

BEFORE THE INDIAN CLAIMS COMMISSION

THE SKAGIT TRIBE OF INDIANS, also known)
 as THE LOWER SKAGIT TRIBE OF INDIANS,)
 also known as WHIDBEY ISLAND SKAGITS,)
)
 Petitioners,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 294

Decided: Mar. 20, 1959

Appearances:

Warren J. Gilbert, Frederick
 W. Post and Malcolm S. McLeod,
 Attorneys for Petitioner

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

OPINION OF THE COMMISSION

Witt, Chief Commissioner delivered the opinion of the Commission.

The petition in this case presents claim in behalf of the tribe of American Indians alleged to be the Lower Skagit Tribe of Whidbey Island Skagits. We find that petitioner is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act (60 Stat. 1049) and as such is entitled to maintain this cause of action.

Petitioner alleges that the United States by the Point Elliott Treaty of January 22, 1855 (12 Stat. 927, II Kapp. 669) secured a cession of Indian land aboriginally belonging to said petitioner for an unconscionable consideration (Petition, Par. VII). The land ceded to

the Government in the Point Elliott Treaty by various tribes and bands of Indians consisted of a large area in what is now the northwestern part of the State of Washington and petitioner's claim is a specified portion of the lands so ceded to the United States.

The only issues to be determined at this time are (1) whether petitioner has capacity under the Indian Claims Commission Act to maintain this action, and (2) is it successor in interest to the original owners of the land involved; and (3) whether petitioner or its predecessors in interest held aboriginal Indian title to the land described in the petition, paragraph IV, or any portion thereof (I Tr. P. 3).

Since the first white contact with the native inhabitants of the Puget Sound area, historical sources have referred to "Skagit Indians" as being located on parts of Whidbey Island and about the mouth of the Skagit River. It is also true that "Skagit" from early times has been used as an identification of one dialect of the Salish language. George Gibbs, Governor Steven's able assistant, in pre-treaty times defined "Skagit" as a dialect spoken by at least four tribes. But aside from the usage of "Skagit" as a classification of dialect, Gibbs also described not only "Skagit" as an entity of American Indians but also drew a distinction between "up-river" bands of Skagits and those situated along the mouth of the Skagit River and on Whidbey Island. This multiple usage of the word "Skagit" in reference sometimes to "Skagit-speakers" and at other times in reference to the Skagits residing on central Whidbey Island and the lower portion of the Skagit River, and at other times used in reference to those Indians residing along the upper portions of the Skagit River has given rise to confusion and controversy in Indian cases.

In 1934 decision which antedates the Indian Claims Commission Act of 1946 (Duwamish, et al. v. United States, 79 C. Cls. 530, Finding IV and Op., p. 581). The Court of Claims found that the Lummi Tribe, Samish, Whidbey Islands Skagit and Upper Skagit, among others, were parties to the Point Elliott Treaty.

Indian Agent Lane in an annual report of 1849 noted "the Skagets live on the Skagit river down to the ocean, toward the north end of Whidbey's Island, a total number about 500 * * *."

George Gibbs, in 1854, classified the Whidbey Island Skagits as a separate identifiable group of Indians in this language, "the next tribe proceeding northward are the Skagits, who live on the main around the mouth of the Skagit River, and own the central parts of Whidbey Island, their principal ground being the neighborhood around Penn's cove."

Also pre-treaty reports of priests, explorer, and government men, Blanchet, Bolduc, Kautz, Wilkes, and others all mention the Sachets, Shatchets, Skagats, etc., as living on Whidbey Island and adjacent areas. The Government men treated with the Skagit in the Point Elliott Treaty and also before and after said treaty. The fourth signature to this treaty is "Goliah, Chief of the Skagits and other allied tribes." It is well known that Goliah as well as Chief Neetlum and other prominent Skagits resided on Whidbey Island.

Sally Snyder, petitioner's ethnologist, pointed out in her testimony that various methods were used in Indian classification among scholars who have made special studies of Indians and their culture, particularly in the Puget Sound region. Some classifications used are ecological, geographical, linguistics, tribal caste systems, potlaching, etc. Snyder

commented that in her classification the term "tribe," among Indians of this region, would be applied to a group of Indians inhabiting, ordinarily, contiguous territory with a degree of solidarity that would approach a political level -- something more than by mere physical habitat or ecological grouping. In defining the Lower Skagits as a tribe she drew a distinction between them and the up-river (upper) Skagits (II Tr. pp. 12-14).

