

## BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: Mar. 6, 1958

Appearances:

David Cobb, Attorney 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.

The petitioner tribe asserts herein a claim for the value of an undetermined amount of land located in the northwest Puget Sound region of the State of Washington. The extent of petitioner's claim is adequately set out in Finding 2, and comprises an area included entirely within the described boundaries of the lands ceded under the Point No Point Treaty of 1855.

The petitioner tribe was a party signatory to the Point No Point Treaty entered into at Point No Point, Washington Territory, January 26, 1855, ratified by the Senate on March 8, 1859, and proclaimed April 29, 1859. (12 Stat. 933). The petitioner claims that under the

treaty provisions it relinquished to the defendant for an unconscionable consideration all right, title, and interest to all lands it held under aboriginal title. In accordance with the treaty terms the petitioner tribe removed its members to the reservation set aside within the ceded area for its purposes, and since the date of said removal, the petitioner claims it has continuously maintained the Skokomish reservation as its permanent residence even unto today.

In 1938 the petitioner sought and obtained official tribal status pursuant to the Indian reorganization Act of 1934, (48 Stat. 984), and acting in this capacity brings suit under the Indian Claims Commission Act as the rightful and proper representative and successor in interest to the aboriginal tribal group who participated in the Point No Point Treaty negotiations.

Under a stipulation entered into between the parties the issues to be determined in the current proceedings are limited to the capacity of the petitioners to bring this action, and whether petitioner held Indian title to the claimed area ceded under the provisions of the Point No Point Treaty.

Besides denying petitioner's capacity to bring suit and petitioner's exclusive occupancy of the area claimed in the petition, defendant in opposition asserts the defense of "res judicata" in that the present claim is barred by the judgment rendered in the case of The Duwamish Tribe v. United States, 79 C. Cls. 530. Needless to say this same defense has been raised on other occasions against claimants who were party litigants in the Duwamish case, and who brought subsequent suits under the Indian Claims Commission Act. In each instance where

appropriate, the Commission has consistently rejected the plea of "res judicata" as barring the claim asserted. The Suquamish Tribe v. United States, 5 Ind. Cl. Comm. 158, The Skokomish Tribe v. United States, 4 Ind. Cl. Comm. 549, The Muckleshoot Tribe v. United States, 2 Ind. Cl. Comm. 424, The Nooksack Tribe v. United States, 1 Ind. Cl. Comm. 424. Because of the reasons set forth in those prior cases, and the similarity of the claim asserted herein, the Commission rejects the defense of "res judicata" and finds that the judgment rendered against the Skokomish Tribe in the Duwamish case is not a bar to the present claim.

The earliest recorded contact by white men with the Skokomish Indians occurred in 1792 when famed explorer George Vancouver traversed the entire length of the Hood Canal in the State of Washington. Hood Canal is a principal salt water inlet lying west of the Puget Sound and emptying into Admiralty Inlet. It extends approximately 45 miles in a general south-southwest direction before turning sharply and stretching east-northeast an additional 15 miles or so to its head. The Olympic mountain range parallels the western shore of the main arm of the Canal for a distance of ten miles and frequently less. The principal streams emptying into the Canal flow east from the Olympic drainage area. Surrounding the Canal are thick wooded sections. To the east lies relatively flat fertile lands with little elevation. This general Hood Canal and Puget Sound region forms a huge watershed between the Olympic range on the west and the Cascades to the east.

While Vancouver failed to identify by name the Indian groups he

encountered, Charles Wilkes in 1841 reported in his survey of the Hood Canal that the "Toandos" tribe range along the northernmost section of the Canal, while at the southern end were the "Skokomish" who bore marked resemblance to the Toandos. As early as 1849 an official government Indian report grouped the "Twanoh" and Skokomish as the totality of Indians who live along the Hood Canal and numbering about 200.

In 1854, George Gibbs, who was a member of Governor Isaac Stevens' treaty commission and actively participated in the Point No Point Treaty negotiations of 1855, classified the "Toonhook" with the Skokomish, and placed the total number of these Indians around 465.

On January 26, 1855, Governor Isaac Stevens concluded the Point No Point Treaty at Point No Point, Washington, with the Skallam, Skokomish, Too-an-hooch and Chemikam Indians. The recorded minutes of the treaty commission show that the treaty officials on this occasion were dealing with the Skokomish or To-an-hooch tribes, and that as a practical matter only three distinct Indian tribes were involved.

Thus it is apparent from the evidence that during the years critical to the issues in this case, just prior to and at the time of the Point No Point Treaty, defendant's Indian officials made no real distinction between "Too-an-hooch", "Toandos" and "Skokomish" Indians. Indeed the evidence shows, and the Commission has found as set out in Findings 3, 4 and 5, that for our purposes under the Indian Claims Commission Act, the Skokomish, Toandos, Toanhook, Twanoh, or Twana are interchangeable and each properly identifies one group of Indians who lived along the entire length and on both sides of Hood Canal.

Upon the execution of the Point No Point Treaty, the Skokomish or Twana Indians for the most part removed themselves to the Skokomish reservation which was set aside for their purposes as provided in the Treaty. Indian agents, missionaries, writers and other individuals had almost daily contact with these Indians during the years that followed. As reflected in the reports and writings of these persons, the Skokomish or Twana were not only considered one group of Indians but were the only group who through great personal effort made permanent their residence there. Accordingly, in the absence of any substantial evidence to the contrary, the Commission has determined that the present day members of the Skokomish tribe who live on the reservation and in the adjacent northwest area of Washington State are the descendants and successors in interest of the aboriginal Skokomish or Twana Indians which inhabited the Hood Canal area.

Turning to the question of Indian title, the Commission finds that the evidence does not justify the extent of petitioner's claim to land held aboriginally and in 1859. The evidence shows quite clearly that petitioner's ancestors enjoyed the typically confining fish eating economy which on other occasions the Commission has found to prevail among the northwest coast and Puget Sound Indians of Washington State. Because of their extreme dependence upon sea food and other water game, these Indians centered the more stable aspect of their lives around permanent well defined village sites. These they built purposely along the shores of Hood Canal and at the confluence of the principal tributary streams which empty into the Canal waters. Apart from berry picking

and root gathering, agriculture was unknown, and whatever hunting was done inland along the Olympic range was generated by other considerations than the prime need of subsistence. For the most part hunting in the interior was sporadic and became the lot of the more adventuresome Indian brave. The periodic migration of the Indian family away from the permanent village site, instead of moving off into the interior, generally kept pace along the shores of the canal with the variations in the heavy salmon run, and in pursuit of the seasonal water products.

Topographical and population factors must be considered in a proper valuation of the extent of petitioner's claim of aboriginal title. The main mass of the Olympic range with its rugged peaks traversing over 6,000 feet crowd the western shore of Hood Canal. Thick, impenetrable forests coupled with choking underbrush discourages extensive forages into the interior. Those tributary streams, which afford some means of ingress, are relatively short and difficult to navigate with even the shallowest of canoes. At the time of the Point No Point Treaty the best estimates place the combined Skokomish and Twana population at hardly more than 465 men, women, and children. Other estimates range as low as 200.

Considering all the factors as set out in Findings 6, 7, and 8, and without engaging in undue speculation, the Commission finds that the petitioner has proven original Indian title to the permanent village sites and immediate surrounding area extending along the entire length of the Hood Canal.

As to the interior regions of the Olympic range, the evidence offers

only isolated instances of Skokomish or Wana penetration. For the most part these single occurrences were individual hunting efforts as contrasted with any persistent and concerted tribal effort aimed at demonstrating ownership and possession of this vast area to the exclusion of the neighboring tribes. While there may have been recognition prior to 1859 of petitioner's right to exercise some degree of sovereignty over the lands it ceded under the Point No Point Treaty, the evidence does not justify an extension in like manner of the concept of exclusive possession and control over the entire area as claimed herein.

It is the conclusion of the Commission that in 1855, petitioner's ancestors held aboriginal title to the lands as set out in Finding 9, and on March 8, 1859, the effective date of the Point No Point Treaty, the defendant acquired by purchase said Indian title to these lands. Further hearings will be required on the questions of the adequacy of the consideration paid, the acreage and value of said lands and the rights retained in said lands by petitioner's ancestors.

Edgar E. Witt  
Chief Commissioner

We concur:

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner