

THE QUILEUTE TRIBE OF INDIANS, on its)
 own behalf and on behalf of the HOH)
 TRIBE OR BANDS OF INDIANS; HOH TRIBE)
 OR BAND OF INDIANS, on the relation of)
 and represented by SCOTT FISHER, on)
 its own behalf,)

Petitioners,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 155

Decided: December 1, 1958

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Quileute 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 northwestern 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. I

a. The United States recognized this tribe in the preamble of the Treaty with the Quinaielt, etc. in 1855 (12 Stat. 971; II Kappler 719), sometimes called the "Treaty of Olympia."

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

"Quileute. A Chimakuan tribe, now the only representative of the linguistic stock, whose main seat is at Lapush, at the mouth of Quillayute r., about 35 m.s. of C. Flattery, w. coast of Washington. A small division of the tribe, the Hoh, live at the mouth of the river of the same name, 15 m. s. of Lapush Salmon are caught in considerable numbers and constituted an important article of food. Roots and berries of various kinds are also much used. Although the woods in their vicinity abound with deer, elk, and bear, the Quileute seem to have hunted them but little and have confined themselves to a seafaring life."

c. The identification of the Quileute Tribe was made by Territorial Governor Isaac I. Stevens, Superintendent of Indian Affairs, Mr. Simmons, Indian Agent, Mr. Gibbs, Secretary, Mr. Frank Shaw, Interpreter and Special Agent, Mr. Tappan, Sub-agent, together with the employees of the party, who took part in a council "with the Upper and Lower Chehalis, Lower Chinook, Cowlitz and Quinault Indians." This council became a preliminary step to the subsequent Treaty at Olympia some months later. The council, begun in February 1855, was held "on the site of Mr. Pilkenton's claim a few miles above the entrance of the Chihalis River into Gray Harbor." Its journal reports:

It was now however found that the Quinaults did not occupy the whole country between the Chihalis and the Makah's, but that another and distinct tribe, the Kwilleyutes were intermediate. This was perceived upon collecting vocabularies of the languages for comparison that of the Kwilleyutes proving to be entirely different, and upon pursuing the inquiry it was further ascertained that the messengers sent up the Coast had for this reason not notified them of the Council. Being wholly unrepresented therefore, they were necessarily omitted in the intended negotiation but their numbers are ascertained to be about 300.

The necessity of Ethnological inquiry in concluding arrangements for treating with or locating Indians is strikingly shown in this instance. (Pet. Ex. 17)

There is a remote possibility that Horatio Hale, philologist of the United States Exploring Expedition (1838 - 1842), in reporting on the tribes of this region may have made bare mention of these Indians as the "Kwenaiwitl." (Dft. Ex. 18, p. 212)

Governor Stevens' effort in 1854 to take a census of the tribes and bands north of the Chehalis River up to Cape Flattery had been thwarted by some Indians called "Qui-eets," armed with guns and knives, who stopped Colonel Simmons from crossing the Queets River. (Pet. Exs. 14 and 15)

d. James G. Swan published in the "Northwest Coast" (1857), an account of the negotiations at the above-mentioned treaty council, reporting:

* * * *The features and provisions of this treaty were these: The Indians were to cede all the territory, commencing on the Pacific coast, at the divide of the Quaitso (Queets) and Hooch (hoh) Rivers, thence east between the same along the line of the Quillahyute tribe, to the summit of the coast range; thence south * * *. (Underscoring supplied)

e. Superintendent of Indian Affairs, R. H. Milroy, reported on the identity and location of petitioner Indians in post-treaty times (1872):

* * *But one of the four tribes that have been made parties to the Quinalt treaty is on the reservation. The Quiliutes, Hohs, and Quits reside at different points and distances north of the reservation, and say they never agreed to sell their country, nor did they, to their knowledge, sign any treaty disposing of their right to it. That they were present at

the time of the treaty with them is alleged to have been made, but that the paper that they signed was explained to them to be an agreement to keep the peace with citizens of the United States * * *. They therefore refuse to leave their homes and localities in which they then and still reside, and move on the reservation which they (the Quillutes, Hohs, and Quits) regard as the homes and property of the Quinaielts. (Pet. Ex. 40, pp. 339-340)

f. Ethnological works of the twentieth and late nineteenth centuries which mention or identify the Quileutes are several. The only known works which treat specifically with the Quileute are discussed by petitioner's anthropologist, Dr. Verne Frederick Ray. In his testimony, Dr. Ray mentions the unpublished field notes of his former student, Richard Daugherty, Professor of Anthropology at Washington State College. Dr. Ray also mentions his discovery of the long-lost manuscript of Dr. Leo J. Frachtenberg as the earliest works treating with Quileute Indians in any detail. (R. pp. 19-20; Pet. Ex. 93, apparently an extract.)

2. The Hoh Indians were a small division of the Quilleute Tribe and resided principally at the mouth of the Hoh River. (See Finding No. 3 below)

3. We find this petitioner is the tribal organization of Quileute Indians whose predecessors in interest, Quileute and Hoh Indians, ceded their lands, together with other groups of Indians, under the terms of the Treaty with the Quinaielt, etc., to defendant. (12 Stat. 971; II Kapp. 719)

EVIDENTIARY FACTS SUPPORTING ULTIMATE FINDING OF FACT NO. 2 AND 3

a. The Quileute and Hoh were of the Chimakum lingual stock,

separate and distinct from the dialects of their Salishan speaking neighbors. (See Evidentiary Findings 1b and 1c.)

b. In 1877, Dr. George Gibbs made a comprehensive report for the Smithsonian Institute on Washington Indians in which he described the Quileute Indians as follows: (Pet. Ex. 20; Dft. Ex. 4)

* * *There are two bands of this tribe, the Kwilla'-huit, of Kive-dee-tut, and the Huch, of Kwaat-sat.
(p. 166)

c. In about 1907, Albert B. Reagan wrote "The Hoh and Quileute Indians, Archaeological Notes." Reagan located the Quileutes at James Island and at the mouth of the Quilayute River. (Pet. Ex. 78)

d. In 1920, Leo J. Frachtenberg published the "Eschatology of the Quileute Indians." (Pet. Ex. 86) Frachtenberg most emphatically rejected the "Hoh" as being a separate tribe and defined them as merely a geographic location of Quileute Indians. He reported :

* * *Earlier writers and particularly Farrand, assigned three distinct dialects to this group; the Chimakum, the Quileute, and the Hoh. The latter, however, according to a detailed investigation carried out by the present writer, shows no particular points of differentiation from the Quileute variety, and the word Hoh may be safely assumed to be a purely geographic term * * *.

e. In 1924, Dr. W. C. MacLeod published "The Origin of the State" in which he reported (Dft. Ex. 143, pp. 31-32):

* * *In the great Puget Sound area occupied almost wholly by Salish-speaking tribes, there exists the only two groups, both very small independent political units, representing an independent linguistic stock - The Chimakum. The groups are the Quileute and the Chimakum Tribes, which, when discovered by the whites were possessed of a precarious hold of two separated portions of the shore of the Sound and at war constantly with their Salish neighbors and the Makah Nootka of the Cape, and were on the verge of extinction.

f. James Mooney's population statistics, published in 1928, explain the decimation of the Indians of this area in pre-treaty times as follows: (Pet. Ex. 85, pp. 14-16)

* * * 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 Columbia tribes * * * suffered another visitation of small-pox. In 1847 a measles epidemic spread* * *. In 1852-3 small-pox, 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>	1780	1907
Makah (Quinnechant)	2000	438
Quilleute and Hoh	500	295
Quinalielt and Queets	1500	196

g. The Quilleute tribe of Indians of the Quilleute Indian Reservation were incorporated and its charter ratified on August 21, 1937. The Constitution and By-Laws of said tribe were approved by the Secretary of the Interior on November 11, 1937, pursuant to Section 17 of the Wheeler Howard Act of June 18, 1934, 48 Stat. 984. (Records, Dept. of the Interior, Bureau of Indian Affairs.)

4. The political organization of the Quilleute 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. (Testimony of Dr. Ray, 1 Tr. 63-64)

5. Petitioner's aboriginal territory was located along and inland from 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 of the Quileute Tribe were undisturbed at the time of treaty negotiations with the United States in 1855, and remained relatively undisturbed as late as the latter decades of the nineteenth century. (Dr. Lurie's Testimony, 2 Tr. pp. 282-283)

6. During February, 1855, Governor Isaac I. Stevens scheduled a treaty council involving Indian tribes west of the Cascade Mountains whose land had not theretofore been ceded. He summoned representatives of all such tribes known to him except the Upper Chinook and Klikatat Indians. That summons included the Quinaielt, Upper Chehalis, Lower Chehalis, Lower Chinook and Cowlitz Tribes. The Council was held a few miles north of the entrance into Gray's Harbor. Not until the beginning of this council did officials of the United States discover there was a Quileute tribe and that it occupied territory between the Quinaielt and Makah tribes. After this discovery, Governor Stevens did not summon Quileute representatives to the council but proceeded

to present to the groups present a draft of a treaty for consideration and adoption. He was unable to obtain agreement to its terms.

7. 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 Quilleute and Quinaieilt 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 Quineieilt and "Quillehute" 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 southwest corner 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 Quinaiatl Rivers; thence westerly with said ridge to the Pacific coast; thence northerly along said coast to the place of beginning. (Treaty with Quinaieilt, etc., 1855, 12 Stat. 791, II Kapp. 71a)

8. 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.

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) The Quileutes, in 1889, were set aside a small reservation by President Cleveland at the mouth of the Quillayute River (Pet. Ex. 46). In 1893, a small reservation was set aside at the mouth of the Hoh River for the Hoh Indians. (Pet. Ex. 61)

9. The Quileute villages were situated about the mouth of the Quillayute River, on James Island, with campsites along the Quillayute, Dickey, Soleduck and Bogachiel Rivers in aboriginal times. Similarly, the villages of Hoh Indians were situated at the mouth of the Hoh River. Temporary or seasonal camps were maintained by these Indians near their fish-traps along the respective rivers bearing their names. The locations of these campsites and villages are shown on Dr. Ray's map. (Pltf. Ex. 73)

Dr. Leo J. Frachtenberg's manuscript, found by Dr. Verne Frederick Ray in the American Philosophical Society's Library in Philadelphia (R., p. 20), includes a historical account of the Quileute, dated 1916, by Arthur Howeattle (Pet. Ex. 93, Ql. 2:1), who was the son of the last Chief Howeattle of the Quileutes. The last chief died in 1898. The uncle of this last chief was the old Chief Howeattle who participated in the treaty cession of the Quileute with Governor Stevens.

This informer reported a long series of "wars" with the aggressive Makah tribe lasting until "just prior to treaty times". During the period of these "wars" the Quileute moved to James Island, a natural fortress, accessible by only two trails hewn by the Quileutes through rock passages situated at the mouth of the Quillayute River. Just prior to the treaty, the Quileute moved back to Lapush which was their only permanent village. From this one permanent village, the Quileutes established seasonal camps along the Quillayute River and near its confluence with its major tributary rivers. Quileute hunting parties occasionally went as far as the snow ridges of the Olympics on the east for deer, bear and elk. Two notable errors seem to appear in the reports of this informer, namely, that the Hohs were only recent additions to the Quileute, being originally of the Quinaielt tribe, and the map of Quileute locations shows the mouth of the Dickey River flowing into the Pacific rather than into the Quillayute River. Howeattle also stated "the Quileute thought they had ceded the north half of Lake Ozette", he further related how, about 70 years earlier (about 1846?), Quileutes learned fur-sealing when Chief Howeattle went "on a visit to the Ozettes," and under "travel", (Q1., 3:131 of Pet. Ex. 93), Howeattle informs "few of the Quillutes ever tried or had a chance to learn the language of the Makahs (spoken by the Ozettes) and Quinaults. * * * * The greatest amount of travel was done between Hoh and Lapush* * * *since both tribes were related (sic) there was a great deal of friendly visiting at all seasons."

10. Ozette Lake area was not exclusively used and occupied by the Quileute Indians.

a. The Makah Tribe (Docket No. 60) assert claim to the land areas northeast of the Quilleute Tribe. There is an overlap of approximately ten miles wide of the respective claims of this petitioner and the Makah Tribe. The Makah claim the southeast corner of their aboriginal lands was located at Cape Johnson which is approximately four miles north of the Quillayute River. (Dkt. 60, par. III, Orig. Pet.)

b. The petitioner, Quilleute Tribe of Indians, dispute this and claim the northeast corner of Quilleute aboriginal lands was at a point approximately six miles south of the mouth of the Ozette River. Thus, an overlap of claims of the petitioner tribe and the Makah Tribe is described containing a strip of land approximately ten miles in width extending along the whole south boundary of the territory claimed by the Makah Tribe in Docket 60, and such overlap includes a large portion of Lake Ozette. (Dkt. 155, par. VII of Amended Pet., filed Dec. 23, 1955)

c. Dr. Verne Frederick Ray on behalf of petitioner conducted a research of the area in question (Pet. Ex. 125) and his conclusions seem to agree substantially, if not absolutely, with the cession boundary described in the treaties above mentioned. (5 Tr. pp.733-734). Both Dr. Ray and the treaties of cession seem to support petitioners' allegations so far as the location of cession boundary between the Makah and the Quilleute is concerned. However, notwithstanding these considerations of the location of the common boundary as it was described in the treaty cession involved and the rather thorough research of Dr. Ray interpreting same, we find that Ozette Lake, and

necessarily the shoreline surrounding it, was not used and occupied exclusively by the Quileute Indians.

d. Governor Stevens was not well informed on the aboriginal boundaries of the Indians, Quileute and Makah, in the Ozette Lake area, in fact a hiatus in the reports of "Indians west of the Cascades and north of Grays Harbor" existed in the journals and maps of government men and explorers until long after treaty times as to any exact location of the north aboriginal boundary of the Quileutes.

Governor Stevens' investigator, Special Agent Simmons, was forcibly prevented by "about 50 Qui-eet Indians" from crossing the Queets River northward into Hoh and Quileute territory to investigate the boundary in 1854, as he was instructed to do by Stevens.

(Pet. Ex. 14)

Governor Stevens' assistant, Dr. George Gibbs, indicated his ignorance of the Quileute, or their territory, in his report dated March 4, 1854, to Captain George B. McClellan, Commanding Western Division, N. P. Railroad Exploration, in these words, "Still further north, and between the Kwinitl and the Makahs, or Cape Flattery Indians, are other tribes still unknown, but who by vague rumors * * *are both numerous and warlike." At page 429, Gibbs stated, "The Makahs, or Classets, inhabit the coast in the neighborhood of Cape Flattery, their country extending but a short distance up the Straits, where it adjoins that of the Clallams. Their language is said to extend half way down to Gray's Harbor."(Underscoring supplied)

The maps drawn by Stevens in 1857 after treaty times completely omit Lake Ozette, as does the Survey or General's Map of 1865, as does the W. H. Dall (Gibbs) Map of 1877, consistently showing the omission of Lake Ozette until Powell's Map in 1891 (See Pet. Ex. 125). Frachtenberg's later map of Quilleute territory (1919) shows a mislabeled "Dickey River" (Ellen Creek) as the north Quilleute boundary, six or seven miles south of Lake Ozette. (Pet. Ex. 125)

Simmons' and Shaw's trip down the coast from Cape Flattery in 1855 was a renewed effort to supply Governor Stevens with boundary information, but apparently was not a thorough reconnaissance, which is obvious upon noting the omission of Lake Ozette from the maps of this area for so many years after the treaty cession.

e. Neither the "Treaty of Olympia", 12 Stat. 971, II Kappler 719, nor the "Treaty of Neah Bay", 12 Stat. 939, II Kappler 682, with the Makah Indians, described the common boundary line on the ground between the Makah and Quilleute Indians, further than the location of the afore-mentioned common corner of such boundary. This corner, in the Treaty of Neah Bay, and referred to in the Treaty of Olympia, is described in the former as "running southwardly along the coast to Osett, or the Lower Cape Flattery; thence eastwardly along the line of lands occupied by the Kwe-deh-tut or Kwill-eh-yute tribe of Indians, * * *." The treaty term "Osett" is ambiguous because there is a lake, river, island and village all named Osett; but probably the village was the reference point intended by "Osett" since it constitutes a point most readily discernible

at "Lower Cape Flattery". Evidence extraneous of the language of the respective treaties must be relied upon to establish what was the "line of lands occupied by the Kwill-eh-yute tribe."

f. Dr. Roland L. Olson in his "The Quinault Indians" (1936) in classifying the Indians in this area wrote:

* * * * The Ozette, who lived about the lake of that name and adjacent coast, and the Suez (Tsue's?) who lived along the Suez River, where Makah groups but probably regarded themselves as distinct tribes.

g. The Ozette were an intermediate group of Indians situated between the Makah proper and the petitioner. The Ozette village, in pre-treaty times as now, is more centrally located to this disputed overlap area than either the Makah proper or this petitioner. We find insufficient evidence in this record to associate the Ozettes as part of the Quilleute tribe.

h. The documentary evidence of this overlap area in treaty times was indeed vague and scant. Dr. George Gibbs commented in his "North American Ethnology" (1877), thereon as follows: (Pet. Ex. 20, p. 166)

* * * *North of this (country of the Chehalis) there were no land-locked harbors, the streams entering the sea directly and without estuaries; of these there are several, the largest being the Kwinaiutl, the Loh-whilse, and the Kwillehiut. What is known of this section is chiefly from the journey of Messrs. Simmons and Shaw, who followed the coast down from Cape Flattery, in the summer of 1855.

11. The whole of the Olympic mountain range was a free range to everyone. (Gunther's Klallam Ethnography, p. 205) Dr. Ronald Olson in his study, "The Quinault Indians" (1936) reports (Pet. Ex. 124, p. 13):

* * * *Territory. In theory the tribal territory embraced the whole region drained by the Quinault river* * *. In practice not a foot of tribal territory was sharply determined. The southern boundary is said to have followed* * * 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.

12. In aboriginal times the Quileute Indians very largely subsisted on fish and seafood. They utilized fishing weirs where salmon were caught along the Quillayute River. Quileute Indians also fished on the Bogachiel, Calawah and Soleduck rivers. (R. 295-296) Along the adjacent Pacific coast Quileute caught smelt, bass, puggy, codfish, rock, red, ling-cod, halibut, flatfish, bullheads, devil-fish shark, herring sardines, sturgeons, seal, sea-lion, porpoise and whale. (Pet. Ex. 93, P. 3:57) The Hoh Indians fished along the river bearing their name.

These Indians, Quileute and Hoh, also hunted deer, elk, small game and birds (Pet. Ex. 74), including grouse, pheasant, wild geese, duck, brant, white-crested cormorant, falcon, sea-gull, puffin, rhinoceros auclid and loon. (Pet. Ex. 93, p. 3:18)

On Little, Quillayute, Maxfield and Forks Prairies near the afore-mentioned fishing streams, upon which they travelled by canoe, were gathered gooseberries, red and blue huckleberries, salmon, elder, salal, blackberries, thimble berries and strawberries by these Indians. They dug camas and white clover roots at Forks and other prairies. (Pet. Ex. pp. 3:27 and 131)

