

BEFORE THE INDIAN CLAIMS COMMISSION

THE WASHOE TRIBE OF THE STATES)
 OF NEVADA AND CALIFORNIA,)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES)
)
 Defendant.)

Docket No. 288

Decided: March 20, 1959

Appearances:

John Lewis Smith, Jr.
 with whom were C. T. Busha, Jr.
 and George F. Wright,
 Attorneys for Plaintiff

Ralph A. Barney and
 Bernard Newburg, 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 timely filed with the Indian Claims Commission. The petitioner is the Washoe Tribe of the States of Nevada and California, which was formally organized under the provisions of the Wheeler-Howard Act (48 Stat. 984) and a corporate charter was issued to it by the Secretary of the Interior in 1937. As such, petitioner is an

identifiable group of American Indians, entitled to maintain this action under the Indian Claims Commission Act, 60 Stat. 1049.

The claim presented herein by petitioner included alleged exclusive use and occupancy to lands not only in the State of Nevada but also the State of California. Since California lands were claimed the case was consolidated for the purposes of trial with Docket Numbers 31 and 37, the "Indians of California," and certain other cases seeking recovery for the loss of lands in California allegedly held by aboriginal title in the respective petitioners (Order of Commission, November 19, 1953). The Commission, on January 20, 1958, in an opinion held that petitioner herein was entitled to present the claim of the Washoe Indians relating to lands in California and that petitioners in Docket 31 and 37 did not have the exclusive right to present claims relating to lands in that State (6 Ind. Cl. Com. 86).

The lands claimed by petitioner are located in western Nevada and eastern California. The claimed area described in the petition was reduced by petitioner during the hearing in this case (Pet. Ex. 9-1; Fdg. 5). Generally speaking the area now alleged to have been exclusively used and occupied by petitioner's ancestors was located with Lakes Washoe and Tahoe in its center. To the north, petitioner claims it held Indian title as far as Honey Lake, California; to the west, to the crest of the Sierra Nevada Mountains; to the south, to Sonora Pass; and to the east, to the crest of the Pine Nut Mountains, and northerly from said mountains to just east of Reno and Carson Cities, Nevada, and thence to Honey Lake.

The Washoe Indians, being located to the east of the Sierra Nevada

Mountains, their culture had strong affinities with that of the California area and also with the culture of the Great Basin area. Washoe culture was more closely allied to the latter, however. While long considered a distinct linguistic family, the Washoe Indians may be an aberrant Hokan group geographically separated from Hokan-speaking people west of the Sierra Nevada Mountains.

The Washoe Indians lived in and ranged over a small, narrow tract of country. The rugged Sierra Nevada Mountains to the west with deep snow for a great part of the year limited the Washoe movement in that direction. To the east were the Northern Paiute Indians who in historic times restricted the eastward movements of the Washoe. In the valleys, such as on the upper Carson and Truckee rivers, and the Little Truckee River, the Washoe found shelter and relief from the extreme winters and for the most part made their homes. The pine nut was one of their main sources of food which was supplemented by fish, roots, grass seed and game.

These Indians were what may be called semi-sedentary. They lived in small communities or villages normally containing ten or less huts. The Washoe had few, if any, horses and thus their range in search of sustenance was also limited by this fact. In aboriginal times the social organization was primarily based upon the family unit and apparently there was no approach to a tribal organization. Chiefs, in the sense the title is used in orthodox tribes, were in practice "bosses" who arranged communal rabbit or deer hunts, or were in charge for social purposes when the Washoe would gather on occasions.

On the basis of what evidence is available the Washoe Indians numbered approximately 1000 people. According to the ethnologists there were three divisions, (1) the "Southerners" between the forks of the Carson River near Woodfords, California, (2) the "Valley Dwellers", near Minden and Gardnerville, Nevada, and (3) the "Northerners" apparently in the vicinity of Reno, Nevada. Indian Agent J. Dodge, in 1859, reported there were three "bands" of Washoe Indians which observation seems to confirm the division or groups found by the ethnologists. Dodge reported a band in the vicinity of Carson, Washo and Eagle valleys and Lake Tahoe; a second band in Little Valley between the east and west forks of the Carson River; and a band living in Long Valley, southeast from Honey Lake.

Historical material with respect to the Washoe Indians in the way of reports of Indian agents, officials, trappers, traders and others is scant. The Washoe were apparently a peaceful people who made little demand on, or trouble for, the Government or the whites who came into their country. No treaty was ever made with these Indians and the need of a strong political concept in this identifiable group never appears to have developed in historic times although some semblance of leadership within the geographically located divisions appears to have existed when Dodge visited one of the divisions in 1859. The lands where the three groups or divisions of Washoe Indians lived were contiguous and all Washoes were free to obtain from these lands their sources of subsistence.

Defendant does not take issue with the fact that Washoe Indians were to be found living within at least a part of the claimed area when the

territory involved was acquired from Mexico in 1848 by the Treaty of Guadalupe Hidalgo, 9 Stat. 922. Defendant contends that the customary range of the Washoe Indians did not encompass the large area claimed by petitioner. According to defendant, the customary range of these Indians extended on the north no farther than the valleys of the Little Truckee River and the Truckee River; on the west, the valley floors east of the Sierras, with occasional sorties into the higher slopes, from the Little Truckee River south to just below Echo Pass; on the south to about Hawkins Peak; in the east along the crest of the Pine Nut Mountains; thence northward just east of Carson City and continuing northward along Steamboat Valley to a point just east of Reno, Nevada.

While defendant contends that the record shows the above to be the customary range of the Washoe Indians, defendant urges a number of reasons why it believes the petitioner should not recover before this Commission. Defendant states that petitioner has failed to prove the existence of a Washoe tribe which was capable of holding Indian title. According to defendant's reasoning if there did not exist aboriginally a Washoe tribe, which would have to be a functionary society, a political unit, a land-conscious people in defendant's concept, then the petitioner, the organized Washoe Tribe, is not identical with or the successor of the aboriginal Washoe Indians. This position advanced by defendant has been squarely met by the Commission in the Puget Sound cases already determined by this Commission wherein it has been held that the lack of political cohesion, in itself, was no defense where it was shown that among the autonomous villages in a small area there

existed an identifiable group of American Indians with strong ties of kinship and friendship and close cultural ties. In those cases, as in the instant case, it was also shown that there were areas of land used in common by all the people of the group. The Muckleshoot Tribe of Indians v. United States, 3 Ind. Cl. Com. 658, 674, 675; The Nooksack Tribe v. United States, 3 Ind. Cl. Com. 479, 494; The Lummi Tribe v. United States, 5 Ind. Cl. Com. 525, 546.

It is the further contention of the defendant that the area within the customary range of the Washoe Indians was not exclusively used and occupied by the Washoes. This contention is based on two points. Defendant urges first, that other Indians used parts of the area, and secondly, that the Washoe Indians "had no idea of the actual ownership of the soil or the subsoil, and were interested only in the resources they could obtain from it. In other words, even if the Washoe Indians had had an organization capable of exclusively using and occupying the whole of a defined area of land, their manner of life was such that no exclusive use and occupancy could result." There is no substantial evidence of record to show the use and occupancy by other Indians of any of the territory in which this Commission has determined Indian title to have been in the Washoe Indians. On the other hand, the Commission has found substantial evidence that certain sections of the claimed area were used or occupied by other than Washoe Indians, or used in common, such as Sierra Valley and the upper or northern part of Long Valley, and has eliminated such parts of the claimed area in determining the Washoe boundaries. Whether the Washoe Indians had any control of

actual ownership, as white men use the term, although the family right to pine nut patches apparently indicates some such concept, is not important. Indian title is the right of exclusive use and occupancy and if the Indians exercised this right in their every day life, then, what their concept, if any, of this use or occupancy was in legalistic terms is immaterial.

The area of land claimed by the Washoe Indians was included in the lands ceded to the United States by Mexico by the Treaty of Guadalupe Hidalgo in 1848. Defendant contends that this treaty gave the Washoe Indians no more rights than they had under the sovereignty of Mexico. According to defendant the Washoes, being uncivilized Indians, could derive no rights from Spanish or Mexican law, and "that the idea of aboriginal title was in fact contrary to that law." The question of whether lands within the Mexican Cession can now be made the subject of a claim such as in the instant case based on Indian title was determined affirmatively in favor of the petitioner in the Mohave Tribe v. The United States, 7 Ind. Cl. Com. 219, by this Commission, and the same reasoning stated therein applies in this case.

As previously pointed out, the historical data pertaining to the Washoe Indians is scant indeed. Ethnographic material with respect to the habitations or specific areas used by the Washoe is also meager when compared with source material for many other Indian tribes, bands, or groups. This sparsity of information has made it difficult to determine the area exclusively used and occupied by the Washoe Indians. Most historical material only located these Indians in a general way.

Some historical data, such as Agent Dodge's report, more specifically place the three divisions, as do several ethnographic studies. But Dodge, who visited but one of the divisions or "bands" in the vicinity of Carson City, in his report places a Northern Paiute band as staying in "Carson Valley at the forks of the River," thus causing some skepticism as to the overall validity of his report since no one else has ever mentioned Paiutes as living in this area. To determine the boundaries of Washoe territory with reasonable accuracy in view of the nature of the country, its resources and the subsistence economy of the Washoe Indians necessarily involved a thorough study of the limited material pertaining to these Indians and to the material of record in these consolidated cases referring to their Indian neighbors. Such a study resulted in the elimination of Sierra Valley from the Washoe claimed territory and the upper part of Long Valley because there was not exclusive use or occupancy in these sections in the Washoe Indians. The extreme southern part of the claimed area was also eliminated because there was no substantial proof of exclusive use and occupancy in that section.

Petitioner contends that the lands of the Washoe Indians were taken from them over a period of time beginning in 1848 and ending by 1863. As stated within the findings of fact herein made (Finding 17 (b)) the date of taking of the California lands which were aboriginally exclusively used and occupied by the Washoe Indians occurred for all intents and purposes on March 3, 1853. The date of taking with respect to the

lands in what is now the State of Nevada cannot be determined from the evidence now of record (Fdg. 17 (a)). The Commission does not agree with defendant that there has not been a "taking" of all of Washoe country. At some date, or dates, at least prior to 1863, there was sufficient disruption of the Washoe way of life and interference with the overall use and occupancy of their lands to constitute an extinguishment of the Washoe Indian title in their lands. A further hearing shall be held to determine the date the Indians were deprived of their lands unless the parties may agree on such a date that will enable the Commission to determine the value of the Nevada lands.

The Commission concludes that petitioner has the right to maintain this action for and on behalf of all descendants of the Washoe Indians. The Commission further holds that petitioner has proven Indian title to the area of land described in Finding 16, and that said Indian title was acquired by the United States from the Washoe Indians without the payment of compensation therefor. The case shall now proceed to a determination of the date of acquisition of the Washoe lands in Nevada, the value of the lands in California and Nevada found to have been exclusively used and occupied by the Washoe Indians for which they are entitled to recover, less the amounts of offsets, if any, including money or property given to or funds expended gratuitously for

petitioner, to be allowed defendant under the Indian Claims Commission Act.

/s/ LOUIS J. O'MARR
Associate Commissioner

We concur:

/s/ EDGAR E. WITT
Chief Commissioner

/s/ WM. M. HOLT
Associate Commissioner