It appears beyond question that these Skagits spoke a common dialect, roamed about together in their canoes around Whidbey Island and lower portions of the Skagit River, constructed pole barricades at Penn's Cove as a common refuge against their common enemy, the Queen Charlotte Indians or the "Yugoltah" of Frazier River. They potlached together, had areas of religious ceremonies, buried their dead in a common cemetery, had arbitration councils to settle internal disputes, followed the leadership of Chief Neetlum and others. While, perhaps, their social order appeared crude and loosely knit when compared to such groups as the powerful and warlike confederacy of "the Six Nations" among the Iroquois, and other organized tribes east of the Mississippi, nevertheless, we have concluded upon the basis of these factors, and in the light of the history of Government negotiations in treaty times treating with them and their leaders as representatives of "tribes and bands," that the Lower Skagits were an identifiable group of Indians within the meaning of the Indian Claims Commission Act. Our finding is thus based not alone upon modern sources and studies but also upon reports of religious, political, and administrative relationships by missionaries, explorers, and Government men with these Indians at a period when they had not abandoned their native culture, 1792-1850's.

Petitioner has established that it is the successor to the aboriginal tribe of Lower Skagit Indians. The testimony of three members of petitioner whose ancestors were well known Skagit Indians, identified by their native culture, 1792-1850's.

This Commission believes that petitioner has established that it is the successor to the aboriginal tribe of Lower Skagit Indians. The testimony of three members of petitioner whose ancestors were well known Skagit Indians, identified by Blanchet, Bolduc, and others, who came in contact with the Indians on Whidbey Island and the North Fork of the Skagit River, supports our Finding No. 10, that petitioner represents the descendants of said aborigines and is the successor to said aboriginal group or tribe of American Indians.

The fourth signer of the Point Elliott Treaty is subscribed "Goliah, Chief of the Skagits and other tribes." When considered with Colonel Simmon's report, this fact considered with other early reports of Skagits on Whidbey Island set out in our Evidentiary Finding No. 10, establishes that Chief Goliah's group of Skagits were a party to the Point Elliott Treaty and their principal residence, at least, was on central Whidbey Island.

The validity of the treaty is not challenged by defendant but only the identity of "so-called Lower Skagit Tribe or Whidbey Island Skagits," as a party to such treaty.

Petitioner seeks additional compensation for lands ceded by the Lower Skagits under the terms of the aforementioned Point Elliott Treaty (12 Stat. 927; II Karp. 669) and alleges such Indians held exclusive use and occupancy of lands described by metes and bounds in the petition,

Par. IV. Said lands of Island and Skagit Counties, Washington, generally comprise two parcels, namely, all that portion of Whidbey Island south from Dugula Bay and north of the entrance to Holmes Harbor and a triangular shaped area on the mainland generally circumscribing so much of the Skagit River as comprises the North Fork, from an apex about three miles north of Mt. Vernon, with one leg extended down to a point on Skagit Bay near Swinomish Slough, and the other leg roughly dividing in half the area between the North and South Forks of the Skagit River, and with that segment of Skagit Bay shoreline thus cut by these forming the base of the triangular tract claimed.

The locations of villages, campsites and use areas of the Lower Skagit were detailed by petitioner's ethnologist, Sally Snyder. (Finding 11)

Snyder in her testimony in this case located and explained the place names set out on the map. (Claimant's Exhibit 4) with aboriginal boundaries delineated in red pencil. She reported Skagit villages beginning at the north end of Whidbey and along the eastern coastline down to Holmes Harbor. Snyder listed Ben Ure, Dugula Bay, Crescent Harbor, Oak Harbor, Penn Cove, Monroe's Landing, Long Point, Snakelum Point and Greenbank, and on the mainland opposite Bald Island, at the fork of the North and South Forks of the Skagit River and near Mt. Vernon, all as permanent Skagit village sites (II Tr. pp. 25-40).

This Commission believes that the evidence, both of modern sources and of such eminent authorities as George Gibbs, and other writers who were among the first to report on the Skagits, establishes that Skagits lived on Whidbey Island and "on the main" along the North Fork of the Skagit River, and were an identifiable group.

In considering the issue of aboriginal boundaries of territory exclusively used and occupied by petitioner's Indian predecessor -- that is, possession that was real, and not merely constructive -- that was exclusive and not jointly used or held in common with other groups -- we have noted two particular portions of the areas claimed by petitioner which claims are not supported in the record, because said areas were not exclusively used or possessed by Whidbey Island Skagits.

