the water inlet or its shores than they were for inland areas." (Tr. 77)

In his dissertation on the Twana Indians submitted in 1950 in partial satisfaction of his doctorate degree, Elmendorf stated: (Def. Ex. 132, p. 32)

Geographic location of winter village sites accorded with patterns of food economy. Except for the Skokomish extended community and the Vance Creek people, all were located at the mouths of salmon streams, on or near the canal shore.

As to the intensity of land hunting inland from the permanent

village sites, he states in his same work: (Def. Ex. 132, p. 23)

Land game hunting was also a specialist occupation, as usual on a guardian spirit basis, but the meat of land animals played a distinctly secondary role in the subsistence of most Twana groups with the exception of the inland Vance Creek people mentioned above.

In his testimony on this point Elmendorf said, (Tr. 80,81):

Finally I would conclude that a large amount of inland territory was used for relatively few economic operations; berry picking, bear hunting, deer hunting, and elk hunting, supplemented by the hunting of other smaller animals being the principal occupations that went on in any amount in large inland territory. And I would further add that some of this inland hunting was poor economically. This was true of the deer and elk. . . . (Tr. 83) . . . The area that elk were abundant actually extended closer to the canal shore than the high mountain area of these spots. They might be taken five miles back in this rough country.

Elmendorf has described the shoreline of the canal as consisting of a rather narrow gravelly beach sloping off into tidal flats, which in some area were quite extensive as in the Skokomish river region at the bend of the Canal. The hinterland surrounding the canal is heavily wooded. He noted in particular: (Def. Ex. 132, p. 20)

The dominant landscape feature west of the canal in the Olympic mountain range, peaks of which, 3000 to 6000 feet high, parallel the west shore at a distance of ten miles or less. Inland to the east and south the land is in few places over 500 feet above sea level.

(c) Dr. Carroll R. Riley, defendant's expert witness, confirmed for the most part the location of Dr. Elmendorf's nine permanent village sites. (Tr. 282) He describes the village community as the principal political and land owning unit and that the location of these permanent village sites was governed by strictly economic considerations. (Tr. 263, 265, 271) Exclusive right to use non village areas was unheard of (Tr. 268). In-

tensive use in the area was along the Canal near the permanent winter villages with some use of prairie area extending two or three miles back from the Canal shores (Tr. 291). Dr. Riley stated further: (Tr. 302)

Your feeling of exclusiveness inasmuch as there was a feeling of exclusiveness would be in the village area, the winter village area or perhaps a tiny spot peripheral to the village area such as choice berry fields and the like that would be utilized by families from a village community.

In describing the Hood Canal area, Dr. Riley stated: (Tr. 303)

There is a long stretch of water and there is a very rich stretch of water. You had a topography of very rugged country. The hills rise rather sharply from the Canal itself and behind them the main mass of the Olympic range . . .

Great, vast portions of the region probably were untouched by human foot for the simple reason that you could not get into them. The underbrush and the very thick timber and the like prevented travel.

(d) Dr. Erna Gunther in her work, "The Klallam Ethnography" (1927), compared the economic life of the Klallam Indians in general terms with the Northwest Coast tribes in the following manner: (Pet. Ex. 26)

The Klallam, like other Northwest Coast tribes, depend for their subsistence principally on sea food. The villages are always situated near some fishing grounds; still most people find it necessary to move several times each year to follow the various runs of salmon or to gather vegetable products. Although a village in one way may have several different abodes during the year, the one where the permanent houses are built is considered the real home of the group.

According to Dr. Gunther, the Klallam, whose territory lay immediately to the north and northwest of the Twana Indians, were in intimate conduct with the latter group. They frequently migrated down the Hood Canal following the salmon, going frequently as far south as the permanent Skokomish villages at Tahuya and Union City.

