

BEFORE THE INDIAN CLAIMS COMMISSION

THE QUINAIELT TRIBE OF INDIANS, on its)
own behalf; QUINAIELT TRIBE OF INDIANS)
on behalf of the QUEETS TRIBE OR BAND OF)
INDIANS; QUEETS TRIBE OR BAND OF INDIANS,)
on relation of and represented by Harry)
Shale,)

Petitioners,)

Docket No. 242

v.)

THE UNITED STATES OF AMERICA,)
Defendant.)

Decided: December 1, 1958

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Quinaielt Tribe of Indians are an identifiable tribe of American Indians who resided in aboriginal times within the territorial limits of the United States in what is now a western portion of the State of Washington. We find the identity of this aboriginal tribe, as such, has been established in this record and meets the requirements of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S. Code Sec. 70(a)).

EVIDENTIARY FACTS SUPPORTING ULTIMATE FINDING OF FACT NO. 1

(a) The United States recognized this tribe and executed "the Treaty with the Quinaielt," etc. in 1855 (12 Stat. 971, II Kappler 719), with the "chiefs, headmen and delegates of the different tribes and bands of the Qui-nai-elt and Quil-leh-ute Indians."

(b) During February, 1855, Governor Isaac I. Stevens scheduled a treaty council involving Indian tribes west of the Cascade Mountains whose lands had not theretofore been ceded. He summoned representatives of all such tribes known to him except Upper Chinook and Klikatat Tribes. That summons included the Quinaielt, the Upper Chehalis and Cowlitz Tribes. The Council was held on the Chehalis River a few miles above its entrance into Gray's Harbor. (Dr. Nancy O. Lurie, Tr. 272; Pet. Ex. 19(b), p. 103).

(c) The minutes of the above-mentioned council state:

The Kwinai-ult Chief now came forward accompanied by the principal men of his tribe and expressed his willingness to sign the Treaty and Governor Stevens accordingly signed it first and was followed by Tahola. (Pet. Ex. 17, p. 58)

The council began deliberations in February, 1855, "on the site of Mr. Pilkenton's claim a few miles above the entrance of the Chihalis River into Gray Harbor." The council journal reports:

It was now however found that the Quinaults did not occupy the whole country between the Chihalis and the Makahs, but that another and distinct tribe, the Kwilleyutes were intermediate. (Pet. Ex. 17)

(d) Handbook of American Indians (1912, Bulletin 30, Part II) edited by Frederick Webb Hodge of Smithsonian Institution states:

Quinaielt, a Salish tribe on the Quinaielt r., Wash., and along the coast between the Quileute and the Quaitso on the N. (the latter of which probably formed a part of the tribe), and the Chehalis on the s. Lewis and Clark described them in two divisions, the Calasthocle and the Quiniilt, with 200 and 1000 population, respectively. In 1909 they numbered 156, under the Puyallup school superintendency.

(e) The language of the Quinaielt Indians was of the Salish linguistic stock but was sufficiently different from that of any other Salish-speaking Indian group to form a separate and distinct dialect of

that linguistic stock. The Qweets spoke the same language as the Quinaielt proper. (Hodge, Pet. Ex. 81; Boas, Def. Ex. 90; Riley, Def. Ex. 126; Mooney, Pet. Ex. 85; Swanton, Pet. Ex. 91; Ray, Tr. 45; Olson Tr. 477).

(f) Quinaielt Indians have been the subject of numerous brief sketches and mentions by ethnologists. The first systematic description of Quinaielt Indians was written by Dr. Ronald L. Olson, and published in the University of Washington Publications in Anthropology, November, 1936. (Pet. Ex. 124)

(g) Henry R. Wagner reported in The Cartography of the Northwest Coast of America to the Year 1800, Vol. II, p. 488 (1937) as follows:

Queen Hithe, or Hythe, probably at the mouth of the Quinault River, Washington, one of the names said to have been given by Meares for some place on the Thames River in England but more probably it was what Quinzult sounded like to him. Meares refers to it July 1, 1788. It is likely that it was named by Capt. Barkley in 1787. It was once spelled Queenault. (Pet. Ex. 3)

(h) George Davidson, Assistant Superintendent, U. S. Coast Survey (circa 1858) wrote this about Quinaielt Indians:

Que'-ni-ult River. The mouth of this small stream is between three and four miles N W. by W. from Point Grenville, and is almost closed by the shingle and gravel thrown up by the surf; which leave, however, a contracted opening for the passage of canoes in calm weather. The closing of the entrance has so dammed the river as to form a small lake inside, upon the banks of which is situated a village of the Queniults, a race of Indians hostile to all other tribes. Combined with others to the northward they have ever been notorious for their hostility and vindictiveness to the whites. Several Spanish, English, and Russian vessels and their crews were, in former times, taken and destroyed. Hence we meet with the names Destruction Island, Isla de Dolores, Punta de Matires, &c, in this immediate vicinity. The river is said to head in a lake at the foot of the mountains.

The name of this river is usually known by the old settlers as Que'-noith, but the Indians are said to pronounce it as if spelled Que'-ni-ult, accenting the first syllable strongly, and the last so softly that many persons consider they call themselves Que-nai. A tribe still further north is called the Que-nait'-sath.

2. The Queets Indians were a small division of the Quinaielt Tribe and resided principally on the Queets River. (See 1(b), 1(e) and 1(f) above, and 3(b), 3(c), 3(d) below)

3. We find this petitioner is the tribal organization of Quinaielt Indians whose predecessors in interest, Quinaielt and Queets Indians, ceded their lands, together with other groups of Indians, under the terms of the Treaty with the Quinaielt, etc. 1855, to defendant. (12 Stat. 971; II Kappler 719). This treaty is sometimes called "The Treaty of Olympia."

EVIDENTIARY FACTS SUPPORTING ULTIMATE FINDING OF FACT NO. 3

(a) The Quinaielt and Queets were of the Salish lingual stock, speaking a common dialect of Salish, separate and distinct from their neighbors. (See Finding 1(b) and 1(f) above)

(b) In 1877, Dr. George Gibbs wrote a comprehensive report for the Smithsonian Institution on Washington Indians in which he described the Quinaielt Indians as follows:

The Kwinaiutl, of which tribe the Kwe'hts-hu form part, were present at the council. This tribe speak little more than a dialect of the Lower Tshialis tongue. They are mostly on the two streams which bear their respective names. The Kwinaiutl is celebrated for its salmon, which are considered to excel in quality even those of the Columbia. (Pet. Ex. 20, p. 172; Dft. Ex. 4) (Underscoring supplied)

(c) Leslie Spier in his Tribal Distribution of Washington cites Gibbs in classifying Queets as part of Quinaielt. (Pet. Ex. 89, p. 28) John R. Swanton in Bulletin 145 of Smithsonian Institution, Bureau of American Ethnology, reported:

Queets or Quaitso. Significance unknown. Connections--The Queets belonged to the coastal division of the Salishan linguistic family and were most intimately related to their neighbors of the south, the Quinault. (Pet. Ex. 91, p. 434)

(d) James Mooney's Population Statistics, published in 1928, explains the great decimation of the Indians of this area in pre-treaty times as follows:

That regular trade of ocean vessels at the mouth of Columbia 1788 marked the introduction of sexual diseases from sailors and traders which soon poisoned the blood of practically all of the Indians west of the Cascades Liquor, introduced in large quantities by Russian traders, despite the efforts of the Hudson Bay Company officers to prevent it, is also said to be a potent destroyer along the coast and the Columbian (Farnham). In 1823 . . . an epidemic of fever . . . spread . . . and apparently also along the coast and central region It destroyed four fifths of the natives, practically exterminating the Chinookan tribes . . . but the Salishan . . . tribes of Washington appear to have escaped. In 1846 the Columbian tribes . . . suffered another visitation of smallpox. In 1847 a measles epidemic spread In 1852-3 smallpox, introduced from San Francisco among the Makah, with its usual destructive effect among nearly all the tribes of Washington . . . wiped out whole villages in some tribes

<u>Washington, Western Tribes</u>	<u>1780</u>	<u>1907</u>
Makah (Quinnechant)	2000	438
Quilleute and Hoh	500	295
Quinaielt and Queets	1500	196

(Pet. Ex. 85, pp. 14-15)

4. Petitioners' aboriginal territory was situated generally along the Quinaielt and Queets River on the Pacific Coast in the present State of Washington between Gray's Harbor and the Strait of Juan de Fuca. That area had no natural harbors and was so heavily wooded that it was extremely difficult to traverse by land. Aboriginal conditions were relatively undisturbed at the time of treaty negotiations with the United States in 1855, and remained undisturbed as late as the latter decades of the nineteenth century. (Dr. Lurie, 2 Tr. pp. 282-283)

The North American Ethnology in 1877 published a contribution by Dr. George Gibbs containing this general comment on Quinaielt Indians:

The coast north of the Tsihalis tribe is successively occupied by the Kwinaiutl, the Kwillehiut, and the Makah, the first speaking a dialect varying considerably from the Tsihalis, the second is a distinct language, the root of which is also probably in the Selish, and the third the language of the Nutka Sound. The Makah territory extends from the southern Cape Flattery. . . .

The Kwinaiutl find their supplies in the streams, and to a certain extent in hunting, while the Tsihalis properly belong to the bays, from which they obtain winter salmon and shell-fish, and trade with the interior for Kamas roots and berries. Trails are said to exist from the Chahlatt River to the Elwa on the straits, and from the Kwillehiut to the Pishtst and the Okeho (Dft. Ex. 4, p. 167)

5. The "Treaty of Olympia," as it is sometimes called, was consummated after the February-March, 1855 treaty council took place. Governor Stevens had instructed Colonel M. T. Simmons to explore the territory between that occupied by the Makah Tribe and Gray's Harbor. (Pet. Ex. 14) While carrying out this exploration, Colonel Simmons met with the Quileute and Quinaielt tribes on their home grounds and concluded a treaty which Governor Stevens subsequently signed at Olympia, Washington Territory.

The different tribes and bands of the Quinaielt and "Quileute" Indians ceded all their rights in lands occupied by them, bounded and described in said treaty as follows:

. . . . Commencing at a point on the Pacific coast, which is the southwestcorner of the lands lately ceded by the Makah tribe of Indians to the United States, and running easterly with and along the southern boundary of the said Makah Tribe to the middle of the coast range of mountains; thence southerly with said range of mountains to their intersection with the dividing ridge between the Chehalis and Quiniatl Rivers; thence westerly with said ridge to the Pacific coast; thence northerly along said coast to the place of beginning. (Treaty with Quinaielt, etc., 1855, 12 Stat. 791, II Kappler 185)

6. The treaty further provided "in consideration of the above cession the United States agree to pay to the said tribes and bands the sum of twenty-five thousand dollars . . ." (Article 4). Article 5 further provided "the United States further agree to pay the sum of three thousand five hundred dollars" for reservation lands for the tribes and bands.

7. In 1861, a reservation on the Pacific Coast south of the Quinaielt River was established by the Superintendent of Indian Affairs for Washington Territory for the Quinaielt and Quileute Tribes. Subsequently, in 1873, that reservation was enlarged to its present size by Executive Order, and was opened to other tribes of "fish-eating Indians" on the Pacific Coast. (Pet. Ex. 44)

8. The political organization of the Quinaielt Tribe was an integral part of its social order. This social organization was dominated by the concept of class consciousness found throughout the Puget Sound areas in which each individual was born into his place, as a slave, commoner, or of the royalty or "chief" class. The ranking member of this social structure was a "leader" or respected "chief" of the village. He was spokesman for the village in tribal matters. (Dr. Ray, 1 Tr. 63-64)

9. The Quinaielt Indians in pre-treaty times lived in multiple family lodges situated along the Quinaielt River, near its mouth and up to Lake Quinaielt. Similarly, the Queets Indians lived along the Queets River near its mouth. Temporary or seasonal camps were also maintained by these Indians along the respective rivers bearing their names. The location of such campsites and permanent locations are shown on Dr. Ray's map. (Pltf. Ex. 73)

10. Petitioners herein claim exclusive use and occupancy in pre-treaty times of a tract of land alleged to encompass approximately 814,080 acres, the boundaries of which petitioners describe as follows:

Commencing on the Pacific Coast at the mouth of Steamboat Creek; thence easterly along the crest of the watershed of the Hoh River to Mount Olympus; thence easterly along the crest of the watershed between Hoh River and Clearwater River; thence easterly along the crest of the watershed between the South Fork of Hoh River and Queets River to the crest of Mount Olympus; thence easterly to Bear Pass; thence southeasterly along the crest of the Olympic Mountains to Mount Anderson; thence southwesterly along the crest of the watershed between Quinaielt River and Skokomish River; thence along the crest of the watershed of Quinaielt River and the Humptulips River; thence southwesterly along the crest of the watershed between Chehalis or Copalis River and Humptulips River to a point on the North Bay approximately 3 miles west of the mouth of the Humptulips River; thence westerly and southerly along the coast of the North Bay to Point Brown; thence northerly along the Pacific Coast to the place of beginning.

11. The Chehalis Indians (Docket No. 237) assert claim to the land areas south of the Quinaielt claim. There is an overlap of approximately six miles width of the respective claim of petitioners and the Chehalis claim. The Chehalis, in their Amended Petition filed with this Commission on February 24, 1954 claim "their north aboriginal boundary" as:

Beginning on the coast of what is now the State of Washington at a point north of Gray's Harbor, which point is now called Copalis Rock; thence in a northeasterly direction to the headwaters of the Humptulips river; thence in a generally easterly direction from the head of the Humptulips river to the head of the Wynoochee river; etc.

Dr. Ronald Olson, anthropologist, who testified for petitioners in this case, stated, in his Quinaielt Indians, published in 1936 on page 13:

In theory the tribal territory embraced the whole region drained by the Quinault river, and in addition a district along the beach between a point near the mouth of the Raft river and a spot near the present site of Pacific Beach, or the mouth of Joe Creek. In practice not a foot of the tribal boundary was sharply determined. The southern boundary is said to have followed Joe Creek to its source and thence along the height of land of the Quinault watershed to the summit of the Olympic mountains. The heights above the sources of the river were more or less common hunting territory for Quinault, Skokomish, Klallam and Queets. The northern limit of Quinault country was roughly along the northern rim of the watershed to the source of the Raft river and down that stream to its mouth. But the feeling of ownership or exclusive right to this territory was unheard of, and if expressed, no doubt would have been considered a great joke. Any one had the right to travel along the beach, to dig clams where he pleased and to hunt where game was most plentiful, just as anyone had the privileges of voyaging after whale or seal. Yet the rights of members of the Quinault tribe were slightly different from those of aliens. A whale which drifted ashore between Joe Creek and Raft river belonged first of all to members of the tribe. An alien hunting in the Quinault watershed might be shot at, but largely because it offered a better opportunity than if close by his home village. (Pet. Ex. 124, p. 13)

12. The overlap on the southern boundary alleged by petitioners here (Amended Petition filed Dec. 23, 1955, par. VII) with the alleged northern boundary of the Chehalis claim in Docket 237 turns on the relationship and tribal identity of the Copalis and also of the Humptulip Indians residing on the streams bearing their respective names in the overlap area. We find that neither the Copalis nor the Humptulips were a part of petitioners' Quinaielt Tribe.

The land description contained in the Treaty with Quinaielt, etc. 1855, describes petitioners' southern boundary in somewhat ambiguous terms, viz.: "Thence southerly with said range of Mountains to their intersection with the dividing range between the Chehalis and Quin=ialt Rivers, thence westerly with the said ridge to the Pacific Coast" (Pet. Ex. 24, p. 4; 12 Stat. 971; II Kappler 719)

The dividing ridge of the Chehalis and Quinault Rivers is not easily discernible, as there are several streams, including the Moclips, Copalis, Humptulips and Wenatchee (Pet. Ex. 71) which are not part of the drainage of either the Quinault River or Chehalis River proper. They flow into the Pacific Ocean or Gray's Harbor.

(Dr. Ray, Tr. 37, 68, 69; Olson, Tr. 636) An examination of the topographical map of this area (Humptulips Quadrangle, Grid "G," Dft. Ex. 101-A) shows that the drainage of this disputed overlap area is of far greater proportions southward, in the general direction of the Chehalis River, than such disputed area is drained northward into, or in the direction of, the Quinaielt River drainage area. Hence, the crest of the watershed between the Quinaielt and Chehalis Rivers, referred to as the south boundary of the Quinaielt by the treaty cession description, must be reasonably concluded as several miles north of the position advocated by petitioners. We observe that petitioners' south boundary claim is not supported by the boundary description contained in the treaty cession made by the Quinaielt Indians.

However, petitioners in their Requested Finding 10, state:

"Actually, the conflict arises because of the Chehalis claim that the Copalis Indians are a band or subdivision of the Chehalis Tribe," followed by citations of ethnological studies tending to regard the Copalis Indians as part of the Quinaielt, by inference, if not expressly so.

The defendant's expert witness, Dr. C. L. Riley, noted in his testimony of the Copalis area that it was used also by other people up

and down the coast for clamming. The Quinaielt were among the nearest coast neighbors of the Copalis and spoke the same Salish language.

(Dr. Riley, Tr. 73-74)

Dr. Edward S. Curtis in his monumental work The North American Indian described the territory of the Quinaielt as extending from the Queets River to the Hoquiam River which would include the Copalis area.

(Pet. Ex. 83, p. 9)

Dr. Ronald L. Olson, in his extensive work among the Quinaielt in the 1920's listed the Copalis as a separate tribe joining the Quinaielt on the south. Olson noted the Copalis as a most hospitable tribe who never "let their fires die out." (Pet. Ex. 124, pp. 16, 24, 115). However, Dr. Olson in his testimony in the hearing of this case stated that he had altered his position and concluded that the Copalis were a part of the Quinaielt. (Dr. Olson, Tr. 536-538) Frederick Webb Hodge in Handbook of American Indians (1912) lists the Copalis as a separate tribe.

James G. Swan, one of the most informed writers of treaty times treating with Indians west of the Cascades and who was present at the treaty council conducted by Governor Stevens with the Quinaielt, relates the following in his book, Three Years at Shoalwater Bay, as to the identity of Copalis Indians:

In May, 1855, General Gibbs, who was connected with Governor Stevens' Commission for treating with the Indians of Washington Territory, wrote me for the purpose of ascertaining the names of the Coast Tribes, and, after quoting Lewis and Clarke's account, adds, "If you can puzzle out these names with the assistance of the Indians, I shall be very glad."

The list, as made out by Lewis and Clarke, are the Chenooks, Chilts, Killaxthokle, Clamoitomish, Potoashees, Pailsk, Quinults, Chillates, Calasthocle, Quinnechaut.

The names given me by the Indians, and by which the tribes from the Columbia River to the Fuca Straits are known are:

Chenooks, on the Columbia.

Kar-wee'-wee, or Arts'milsh, the name of the Shoalwater Bay Tribes, which are now nearly extinct, and are usually considered as Chenooks.

Che-ha'lis, on Gray's Harbor and Chehalis River.

Co-pa'lis, on the Copalis River, eighteen miles north of Gray's Harbor. (Underscoring supplied)

Que'-ni-ult at Point Grenville . . . Next north of the Queniult tribe are the Quai'tso, then the Hooch or Hooch, Que-lai-'ult and Que-nait'sath . . . Dft. Ex. 10, pp. 210-211)

The language of the tribes north of the Columbia is a guttural sound which to a stranger seems a compound of the gruntings of a pig and the clucking of a hen. All of the tribes of the Territory (some twenty-five) speak a language which, though sounding the same to unpracticed ears, is very different when understood; and even tribes so nearly connected as the Chenooks, Chehalis, and Quiniults, being only a few miles distant from each other, yet members of the one can not understand the language of the other. Still, there are individuals of each who, from a roving, trading disposition, have become familiar with each other's tongue, and can usually make themselves understood. The Chehalis language is that most usually spoken at present, for the ancient Chenook is such a guttural difficult tongue, that many of the young Chenook Indians cannot speak it, but have been taught by their parents the Chehalis language and the Jargon. (p. 306)

The inescapable conclusion drawn from the above quoted James G. Swan and George Gibbs, among the most respected authorities on the Indians of the Northwest Pacific coast, is that the Copalis Indians were not a tribelet or subdivision of the Quinaielt Tribe. Gibbs and Swan conducted

their investigations during and immediately after treaty times and were in direct contact with Copalis Indians.

13. The Quinaielt Tribe of Indians, together with their sub-tribe of Queets Indians, used and occupied an area of land in aboriginal times described as follows:

Commencing at the mouth of the Queets River thence northeastward along a straight line to the present town-site of Elk Park on said river; thence southwesterly to the headwaters of the Raft River; thence easterly to the most northeasterly point on Quinaielt Lake; thence south to the crest of the ridge line, between the Quinaielt River and west fork of the Humptulips River; thence southwesterly along the crest of said ridge extended, passing north of the headwaters of the Copalis River, to the headwaters of Joe Creek; thence southwesterly along the course of Joe Creek to its mouth; thence northward along the Pacific Coastline to the place of beginning.

EVIDENTIARY FACTS SUPPORTING ULTIMATE FINDING OF FACT NO. 13

Subsistence and Use Areas of the
Quinaielt and Queets Indians:

In aboriginal times the Quinaielt and their tribal subdivision, the Queets Indians, subsisted very largely on fish and other seafood. All five species of salmon spawn in the Quinaielt River. Blueback enter the river as early as December and increase in numbers until April when great numbers enter this river. By June the peak is over and only stragglers persist until August. The black salmon spawn in August. Dog salmon run in greatest numbers in September and continue to run until mid-November. A few humpback run in late August and September but they are of slight importance. Steelhead trout, often classed as salmon by fisherman, run in the Quinaielt River from November to May. (Pet. Ex. 124, p. 26; Dft. Ex. 40, p. 10)

