

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHINOOK TRIBE AND BANDS
OF INDIANS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 234

Decided: April 16, 1958

Appearances:

James E. Sareault, with whom
were Malcolm S. McLeod,
Frederick W. Post,
E. L. Crawford and J. W. Creagh,
Attorneys for Petitioner.

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

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The petition in this case was filed by "the petitioner, the Chinook Tribe of Indians and the subordinate Waukikum, Willopah and the Clatsop bands of said Tribe of Indians, on relation of John Grant Elliott, Chairman of the General Council of said Tribe of Indians, and presents this their claim, against, the United States of America, * * *." (Pet., page 3).

The petition alleges that -

the Chinook Tribe of Indians, together with the said subordinate bands, have resided from time immemorial west of the summit of the Cascade Range of Mountains in what is now the State of Washington, and formerly exclusively owned, occupied and possessed the lands and country described as follows, composed of approximately two million acres: COMMENCING at the Mid-channel line of South Bay in Gray's Harbor, State of Washington, thence eastwardly to the Summit of the Coast Range of Mountains, thence in a Southerly direction along the Summit of the said Coast Range of Mountains, crossing the Columbia River at a point where the mid-channel line crosses the mid-point of the mouth of Abernathy Creek, thence South into the State of Oregon, to a point due east of Tillamook Head on the Coast of Oregon, thence West to Tillamook Head, and from thence Northward along the Western Coast of Oregon to the point of beginning in the State of Washington. (Pet. Par. III).

Petitioner further alleges that in the year 1850 the "Chinook Tribe and the various bands thereof was composed of between 1,000 and 1,500 men, women and children; that the said Tribe is composed today of approximately 500 men, women and children, known to be descendants of said ancient tribe and that the said tribe lived separate and apart from all other tribes in said area, occupying their said lands exclusively to all other tribes, and had a separate Indian dialect." (Pet. Par. V). Petitioner further alleges that the defendant negotiated treaties with said tribe and its subordinate bands in 1851, but said treaties were never ratified by the United States nor the terms thereof performed by the United States but that petitioner believes the Government did pay said tribe and bands certain payments "the amount of which, and for what purpose, is best known to the defendant, * * *." The payments so made were allegedly so small, according to petitioner, as to make "the sum grossly inadequate and unconscionable consideration for such lands and rights and the defendant, in treating the petitioner in such a manner as it did, acted unfairly and

dishonorably and against the standards of equity and good conscience." (Pet. Par. VII). Petitioner further alleges that the fair and reasonable value of said lands, formerly occupied by petitioner, together with the timber, game, fish, minerals, dwellings and cultivated areas "in 1850 at the time they were taken by the defendant," was \$30,000,000. (Pet. Par. VIII).

Defendant in its answer states as its first defense that the petition fails to state a claim against defendant upon which relief can be granted; that the claim is barred by the decision of the Court of Claims in the case entitled, Duwamish, et al. v. United States, 79 C. Cls. 530 (cert. den. 295 U. S. 755); and that none of the petitioner Indians constitute a "tribe, band or other identifiable group of American Indians" within the meaning of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C., sec. 70(a). Defendant further denies that petitioner, or John Grant Elliott (see Pet. Par. II), "is authorized to represent, or present the claim of, the so-called Waukikum, Willopah and Clatsop Bands of Indians." (Answer, pages 1 and 2). Defendant admits that treaties were negotiated with petitioner Indians which were never ratified and that the United States paid petitioner Indians certain sums of money as set forth in, and pursuant to, the Act of August 24, 1912 (37 Stat. 418, 535) and states that pursuant to said Act, petitioner Indians accepted payment in full satisfaction of the claim now asserted by petitioner. (Answer, paragraphs 9 and 12).

A stipulation agreed to by the parties and approved by the Commissioner (Tr. 2 A-C, 24, June 17, 1952, Seattle, Washington) limits the questions

now to be determined to the issues of whether petitioner had, at the time of the alleged wrongful acts by the defendant, aboriginal or Indian title to the lands described in the petition and as to the capacity of petitioner to sue.

In petitioner's "Findings of Fact and Brief," filed with this Commission following trial on the issues hereinabove mentioned, petitioner lists as "Petitioners" in the caption of said brief "The Chinook Tribe, The Waukiakum Band and the Willipa or Shoalwater Bay Bands of Chinook, The Kathlamet Tribe of Chinook, The Clatsop Tribe of Chinook, and the Nucqueclahwemuck Band of Chinook." Petitioner requests a finding (Pet. Req. Fdg. 1): (see also Pet. Req. Fdg. 23)

That claimant constitutes the Confederated Tribes of the "Chinook Nation," a duly confederated and organized group of American Indians, being a tribal organization recognized by the Secretary of the Interior of the United States. That such Confederation of Tribes of the Chinook Nation is composed of the aboriginal Lower Chinook peoples, including the Clatsop, including the Nucqueclahwemuck band, Kathlamet Tribe and the Chinook (proper) Tribe, the latter including the Waukiakum and Willipa or Shoalwater Bay bands, and as such recognized Confederation, duly represents all members by blood of such Tribes and bands and all descendants thereof. (Tr. 19, 18, 19).

The record contains no evidence that there existed aboriginally or historically a duly organized and confederated group known as the so-called Confederated Tribes of the "Chinook Nation." There is no evidence to prove that the newly organized group has a tribal organization recognized by the Secretary of the Interior. The citation to the transcript of hearings does not support the requested finding of fact.

According to the testimony of John Grant Elliott, the Chinook Tribe was organized in August, 1951, and attorneys were chosen following said

organization (Tr. 77, 78). Mr. Elliott further testified that there were present at the meeting representatives of the Willapa, Chinook, Wahkiakum, Kathlamet and Clatsop "bands or groups," (Tr. 78) and that he is chairman of the Chinook Council. (Tr. 3 and 77). He further testified that there was "some sort of a division" within the tribe in May 1953 with reference to managing the affairs of the tribe but that this other "group" supports the petition in this case. (Tr. 78-79). Mr. Roland Charley also testified (Tr. 3) that he had been elected chairman of the Chinook group and that he did not know Mr. Elliott (Tr. 47).

For reasons that hereinafter will be mentioned, it is important to attempt to ascertain whether this co-called tribe, organized ostensibly for the sole purpose of presenting this claim, is the successor in interest to the claims of the Chinook, Waukiakum, Shoalwater Bay (Willipa-Chinook), Kathlamet, Clatsop and Nucqueclawemuck Indians or is entitled to bring this action for and on behalf of said Indians. The record in this respect is far from satisfactory. The chairman and the secretary-treasurer of the Elliott Chinook group and the chairman of its Portland Council of Chinooks all testified that they were of Chinook descent. Mr. Charley of the other group testified he was a full blood belonging to the "Willipa and Chinook" tribe. The secretary-treasurer of the Elliott group testified that there are no Kathlamets designated as such living today, that there are Willipa descendants living and that there are no full blood Clatsops on the group enrollment (Tr. 49-50). The group's chairman of the Portland Council testified that there are over 900 persons in the present organization (Tr. 66); that she did not know any Kathlamet or Willipa

Indians but that there are people "who are descendants from the Clatsops probably living" (Tr. 87). Mr. Charley testified that he knew of no Willipa Indians who were living and that he did not know whether there were any Clatsop (Tr. 57) or Shoal Water Bay Indians living (Tr. 58) but he guessed there were quite a few Kathlamet Indians left (Tr. 58). He further testified (Tr. 72) that he had never heard of the Nuc-que-clah-we-muck Indians. Mr. Elliott testified that there are at least two hundred descendants of the Clatsop (Tr. 79) and that at the organization meeting there were people present from the Willipa, Chinook, Wahkiakum, Kathlamet and Clatsop "bands or groups" (Tr. 78). Also testifying for petitioner was the "councilman [Elliott group] for the Clatsop County District of the original Clatsop-Chinook Nation group," who testified she was of Chinook descent and that there were approximately 75 Clatsops in her district (Tr. 86).

Originally, petitioner's claim seems to have been based on the existence of Indian title in an entity allegedly known as the Chinook Tribe and its subordinate bands of Waukiakum, Willopah and Clatsop Indians. The testimony of most of its Indian witnesses was pointed to the existence of such an all-inclusive entity. The testimony of petitioner's expert witness, Dr. Herbert C. Taylor, anthropologist, and the documentary evidence precludes determining the existence aboriginally of such an all-inclusive entity.

Petitioner's expert testified that the word "Chinook" has a number of meanings. It was used, according to Taylor, to indicate a village site at the mouth of the Columbia; to refer to a particular tribe located just

north of the mouth of the Columbia; to indicate all of the Chinookan speaking peoples up and down the length of the Columbia; as a purely linguistic term; and in the sense of the Lower Chinook, i.e., the Chinook proper, the Clatsop and the Kathlamet, (Tr. 12) which he stated as in the sense in which he used the word.

The Lower Chinook was a socio-cultural entity and not an identifiable tribe, Taylor testified (Tr. 16). He later described the Lower Chinook as "a rather amorphous cultural entity" (Tr. 54). By this he explained that although the Lower Chinook were sometimes spoken of as one group having the same cultural pattern, the Kathlamets spoke a different language than the Chinook proper and the Clatsop, and that the three fought each other at times and did not regard themselves as members of the same tribe. (See also Tr. 137-138).

Dr. Taylor testified that the Clatsop "in common with most other Indian tribes on the Northwest Coast, were not by many of our standards a tribe at all but were a group of autonomous villages. These autonomous villages, however, had these things in common; they spoke a common dialect of the same language and were capable of uniting in warfare. Thus, for instance, the Tillamook made a distinction between themselves and the Clatsop in time of war, not between one Clatsop village and one Tillamook village." This was also true, according to Taylor, of the Chinook proper. He believed it would be true as far as he could tell of the Kathlamet, also, although "the records on the Kathlamet are so scanty, so very poor, that as far as I am able to determine it is not very far." Although village autonomy prevailed, he called these groups tribes by adopting the definition

of a tribe used by the Royal Anthropological Institute, i.e., a sedentary or nomadic group of people, a confederation of bands capable of uniting in emergency such as warfare and speaking a common dialect (Tr. 16-18, 58, 80, 103).

Petitioner's witness further testified as follows (Tr. 20-23, Hearing, Washington, D. C., November 17, 1953):

Q. Now, in the period from 1800 to 1840, Doctor, what conclusion did you arrive at as to the Clatsop, Kathlamet and Chinook proper as being a recognizable, politically organized tribe of units?

A. Following the smallpox epidemic in the late 1700's, the Chinook, Clatsop and Kathlamet seemed to have made a mild come-back; at least, they were holding their own; but in 1829 and 1832 occurred the so-called intermittent fever epidemic. The figures of death at that time among the Chinook, that is to say, the Chinook proper, Clatsop and Kathlamet, are almost unbelievable. The lowest estimate is seven-eighths of the total population dead in those three years; the highest is nine-tenths, and that by Dr. John McLoughlin, chief factor of the Hudson's Bay Companies at Vancouver. Dufлот de Mofras says between ten and twelve thousand Chinook died in those three years.

In any case, the Chinook ceased to exist as tribes; virtually all villages were de-populated, and what you effectively had after 1832 were a few hangers-on at the trading post and at strategic planning spots, but there was no such thing as a tribe.

Commissioner O'Marr: Those figures indicate a population of over 12,000 that died?

The Witness: These figures indicate a total of 10 to 12 thousand died, nine-tenths of the population, so that would mean a total population of less than 15,000 all told, about thirteen and a half all told.

* * *

Q. (By Mr. Crawford:) Now, Doctor, before they were so stricken with these diseases, what was the situation with respect to these three units, the Clatsop, Kathlamet and the Chinook proper?

A. I take it you are asking here, sir, for a resume of what has gone before.

Q. That is correct.

A. In my judgment, there was no such thing as a tribal organization among the Lower Chinook, that is, between the Clatsop, Chinook proper and Kathlamet, but each of these three groups were a tribe within the terms of the Royal Anthropological Institute definition of tribe, and they were a group of autonomous villages as far as private control was concerned, except when one chief became very powerful; but they spoke a common dialect and were capable of uniting in time of war. Thus, it is proper to speak of three tribes at the mouth of the Columbia, - the Clatsop, the Chinook proper and the Kathlamet; but it is not proper, however, to speak of a Lower Chinook tribe.

Q. Now, with respect to these three units, Doctor, they had, however, some factors in common, did they not?

A. Yes, they did, a great many factors in common.

Q. Will you state what these factors were?

A. Well, to a far greater extent than any of the other peoples in the area they were a riverine people, depending by and large upon fishing and upon clams and mussels for their subsistence. They did some root, nut and berry gathering, and they did some hunting. Hunting, however, does not seem to have been as important to them as it was to the Chehalis to the north or the Tillamook to the south. Hunting was something of a supplement to the diet rather than a major means of subsistence.

In their political organization and in their social organization, in the very way they handled their slaves and the payment of blood money and the way they built their canoes the Chinook proper and the Clatsop and Kathlamet were identical, even to the way they buried their dead.

Their language is somewhat different, however. The Kathlamet spoke a variety of Upper Chinookan; the Chinook proper and the Clatsop spoke Lower Chinook, but it is stated that the Clatsop was a trifle different, probably a difference on the order of a sub-dialectical variation.

Dr. Taylor further testified (Tr. 45-49, Nov. 17, 1953):

Q. With particular respect to these Lower Chinooks, Doctor, weren't they struck by several epidemics which had an effect on their political and social organization?

A. Yes, sir, they were. As previously recounted, the Chinook were largely destroyed by smallpox in the 1780's and 90's. But in the period 1829 to 1832 between seven-eighths and nine-tenths of all the remaining Chinook died. This, of course, destroyed them completely as a going cultural concern.

Q. What effect did that have upon their political organizations?

A. Any political organization would cease to exist. Let us assume, for instance, that a plague destroyed nine-tenths of the population of the United States. I dare say you would immediately in those areas which did survive, go back to a village type economy and to a village type political authority, and it would be a long time before you would reestablish national political controls. (Under-scoring supplied).

* * *

As to the Wahkiakum, Taylor testified that they were located to the east of Chinook proper on the Columbia River and actually seemed to have been a few "semi-autonomous, or autonomous villages which were Chinook in character." Petitioner's expert witness states that Washington Irving wrote that the Wahkiakum were once a part of the Chinook proper but that they broke off during Hudson Bay trading times. For this reason, Taylor considers the Wahkiakum part of the Chinook proper. (Tr. 26).

Dr. Taylor prepared a map on which he has delineated the boundaries of the Chinook proper, the Clatsop, and the Kathlamet respectively, (Pet. Ex. 11). The areas for each are described in the testimony of Doctor Taylor: for the Clatsop, see Tr. 63, for the Chinook proper, Tr. 64; and

for the Kathlamet, Tr. 66. The base year he selected was 1800 because he felt that year "seemed a much better year to use than 1850, before the white man began to work his will on the Indian. Secondly, because the tribal groups themselves maintained the tradition of those belonging to the previous owners." (Tr. 70). Defendant points out (Def. Br., pages 2 and 3) that Dr. Taylor's testimony, map and report (Pet, Ex. 7) "relate to 1800 and not to the dates involved herein, namely 1850 or 1855: * * *." Defendant stresses that the date selected by petitioner's expert refers to use and occupancy prior to the 1829 to 1832 intermittent fever epidemic which Taylor states took nine-tenths of the population of these Indians and as a result of which the Chinook ceased to exist as tribes (Tr. 21). Defendant's point is well taken for the Chinook (the term is used in the sense Taylor uses it to mean the Clatsop, Kathlamet and Chinook proper), according to petitioner's expert, were "to a far greater extent than any of the other peoples in the area * * * a rivering people, depending by and large upon fishing and upon clams and mussels for their subsistence. They did some root, nut and berry gathering, and they did some hunting. Hunting, however, does not seem to have been as important to them as it was to the Chehalis to the north or the Tillamook to the south. Hunting was something of a supplement to the diet rather than a major means of subsistence." (Tr. 22-23). The Chinook, he testified, did not hunt a great deal. (Tr. 60). The terrain around Shoalwater Bay, with its clams, fish and mussels, was of the type according to the witness to support a heavy concentration of population, which it did in his judgment. Being a riverine and marine people, known as "fish eating" Indians their subsistence was almost wholly from the sea. If in 1800 the area

now claimed was supporting a population of something in the neighborhood of 13,500 Indians, it is inconceivable that the remnants which survived the epidemics of 1829 and 1832 and later losses due to fever and disease could be using and occupying the same area in 1850, the date of the alleged takings. In 1851, Anson Dart, Superintendent of Indian Affairs for the Territory, reported the Clatsop Indians numbered 71 souls and the Chinook (5 bands) to total 142 (Def. Ex. 141). As stated by the Court of Claims in The Quapaw Tribe of Indians, et al., v. The United States, 128 C. Cls. 45, 49, affirming 1 Ind. Cl. Comm. 469:

Indian tribes, in the absence of a treaty reservation, have only an occupancy and use title, or right, the fee being in the United States, and when an Indian tribe ceases for any reason, by reduction of population or otherwise, to actually and exclusively occupy and use an area of land clearly established by clear and adequate proof, such land becomes the exclusive property of the United States as public lands, and the Indians lose their right to claim and assert full beneficial interest and ownership to such land; and the United States cannot be required to pay therefor on the same basis as if it were a recognized treaty reservation. (citing cases).

Dr. Taylor evidently recognized that the difference in dates as to use and occupancy as far as boundaries are concerned would have an effect on the area to be assigned to a group, band or tribe. In being questioned on cross-examination about a map (Def. Ex. 112) that he had also prepared apparently prior to his employment in this case, petitioner's expert witness testified as follows: (Tr. 378-379)

Q. Let me ask you this on the Chinook question: On your mimeographed map you have the Chinook as delineated-- what color is that?

A. It is red.

Q. *** delineated in red. You have it the same as on Defendant's Exhibit 3 as delineated in red?

A. Yes.

Q. You have it the same on your mimeographed map?

A. Yes.

Q. You have changed your mind about that, haven't you?

A. Yes, I have.

Q. So that your mimeographed map shows a comparatively small acreage, I think about three townships. Isn't that correct?

A. Yes, sir.

Q. Whereas your present-day map includes maybe seven times more area for the Chinook proper?

A. If you please, sir, and may it please the Commission, if I drew that map on the base year 1850 rather than 1800 I would use my own mimeographed map. It is only because I am using the base year 1800 rather than 1850.

Q. I see. Your mimeographed map is 1850?

A. As well as I could make it. The mimeographed map is not a very good map.

By 1850, the Chinook were not in exclusive possession of all the lands delineated as Chinook territory by petitioner's expert on his map (Pet. Ex. 11). Following the epidemics already mentioned, Chehalis speaking people began to move into the Shoalwater Bay area and into the Willipa Hills region. Taylor testified (Tr. 70) that a map using the base year 1850 would show the area around Shoalwater Bay as Chehalis and the Willipa area occupied in the north by Chehalis and in the east by Cowlitz Indians. The Willipa area, according to Taylor, although included in the petition, is not, and never was, Chinook territory. (Tr. 70). The term "Willipa-Chinook" according to this ethnologist refers to Chinook ethnographic

informants who claim the Willipa territory on the grounds that they are

Willipa Chinook but they are not the Willipa of the Willipa territory.

Taylor stated "The Chinook never did occupy the Willipa Hills area; but the Chinook living in the Shoalwater Bay area come to be known as Shoalwater Bay Chinook" and when the name of the bay was changed to Willipa Bay, then they were called Willipa-Chinook. In this bay area, he testified, from 1830 or 1820 on, "there was a great deal of sharing of economic resources * * *, simply because that area is becoming an amalgamated Chinook-Chehalis area." (Tr. 82). Although the Kathlamet Indians are not included in the petition as a "subordinate band" of the "Chinook Tribe," petitioner, based upon the testimony of Doctor Taylor, now claims the area assigned to the Kathlamet (Pet. Ex. 11) by their expert witness. (See also Tr. 355).

With the foregoing background relating to the allegations of the parties and petitioner's position now, based upon the testimony of record, it is next necessary to consider the issues and propositions, as petitioner views them to be as set forth in petitioner's brief at pages 27 and 28. They are stated to be as follows:

1. In aboriginal times, were the Chinook (proper), including the Wauhkiakum and Willipa or Shoalwater Bay Bands of Chinook, the Kathlamet Tribe of Chinook, and the Clatsop Tribe including the Nucqueclahwemuck Band of Chinook, identifiable groups of American Indians within the meaning of section 70a of the Indian Claims Commission Act?
2. What were the boundaries of the lands owned and occupied by such tribes and bands of Indians?
3. Did these tribes and bands become identifiable groups of American Indians under section 70a of the Indian Claims Commission Act following their consolidation as Chinook Nation after the coming of the white man?

4. Is this action properly prosecuted through the confederated "Chinook Nation" in the names of the Chinook Tribes and Bands as follows: Chinook (Proper) Tribe including the Wauhkiakum and Willapa or Shoalwater Bay Band, Kathlamet Chinook, and the Clatsop Tribe including the Nucqueclahwemuck Band?

5. Were the sums appropriated, by the act of August 24, 1912, 34 Stat. 518 adequate consideration for the tribal lands ceded by claimants and did Congress thereby recognize and identify the said Tribes and Bands and their title to said lands?

6. What is the legal effect of any of the members and descendants of these tribes and bands having accepted, if they have accepted any sum, the proceeds of the Act of August 24, 1912, in full settlement of all claims and demands against the United States?

7. Is the taking of claimant's tribal lands contrary to the Fifth Amendment to the Constitution of the United States, so that claimants are entitled to interest on the value thereof from the time of taking to the time of payment?

The defendant, on the other hand, (Def. Br., pp. 140-141) considers the questions presented in this action to be as follows:

1. Whether one or more of the plaintiff tribes or the Confederated Tribes has established by a preponderance of the evidence that a particular historical tribe, band or group of Indians aboriginally and exclusively held and occupied any specific and definable area of land in western Washington?

2. Whether one or more of plaintiff tribes or the Confederated Tribes has established by a preponderance of the evidence that any of them was aboriginally a tribe, band or identifiable group of American Indians?

3. Whether one or more of plaintiff tribes or the Confederated Tribes is a real party in interest, entitled, by legal succession or continued existence as an entity of some recognizable sort, to maintain the claim of aboriginal occupancy?

4. Whether one or more of plaintiff tribes or the Confederated Tribes of Indians is a presently existing tribe, band, or identifiable group of American Indians.

5. Whether plaintiff's petition states a claim or claims upon which relief can be granted?

6. Whether this suit is barred by the judgments in Duwamish v. United States, 79 C. Cls. 530, and Alcea v. United States, 103 C. Cls. 494?

The questions as presented by petitioner will be considered briefly. In aboriginal times there were separate and distinct identifiable groups of American Indians residing along the Columbia River on both sides of that stream near its mouth (Findings 1, 2 and 3). Historical sources identify them as the Chinook (proper), the Kathlamet, the Clatsop, the Waukiakum and the Nucqueclahwemuck Indians. There is no substantial evidence to support petitioner's contention that at any time pertinent to the issues involved herein that the Waukiakum were included within the Chinook proper. Documentary sources throughout the historical period identified them as a separate group. Historical references are scarce with respect to the so-called Nucqueclahwemuck Tribe of Indians who were treated with separately by the United States in 1851. There is no substantial evidence to support petitioner's contention that at any time pertinent to the issues of this action the Nucqueclahwemuck Indians were part of the Clatsop "tribe."

What the boundaries of the lands exclusively used and occupied by these various "groups," "tribes" or "villages" were at the date of the alleged taking in 1850 is the crux of the case. As previously pointed out petitioner seeks to prove what lands were exclusively used and occupied by these Indians in 1800 before they were practically wiped out by epidemics. Petitioner offered no substantial proof as to what lands were exclusively used and occupied as of the date of the alleged taking in 1850 but to the contrary offered the testimony of petitioner's expert

witness, Doctor Taylor, who testified: "In any case, the Chinook ceased to exist as tribes; virtually all villages were depopulated, and what you effectively had after 1832 were a few hangers-on at the trading post and at strategic planning [clamming] spots, but there was no such thing as a tribe." (Tr. 21, Hearing, Washington, D. C., November 17, 1953). These Indians in the vicinity of the mouth of the Columbia have been classified as "fish-eating" Indians who were mostly dependent upon marine life for their food supplemented by roots and berries (Findings 1, 2, 3, 15). Hunting was not important to them (Tr. 22-23). Edward S. Curtis in his work, "The North American Indian" (Volume 9) in writing of the Shoalwater Bay Indians (Chinook and Lower Chehalis) stated they were "'salt-water Indians,' dwelling for the greater part in places adjacent to the extensive mud flats of the bay, with their inexhaustible beds of clams and oysters. Salmon were obtained near the mouth of the streams, and berries in abundance were found near the settlements, so that inland journeys were unnecessary. Few of the men hunted. Most of them, in fact, would easily have lost their way in the woods." (Def. Ex. 54, page 7). In a region of such abundance on Willapa Bay and along the Columbia lives the Chinookan speaking peoples. It was a region that had aboriginally supported an estimated 13,500 such Indians. It may safely be said that only a very small portion of the areas claimed was exclusively used and occupied at the date of the alleged taking by any of these groups. Much of the claimed area in the Willapa Bay (Shoalwater) region was also being used by that time by the Lower Chehalis.

There is no substantial evidence to support the contention of petitioner that these autonomous villages of Chinook, Clatsop, Kathlamet, Wahkiakum, Willipa and Nucqueclahwemuck Indians consolidated to form the so-called Chinook Nation after the coming of the white man. Some of these so-called tribes are extinct today such as the Nucqueclahwemuck whose chief, Wallowska, was the sole male survivor at the time of the signing of the unratified treaty on August 7, 1851. The Nucqueclahwemuck have been extinct for over 100 years according to petitioner's expert, Doctor Taylor (Findings 7 and 8). According to Frederick W. Hodge, "Handbook of American Indians" (B.A.E. 30, Part I, page 216), the Kathlamet Indians in 1849 numbered but 58 people and are now extinct. Of the Wahkiakum, Hodge wrote that they have been "lost sight of since about 1850, when Gibbs referred to their chief as almost the last survivor of the tribe." Hodge, in writing of the Chinook (proper), stated that "Swan counted their number at 112 in 1855, at which time they were much mixed with the Chehalis, with whom they have since completely fused, * * *." The Willipa Indians, who are not to be confused with the Willipa-Chinook Indians, are also extinct, according to all ethnologists. (Findings 2, 18 and 19).

The evidence, therefore, does not support petitioner's contention that there was a consolidation of these various groups into the "Chinook Nation" after the coming of the white man. By the date of the unratified treaties some of these so-called tribes were on the verge of extinction, which did occur later, while the remaining Indians for the most part seem to have fused with other dialectic groups in that section of the country. (See Finding 16).

Petitioner next raises the issue as to whether "this action is properly prosecuted through the confederated 'Chinook Nation' in the names of the Chinook Tribes and Bands as follows: Chinook (Proper) Tribe including the Wauhkiakum and Willapa or Shoalwater Bay Band, Kathlamet Chinook, and the Clatsop Tribe including the Nucqueclahwemuck Band?" It has already been pointed out that there is no evidence of the consolidation of these aboriginal groups into the so-called "Chinook Nation" after the coming of the white man. There is substantial evidence that the Kathlamet, Willipa and Nucqueclahwemuck Indians are now extinct and the Wauhkiakum may be extinct (Findings 2, 8, 16, 18). There is no substantial evidence that petitioner is the successor in interest to the claims of the Kathlamet, Willipa and Nucqueclahwemuck Indians or that petitioner had the capacity to bring this action for and on behalf of such Indians. In any event, the record with respect to the Kathlamet, Wauhkiakum, Willapa (Chinook) and Nucqueclahwemuck, fails to show what lands, if any, these groups were exclusively using and occupying at the date of the alleged taking by defendant.

As previously pointed out the record is far from satisfactory with respect to the right of petitioner herein to maintain a cause of action or the various bands, tribes or groups it claims to represent. In this connection, attention is directed to House Report No. 2680, 83d Congress, 1st Session (Investigation of the Bureau of Indian Affairs, 1954, at pages 475 and 476), wherein the composition of petitioner organization is discussed. The report, in part, states:

* * *

In May of this year, the group adopted a written constitution (not approved) and elected a council for their self-government. The president, or chairman is Mr. Roland Charley of Tokeland, Washington.

This furnishes a good example of the confusion that exists: Mr. Charley is listed in the Quinalt census as a full blooded Quinalt Indian. He has an allotment on the Quinalt Reservation, has a home on the Shoalwater Bay Reservation, and is the chairman of the newly organized Chinook Tribal Organization.

- - - - -

The Newly Organized Chinook Tribal Council

Name	Address	Tribal affiliation as per Quinalt census	Allotted on Quinalt Reservation	Position on Chinook Council
	<u>Washington :</u>			
land Charley	'Tokeland	' Full Quinalt	' Yes	' Chairman
' Hawk	' Bay Center	' 3/4 Quinalt	' Yes	' Vice chairman
' Woodcock	' Raymond	' Full-Quinalt-Chinook	' Yes	' Secretary-Treasurer
ude Wain	' Raymond	' 5/8 Quinalt	' Yes	' Member
arles Larson	' Tacoma	' 1/4 Quinalt	' Yes	' Do.
herine Herrold Troeh	' Ilwaco	' 1/16 Chinook	' Yes	' Do.
l Petit	' Bay Center	' 1/4 Quinalt-Chinook	' Yes	' Do.
k Petit	' Ilwaco	' 1/16 Quinalt	' Yes	' Do.

All of these people claim to be Chinook. * * *

* * *

In view of the above and the previously mentioned testimony concerning the composition of membership in petitioner organization there exists grave doubts as to the capacity of petitioner to present the claims of all of the tribes or bands petitioner contends it represents herein. Because of the necessity of liberally analyzing the pleadings and the record with respect to capacity (cf. Upper Chehalis, et al. v. United States, Court of Claims, Appeal No. 1-56, decided October 9, 1957, reversing 4 Ind. Cl. Comm. 301), the right of petitioner to present the claims of the Chinook (proper) and Clatsop Tribes on behalf of the descendants of such tribes is recognized. The testimony and evidence of record does not support the right of petitioner to represent the other tribes or bands nor does the evidence, in any event, show what lands these tribes or bands were exclusively using and occupying at the time of the alleged taking in 1850.

The Commission therefore concludes that petitioner has the capacity to prosecute this action for and on behalf of the Clatsop and Chinook (proper) Indians. The evidence of record supports the Commission's holding that as of the date of the unratified treaty, August 5, 1851, the Clatsop Indians had Indian title to the area of land described in Finding 29. The Commission further determines that, based upon the evidence of record, the Chinook (proper) Indians had Indian title to the area of land described in Finding 30 as of the date of the unratified treaty of August 9, 1851. If the payments made in 1912 for said lands were unconscionable (this is to be determined in a later hearing) then, of course, the releases secured thereby do not estop petitioner from prosecuting this case. There is nothing in the Act of August 24, 1912,

Stat. 518, 535, providing for said payments, which would indicate
 was the intent of Congress to recognize that the Indians, parties to
 unratified treaties mentioned therein, had "title" to any lands.

The Commission concludes, based on the findings of fact herein made
 the record as a whole, that the Clatsop Indians had Indian title to
 lands as described in Finding 29 and the Chinook (proper) Indians
 Indian title to the lands as described in Finding 30.

Since the limited issues above referred to, namely, the issue of
 capacity of the petitioner to assert the claims and the areas of land
 which each of the petitioner groups had Indian title has been determ-
 d in favor of the Indians, the case will now proceed for the determi-
 ion of the compensation, if any, such groups received for their
 pective lands, the value of the Clatsop lands as of August 5, 1851,

value of the Chinook lands as of August 9, 1851, the payments,
 any, the defendant may have made to either of such Indian groups, and
 offsets, including money or property given to or funds expended
 suitously for the groups, allowable under the Indian Claims Commission

Louis J. O'Marr
 Associate Commissioner

concur:

Mr. E. Witt
 Associate Commissioner

M. Holt
 Associate Commissioner