Claimant's map, Exhibit 4, shows a broken red line marked "Swinomish" at Dugula Bay. The areas around Deception and Canoe Passes on the north of Whidbey were widely used by the marine-oriented Indians of this area, especially Kikiallus, Sklallams, Skokomish, Snohomish, Swinomish, as well as the Skagits (Cl. Ex. 4; Dkt. 125, Snohomish Fdg.9) We have excluded this area from the above-mentioned "First Tract". This does not necessarily contradict petitioner's witnesses in their assertions "Skagits used Whidbey from Greenbanks to Chutes", except that aboriginal Skagits were not the exclusive users and occupants of this area. Deception Pass and Canoe Pass obviously constituted a principal thoroughfare of canoe traffic through the whole north Sound area, since the alternate waterways available would be many miles around the south end of Whidbey Island or the north end of Fidalgo Island. Agent Lane's report, 1849, places Skagats "toward" the north end of Whidbey, Myron Eell's 1887 report listed north Whidbey as "Swinomish". The Handbook of American Indians lists Skagits "on the middle portion" of Whidbey Island. Curtis in North American Indians, 1913, placed Skagits on the "upper eastern" coast of Whidbey Island. Speir assigned "Skagit proper * * * central Whidbey Island" (underscoring supplied) although Speir also reported his

doubts "if a single one of the Washington tribes thought in terms of boundaries." President Pierce, in an official message to both Houses of Congress, December 4, 1854 (which was contained in a September, 1955 supplement thereto and was based upon the report of Governor Isaac Stevens and apparently compiled by George Gibbs) stated, "the next tribe proceeding northward are the Skagits who live on the main around the mouth of the Skagit river and own central parts of Whidbey Island * * * ."

Also we have concluded that the present site of Skagit City, situated at the confluence of the North and South Forks of the Skagit River, marked the northern limits, or boundary of that area of land exclusively used and occupied by the Lower Skagits on the mainland as said limit is described in "Second Tract" of our Finding 12. Petitioner's ethnologist, Sally Snyder, testified in Docket 263 (Kikiallus) that "Now in the case of Upper Skagit coming down the River, they had camping places of their own upper Skagit territory, on the Skagit side of Mt. Vernon. This place is Sositia * * * and then they have the privilege of traveling on the river (South Fork ?) for visiting their relatives in Kikiallus territory. I don't know if they ever came down the north fork. I doubt it." (Dkt. 263, 2 Tr. p. 64) Our conclusion as to this northern boundary is also supported, we think, from the great preponderance of reports which describe that territory of the Skagits on the Skagit River as being "near its mouth," or "down river to the ocean," "About its mouth", etc. The evidence seems to show that these use areas farther from the centers of the Skagit population, the larger villages at Coupeville and at the mouth of the Skagit River, were often jointly used by Skagits and others. Their principal village locations were nearest the best fishing sites and other

food sources. The record does not seem to justify finding exclusive use and occupancy of northern Whidbey Island and above the confluence of the forks of the Skagit River as included within the exclusive aboriginal possession of petitioner's ancestors.

Defendant alleges (Answer, Par. 2 and 6) that petitioner's claim is barred by the decision of the Court of Claims in Duwamish, et al. v. United States, 79 C. Cls. (Cert. Den. 295 U.S. 755). This Commission has in a number of cases involving other claims overruled this plea in bar. For the reason that this cause of action is brought under provisions of the Indian Claims Commission Act enacted by Congress years after the 1934 Duwamish decision, and for reasons which are more fully stated in earlier decisions of this Commission, said plea of res judicata is overruled. (The Sklallam Tribe v. United States, 5 Ind. Cls. Com. 697; The Quilleute Tribe v. United States, 7 Ind. Cls. Com. 31; The Skokomish Tribe v. United States, 6 Ind. Cls. Com. 154; The Suquamish Tribe v. United States, 5 Ind. Cls. Com. 158; The Snohomish Tribe v. United States, 4 Ind. Cls. Com. 549).

In conclusion, the Commission is of the opinion that as of the date of the Point Elliott Treaty cession the petitioner's predecessors in interest held original Indian title to the land described in Finding No. 12, and the date of taking was the date of ratification of said treaty by the United States, March 8, 1859. Such questions as the consideration paid to petitioner, the acreage and value of said lands, and whether or not unconscionable, must await a further hearing and additional evidence.

Edgar E. Witt
Chief Commissioner

We concur:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner