

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAMISH TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 261
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 11, 1958

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Samish Tribe of Indians, petitioners herein, is an identifiable tribe of American Indians residing within the territorial limits of the United States along the shoreline of Guemes Island and Samish Peninsula in what is now the Northwest portion of the State of Washington. The identity of this aboriginal group or tribe of Indians, as such, has been established in evidence as required by the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S. Code Sec. 70(a)).

EVIDENTIARY FACTS SUPPORTED ULTIMATE  
FINDINGS OF FACT NO. 1

(a) The United States Court of Claims found that the Samish Indians were one of the parties to the Treaty of Point Elliott by reason of the signature of "Pat-teh-us, Noo-wha-ah Sub Chief" (Duwamish, et al Indians v. United States, 79 C. Cls. 530, Findings of Fact IV, Docket No. F-275 and Deposition, p. 297).

(b) The Samish Indians, eo-nomine, do not appear in the Treaty of Point Elliott (12 Stat. 927; II Kapp. 669), either in the preamble or among the signatory Indian parties to the treaty. However, the treaty cession includes the whole of the areas alleged by petitioner to have been used and occupied by Samish Indians in aboriginal times.

(c) Report of Lieut. De L. Floyd Jones, dated September 1, 1853, states "Samish-suppose 150 - located north of Whidbey's Island on the Samish River" (Dft. Ex. 187, p. 5).

(d) Isaac Stevens, Governor and Superintendent of Indian Affairs, Washington Territory, reported on September 16, 1854, "the Samish are on a small river of the same name. in the south part of Bellingham Bay" (Dft. Ex. 11b, p. 455).

(e) Governor Stevens reported December 30, 1856, "The Lummi, Neuksack and Samish have their headquarters at Bellingham Bay (Dumamish, et al v. United States, R. 766, F-275).

(f) Indian Agent E. C. Fitzhugh reported on June 18, 1857, "Before and since the commencement of the Indian War in this Territory, I've had under my supervision 3 tribes: Lummas, Nooksacks, and Samish - in all 850 \* \* \* and the remainder, say 98 of Samish" (Dft. Ex. I, p. 1100, 13).

(g) The most descriptive report in treaty times on the identity of the Samish was made by Agent E. C. Fitzhugh in his report dated 1857:

The Samish as a tribe, appear to be more wandering than the others (Lummi and Nooksack). They have several islands which they claim as their inheritance, together with a large scope of the main land. They have some very fine bottom, which they cultivate on a river, whence they derive their name. Their principal fisheries are along the islands and in the channels, through the low bottoms or field lands adjacent to the mouth of their river. They are governed by one chief, but generally follow their own inclinations as they become associated with civilization. Their total number now I do not think exceeds two hundred, whereas ten or twelve years ago they were one of the most numerous tribes on the Sound, and at that date numbered over two thousand \* \* \*. They have been nearly annihilated by hordes of northern savages that \* \* \* infest our own shores (Dft. Ex. 1, pp. 2, 3, 4).

(h) Upchurch reported in Vol. 27, No. 4 (1936) of the Pacific Northwest Quarterly as follows:

(5) The Samish, a band related linguistically to the Clallam, the Songish of Vancouver Island, and the Lummi, have their name perpetuated in Samish Bay, Lake, Island, River and Village. I am inclined to believe that the word Samish is a different pronunciation of the name Songish of the Vancouver Island Band. So many generations have past that it is doubtful whether it could be authentically determined today. The Samish held Samish Island, Guemes Island, eastern Lopez Island, Cypress Island, and Fidalgo Island, west of Fidalgo Bay where they met the Swinomish. On the shores of the mainland in the vicinity of Edison they met the No-wha-ha, sometimes called Upper Samish, along a wide front. (6) The No-wha-ha, sometimes called Upper Samish or Stick Samish, (although they are not linguistically related to the Samish as closely as they are to the Snohomish or some of the other interior bands) occupied the country from southern Lake Whatcom on Samish Lake and Samish River south to where Mount Vernon now stands, where they met the Kikiallis on the South \* \* \*. They ranged easterly to the vicinity of Sedro Woolley where they met bands of what are now known as Upper Skaggits. Their principal villages were on the Samish River and what is now the village of Bayview.

(i) Both defendant's expert witnesses, Dr. Carroll L. Riley, and claimant's ethnologist, Dr. Wayne P. Suttles, testified on the hearing of the claim that Samish Indians were identifiable Indians

of aboriginal times (I Tr. pp. 9, 10, 11 and I Tr. 89). Dr. Suttles' thesis, "Economic Life of the Coast Salish of Haro and Rosario Straits" contains by far the most extensive treatment of Samish Indians among ethnological works.

2. We find this petitioner is the tribal organization of Samish Indians whose predecessors in interest ceded their lands, along with other groups of Indians, under the Treaty of Point Elliott to defendant (12 Stat. 927; II Kapp. 669; Fdg. la, e. f.).

EVIDENTIARY FACTS SUPPORTING FINDING NO. 2

(a) The chairman of the Samish Tribe of Indians testified there are about 150 members of the Samish Tribe (I Tr. 11). (Alfred Edwards; also Mary McDowell Hanson). He testified that two of his uncles and perhaps his father also had testified in the previous trial of the Samish claims urged before the Court of Claims. (Duwamish, et al. Indians vs. United States 79 C. Cls. 530, No. F-275 (1934)).

(b) The aged witness for claimant, Mrs. William (Ruth) Shelton, stated that Samish Indians had occupied certain areas of the Puget Sound since before treaty times (I Tr. pp. 26, 27, 28, 29, 30) and she made identification of certain Samish areas, named older Samish Indians and their uses of such locations in the latter part of the nineteenth century.

(c) The following plaintiffs were parties to the treaty of Point Elliott, viz: "\* \* \* and the Samish Tribes," (listing eleven tribes). (Duwamish case, Findings of Fact IV, Cit. Id).

(d) And defendant's expert, Dr. C. L. Riley, does not dispute that petitioners were descendants of a separate tribe but responds "as I know, they (Samish) were separate. Of course they may have lived with other tribes" (Dr. C. L. Riley, II Tr. 18) .

3. The petitioner and defendant stipulated at the opening of the initial hearing of this case as follows:

There shall be first a determination in the matter of Samish Tribe of Indians versus the United States of America, Docket No. 261, the question whether the claimant, under the law and facts to be adduced had, at the time of the alleged wrongful acts by the defendant, aboriginal or Indian title, within the meaning of the Act, to the lands described in the petition, or any part thereof, and if so, whether the Defendant unlawfully deprived the claimant thereof, postponing until such determination, should such determination be favorable to claimant, proof as to the value thereof, or as to any question of fact not heretofore determined by the Commission.

4. Petitioner alleges that it had exclusive aboriginal use and occupancy of the following described territory within the area ceded to the United States in the Point Elliott Treaty of January 22, 1855, 12 Stat. 927, II Kapp. 669:

Commencing at the Northwest corner of Section 19, Township 35 North, Range 3 E.W.M.; thence East along said 1/16 line to its intersection with the range line between Range 3 E.W.M. and Range 4 E.W.M.; thence North on said range line to the Northeast corner of Section 25, Township 37 North, Range 3 E.W.M.; thence West along the North section line to its intersection with Chuckanut Bay in Section 25, Township 37 North, Range 2 E.W.M.; thence in a Southwesterly direction to the Southern tip of Lummi Island; thence in a Westerly direction through Obstruction Pass and to the Northwest corner of Obstruction Island in Township 36 North, Range 1 W.W.M.; thence in a Southwesterly direction to Port Stanley on Lopez Island in Section 12, Township 35 North, Range 2 W.W.M.; thence continuing in a Southwesterly direction to Davis Point on Lopez Island in Section 9, Township 34 North, Range 2 W.W.M.; thence in a Southeasterly direction to Iceberg Point on Lopez Island; thence

around the Southern tip of Lopez Island and in an Easterly direction to the West entrance to Deception Pass in Township 34 North, Range 1 E.W.M.; thence in a Northeasterly direction across Fidalgo Island and Fidalgo Bay to the Northern tip of Marches Point in Section 28, Township 35 North, Range 2 E.W.M.; thence in a Northeasterly direction to point of beginning; in Skagit, Whatcom and San Juan Counties, State of Washington (Pet. Req. Fdg. of Fact No. 2)

5. The Samish winter village locations were situated, within the area of the United States, along the "back side" of Samish Island (peninsula) at the mouth of the Samish River and on the nearby Guemes Island, being moved about from place to place, especially in this immediate area, after the influx of white settlers in treaty times. The Samish are also described in treaty times "to be a more wandering class than either of the others" (Lummi or Nooksack). (Report of Agent Fitzhugh (1857) Dft. Ex. I, pp. 2,3,4).

6. The Samish Indian villages were located in aboriginal times as follows:

1. Aatseque - on the south shore, Samish Island
2. Xwaimel - on the south shore, Guemes Island
3. Chankwenung - south shore, Lopez Island (a reef netting location)
4. Kwaal - east shore, Fidalgo Bay

The first two locations were exclusive, the latter two jointly used with other Puget Sound Indians ("Handbook of American Indians," Bulletin 30, Part 2, p. 421; Def. Ex. 2, pp II-9 to II-13). Numerous additional use areas were used by the Samish seasonally with

other Puget Sound Indians. The aboriginal tribe (Samish Indians) "was composed of one large village which was autonomous \* \* \*" (Pet. Req. Fdg. of Fact No. 13).

7. The Samish Tribe was in aboriginal times a separate and distinct entity from the Nuwaha Tribe sometimes called Stick-Samish or Upper Samish. The Nuwaha spoke a Nisqually dialect while the Samish spoke a different Salishan dialect. In aboriginal times bad feeling is said to have arisen between these two tribes. (Dr. Suttles, I Tr. 132; Dr. C. L. Riley, II Tr. 11-14 & 17). We find nothing in the record of testimony or exhibits to justify a finding of Samish-Nuwaha tribal merger.

8. Population. The Samish Indian population in the 1850's has been variously estimated and reported as figures between 98 and 200. The name Samish was omitted in the Lane, de Harley, and Sterling accounts and listings of Indian population. Schoolcraft, Gibbs and Governor Stevens report Samish population as 150 as of the year 1854. In 1856 Agent Fitzhugh of the Bellingham Bay Agency reported a Samish population of 98 (apparently an estimate). (Tr. I<sup>I</sup>, 10 & 11).

9. Means of Subsistence. The Samish Indians, were sea-oriented, fish eating Indians traveling among the numerous islands out from Samish Bay by means of canoes hewn from cedar logs. They caught halibut, herring, dog, humpback, spring and silver salmon, and sock-eye, dug clams, horseclams, and hunted seals off Smith Island. In addition to the foregoing sea-life, they caught ducks, islander deer

and elk, and cultivated camas beds and wild berries, and later potatoes, after about 1840 (Pet. Ex. 2, Map with symbols of food.

10. Subsistence Area. About the southwestern tip of San Juan Island around the north shore of Blakely Island to Eliza Island, just south of Lummi Island, to the center of Chuckanut Bay south along the mainland coast to the mouth of the Samish River southwestward across the mainland and continuing across Padillo Bay and Fidalgo Island to the place of beginning (parts of this area were intertribal subsistence areas) (Pet Ex. 2).

Nooksack and Samish dug clams and intermingled in joint areas as users in common (Mrs. Lyons, I Tr. 17). Lummi and friendly neighboring tribes used Samish territory as permissive users, (Mrs. Shelton, I Tr. 37). The plentiful duck and fish were jointly shared around Samish Island and out on the flats by Samish, Lummi, Swinomish and Twaha (Tommy Eob, II Tr. 62) and Lopez, Cypress and San Juan Island areas were essentially free use areas (Dr. Suttles, I Tr. 153; Dr. Riley, II Tr. 24).

11. On August 29, 1955 the defendant filed motion to amend paragraphs 8, 20, 21 and 24, respectively, of defendant's answer to which motion petitioner filed their objections on October 10, 1955. Petitioner's said objections were overruled and this Commission entered its order permitting defendant to so amend its answer. The substance of this amendment is a denial that the Samish were



"Treaty" Indians, and then a plea in the alternative, that if petitioner's antecedents were a party to the Treaty of Point Elliott and did therein make a cession of the lands described in paragraph IV of the petition, then the United States has paid petitioner Indians, and others, a valuable consideration for such treaty cession and that "the so-called Samish Indians" - participated in such payment and the other consideration named in the Treaty. Additionally, defendant denies that petitioner was not accorded fair and honorable dealings.

12. The Samish Tribe of Indians exclusively used and occupied an area of land in aboriginal times described as follows:

First Tract: Commencing at the mouth of Edison Slough, sometimes called North Samish River, thence up said stream to a point known as Edison Station; thence southwestward across the flatlands to a point in a principal bend of the Samish River, said point being at the place where the North-South Section line traverses the Samish River southwest of Conn School; thence eastward to the principal inlet on Padillo Bay shoreline, said point being approximately one mile north of the mouth of Joe Leary Slough; thence northward along said shoreline circumscribing Samish Island (peninsula) to the place of beginning.

Second Tract: All of Guemes Island.

13. The lands described in Finding 12 were part of the lands ceded to the United States by the terms of the Treaty of Point Elliott by the Samish Indians. The date of signing of this treaty by the respective parties was January 22, 1855. This treaty was not ratified, however, until some four years later on March 8, 1859, and the date of such ratification by the United States Senate constitutes the date of taking (12 Stat. 927; II Kapp. 669).

14. Any rights which petitioner, their ancestors and predecessors in interest may have retained or acquired to any lands within the boundaries as set forth in Finding No. 12 may be made the subject of inquiry at the further hearing of this claim respecting the credits of the defendant and consideration paid to petitioner or its successor and predecessors in interest, and as to the value of said lands as of the effective date of the treaty, March 8, 1859.

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

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Associate Commissioner