

BEFORE THE INDIAN CLAIMS COMMISSION

THE KIKIALIUS TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 263

Decided: April 13, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Kikiallus Tribe of Indians was an identifiable band of American Indians residing within the territorial limits of the United States along the mouth of the South Fork of the Skagit River, in what is now the northwest portion of the State of Washington. The identity of this aboriginal village tribe or band of Indians, as such, has been established by the evidence herein as required by the Indian Claims Commission Act of August 13, 1946, (60 Stat. 1049; 25 U.S.C. Sec. 70(a)).

2. Petitioner is the tribal organization of Kikiallus Indians whose ancestors ceded their lands, along with a large number of other bands and tribes of Indians, under the terms of the Treaty of Point Elliott to defendant (12 Stat. 927, II Kapp. 669).

EVIDENCE SUPPORTING FINDING NO. 2

(a) The Chief of the Kikiallus Tribe of Indians testified there are about 150 members of the Kikiallus Tribe and that the position of Chief-tain came to him by heredity from an uncle, his predecessor, and kinsman

of the representative of the Kikiallus Indian who signed the Treaty of Point Elliott (1 Tr. pp. 14-17).

(b) The Chairman of the Kikiallus Tribal Council, Alphonso Sampson, (the record is confusing as to his relationship, if any, to the person whose signature appeared as the seventieth one to the treaty of Point Elliott: "Sampson, Skagit tribe, his x mark") testified he had served in such position "continuously for many years past" (1 Tr., p. 13).

(c) Defendant's ethnologist, Dr. Carroll L. Riley, states in his opinion, "The group of modern Indians that form the Kikiallus are presumably the descendants of villagers who once lived on the Kikiallus River, probably the south fork of the Skagit" (Dft. Ex. 1 at Ch. II, p. 1).

(d) The "Kik-i-a-llus" Indians are listed among the twenty-two tribes and bands whose names appear in the preamble to the Treaty of Point Elliott (12 Stat. 927, II Kapp. 669). Also among the signatory chiefs and subchiefs to said treaty appears, "Sd-so-mahtl, Kik-ial-lus band, his x mark,"

(e) The United States Court of Claims found the Kikiallus Indians were parties to the Treaty of Point Elliott (Fdg. IV) and occupied eight houses and found their houses with a total value of \$2,000.00 (Fdg. XI, Duwanish, et al. Indians vs. United States, 79 C. Cls. 530, 1934, Docket F-275).

(f) Dr. C. L. Riley has summarized the brief reports of Kikiallus among the authorities of Indians in this region (Dft. Ex. I), as follows:

The group of modern Indians that forms the Kikiallus are presumably the descendants of villagers who once lived on the Kikiallus River, probably the south fork of the Skagit. These

were mentioned several times in early accounts. Starling, in 1852, listing positions and populations of the various Sound peoples spoke of a Kick-u-al-lis group of 160 members that lived at the mouth of the "Kick-u-al-lis River and vicinity". Stevens reported the Kikiallis, living along the Kikiallis River (one of the mouths of the Skagit) and Lower Widbey's Island with a population of 75. The Schoolcraft figures gave a population of 75 for the Kikiallus but did not indicate the area inhabited.

Gibbs, in 1854, had a more detailed report of the group:

Below the Sinahomish come the Stoluckaquamish (River People), or, as their name is usually corrupted, Steillaquamish, whose country is on a stream bearing their name, and still north of them the Kikialtis. No opportunity has afforded itself for accurate inquiry into the numbers of either. The first are said by some to amount to two hundred, while the latter may perhaps be set down at seventy-five.

The name Kikiallus appears on the Point Elliott Treaty Documents. After the organization of the Indians at "collection points" following the treaty, the Kikiallus were grouped together with the other Skagit River Indians and were handled through the Penn's Cove Agency headquarters.

Mallet, in 1877, calls the Ki-kia-loos, a "sub-tribe" of the Skagit. In the same year, Gibbs, and a few years later Eells, also classed the Kikiallus as Skagit (Eells is here quoting from Gibbs). Later ethnographers have sometimes included Kikiallus with Skagit. The Handbook takes this view as does Curtis. Both of these sources, however, point out that no political unity is implied by the term "Skagit."

More recently, Spier subsumes Kikiallus under Skagit. Spier, however, feels that villages were largely autonomous in this area and he doubts if any of the Indians thought in terms of boundaries. Smith, employing her own tribal classification, however, makes the Kikiallus (along with the Whidbey's Island Skagit) a "sub-tribe" of the Swinomish. She lists two villages for these people: one (unnamed) at the mouth of the Carpenter Creek, between Conway and Fir, and Utsaladi at Utsalady on Camano Island.

Smith's groupings are based on cultural grounds and do not represent political organizations. Smith points out that in this area the village was the autonomous land holding unit.

In another publication Smith cites informants from farther south to the effect that the Kikiallu(s) was "an important salt water group on Skagit Bay."

Informants used by Dr. Riley in preparing his report filed as Defendant's Ex. 1, stated the Kikiallus ranged widely. They used some of the area between the north and south forks of the Skagit River, parts of northern Camano Island from near the mouth of the Stillaguamish River to the town of Camano, and the eastern projection of Whidbey's Island, east of Point Poinell. Informants knew of only one village on South Fork. This probably is identical with Smith's site on Carpenter Creek (Dft. Ex. 1, Ptr. Req. Fdg. 6).

3. The petitioner and defendant stipulated at the opening of the initial hearing of this case as follows:

"There shall be first a determination in the matter of the Kikiallus Tribe of Indians versus the United States of America, Docket No. 263, the question whether the Claimant, under the law and facts to be adduced, had, at the time of the alleged wrongful acts by the Defendant, aboriginal or Indian title, within the meaning of the Act, to the lands described in the Petition, or any part thereof, and if so, whether the Defendant unlawfully deprived the Claimant thereof, postponing until after such determination, should such determination be favorable to Claimant, proof as to the value thereof, or as to any other questions of fact raised by the pleadings not heretofore determined by the Commission." (Tr. I, p. 3)

4. Petitioner claims Indians title by reason of exclusive aboriginal use and occupancy during aboriginal times of the following described territory within the area ceded to the United States in the Point Elliott Treaty of January 22, 1855, 12 Stat. 927, II Kapp 669:

Beginning at Point Demock on the Northwest tip of Camano Island in Township 32 North, Range 2 E.W.M.; thence in a northeasterly direction to the Northwest corner of Section 17, Township 37 North, Range 3 E.W.M.; thence East along said section line

to the Northeast corner of Section 14, Township 33 North, Range 3 E.W.M.; thence in a Northeasterly direction in a straight line to center point of Section 35, Township 34 North, Range 4 E.W.M.; thence in a Southwesterly direction in a straight line to the Northwest corner of Section 18, Township 31 North, Range 3 E.W.M.; thence in a Northwesterly direction in a straight line across Point Susan Flats and on across Livingston Bay and Camano Island to Point of beginning, situate in Island, Skagit and Snohomish Counties, State of Washington.

5. The Kikiallus Indians had a permanent village site in pre-treaty times located near the mouth of the south fork of the Skagit River some five miles south of the present site of the city of Mt. Vernon, Washington at about the point where Conway Fir Station appears on the Great Northern Railroad as shown on the Deception Pass Quadrangle Map, Defendant's Exhibit No. 3. The Kikiallus ranged through the delta and utilized parts of Skagit Bay and also used and occupied a portion of the north coast of Camano Island. Their principal village on the Skagit River was on somewhat of a main thoroughfare if the Indian (canoe) traffic between upriver settlements and those along the coast (Pet. Ex. 2; Def. Ex. 3).

6. Dr. Carrol L. Riley's report, Defendant's Exhibit 1, contains a concise account of the early history of the Puget Sound area, a small portion of which includes petitioner's claim. The earliest history of Western Washington began when the California area to the south was discovered by Spaniards, Ferrelo and Cabrillo, in 1542, and was visited by Sir Francis Drake in 1579. It is possible Drake actually may have reached the latitude of present Washington State.

In the 17th century Spain made reaches sporadically northward. Russia by the mid 18th century had explored parts of coastal Alaska and

was beginning to tap the rich fur trade. Both England and France had taken new interest in the discovery of a northwest sea passage, a dream already centuries old.

Juan Perez from Mexico began intensive exploration of the Northwest in 1774, reaching the Queen Charlotte Indians before turning back. Naceta, the Spaniard, discovered the mouth of the Columbia River and Bodegay Quadra reached Alaska. In succession the Straits of Juan de Fuca were plied probably by the fur trader Barclay in 1787, by Meares in 1788, by Martinez in 1789, and by an American fur trader named Gray in 1790. In that year Quimper and Lopez de Haro, sent from the Spanish Base at Nootka, sailed as far as the San Juan Archipelago and, in the succeeding two years, Spanish parties under Eliza, then Galiano and Valdes, also visited this region. These were their last activities in the Puget Sound, for threat of war with England forced withdrawal of Spanish forces from the northwest.

The most important British exploration of the Puget Sound area was the voyage of Vancouver in 1792. In 1804-1806 Lewis and Clark employed by the American Government, crossed the plains and floated down the Columbia; although they did not actually visit northwestern Washington, they gathered Indian reports of this area.

In 1832 Hudson's Bay Company post at Nisqually in the upper Sound carried on a fur trading activity in a systemized manner, maintaining a way station between their Frazier and Columbia River headquarters. The Sound was also thoroughly explored and mapped by an American naval expedition under Wilkes in 1841.

Several thousand whites were settled by 1853 and the Territory was then organized. This influx of pioneers impinged on Indian Territory and Territorial Governor Stevens in 1854-1855 concluded treaties with the various Indians establishing major reservations at Nisqually, Tulalip Bay and on the Lummi River (p. 6). Dissatisfaction over the treaties led some of the Indians to join the native uprisings of 1855. Their total defeat the next year, combined with intensive settlement of the area by whites, caused great changes in the native life and rapid disappearance of social and political autonomy.

7. Modern ethnological data treating with the Kikiallus other than the testimony of the respective expert witness, Miss Snyder and Dr. C.L. Riley, is almost totally lacking in the record of this case. The reports of treaty times are few and fragmentary in nature. We observe the general conditions at the time of initial white contact that there were several thousand Indians scattered along the Puget Sound area, along the river valleys and coast from near the Columbia River to Northern Vancouver Island. The Coast Salish dialects were spoken by most of these groups, including the Kikiallus who spoke Skagit dialect of Coast Salish.

In the south of Puget Sound along sheltered inlets and extending up the rivers were a number of villages sometimes collectively called the "Nisqualli Nation". Squaxin (Southwest Sound) applied to Indians from Olympia to North Bay. Nisqually and Puyallup referred generally to the natives in the river valleys bearing those names. Other Indians bearing names of rivers were Duwamish, Snohomish, Stillaguamish, Lower Skagit, Samish, Snoqualmie, Skykomish, while a number of the sites on

the White and Green Rivers are collectively known as Muckleshoot.

West of the Sound, on Hood's Canal were Skokomish with Chimakums and Klallam to the north, the latter on the south shore of the Strait of Juan de Fuca and a series of villages on the Quillayute, Hoh, Queets, and Quinault rivers and the Makahs lived in the vicinity of Cape Flattery, although there were cultural differences among these Indians, there were great similarities, in their political and social organization.

Fish constituted the principal diet of the Indians living in villages of one or more large multi-family, rectangular shaped houses along the rivers and bays of Puget Sound. In the summer these canoe-using Indians drifted away from and about these foci of their winter activities to search for food by fishing, clamming, berry and root gathering.

Essentially a second major division, apart from linguistic differences, were the inland or hunting Indians from the fishing or canoe Indians. The coastal groups had more pronounced social strata among their own tribe than the inland Indians. The Kikiallus are believed to be an exception to this class system of coastal Indians here and held no slaves, probably because they were a relatively young tribe (Sally Snyder, 2 Tr. p. 7).

The leaders of the Puget Sound Indians acquired their leadership prestige by the size of their pot-lache celebrations. These winter events were held in cedar lodges. The leader, as host, would invite large numbers of guests, including other villagers and tribesmen, and distribute gifts among them as evidence of his generosity and wealth.

Standard items of wealth among Puget Sound Indians included blankets, canoes, slaves, stored foodstuff and, in the upper Sound, strings of clam shells serving somewhat as a currency standard (Dr. C. L. Riley Def. Ex. I, pp. 1-27).

In treaty times the north part of Camano Island was in the control and possession of Kikiallus Indians although it was frequently visited by the Snohomish, Stillaguamish, and Skagit Indians with the consent of the Kikiallus. The north end of Camano Island is claimed by petitioner "north of a line from Point Demock to Livingston Bay" as described in paragraph two of the petition. (Snohomish, Dkt. 125, Pet. Ex. 10, p. 60; Stillaguamish, Dkt. 207, Deposition of Sally Snyder, last par., p. 68) The canoe traffic between the upper and lower regions of the Sound would pass through Saratoga Passage on the west, and Port Susan on the east, around Camano Island. We found in Docket No. 125, (Snohomish) Finding No. 17 that the Snohomish exclusively used the area in Camano Island south of Camano city.

8. The Handbook of American Indians lists subject Indians as follows:

"KIKIALLU. A Skagit subtribe formerly living on the N. end of Whidbey Id. and at the mouth of the Skagit r., Wash., but now on Swinomish res. They participated in the treaty of Pt. Elliott, Wash., Jan. 22, 1855."

9. "The Kikiallus probably branched off from the Skagit Tribe in earlier times," reports Miss Sally Snyder, candidate for Ph. D. degree in Anthropology and expert witness for petitioner (2 Tr. 7). The Skagit and Kikiallus spoke the same dialect and their close proximity lends credence to her conclusion. Whether or not her conclusion as to their

origin in time is correct, the Kikiallus Indians were, at least, a separate autonomous village situated on the south fork of the Skagit River during treaty times (Def. Ex. I, Ch. II; Pet. Req. Fdg. 8).

10. The Kikiallus Village Tribe of Indians exclusively used and occupied an area of land in aboriginal times described as follows:

First Tract: (Along South Fork of Skagit River)

Commencing at the point where the Skagit and Snohomish County boundary line intersects the mouth of Tom Moore Slough; thence due east on said county line to the point of its intersection with the Great Northern Railroad; thence northward along said railroad to the site of Conway Fir Station; thence due west along a line to a point where said line intersects Deer Slough; thence generally southward down said stream to its mouth; thence generally southeastward along the shoreline of Skagit Bay and encompassing all of the unnamed islets along said shoreline between the mouths of Deer Slough and Tom Moore Slough, to the place of beginning.

Second Tract: (Northern Portion of Camano Island)

Beginning at Point Demock; thence due east to a point on the ridgeline, which point is directly south of Utsaladdy and on line with Point Demock; thence southeasterly to the center point of the shoreline of Livingstone Bay; thence generally eastward along the shoreline to the mouth of Davis Slough; thence northward through Davis Slough, on the present county line to the entrance of West Pass; thence generally westward along the shoreline of Camano Island to the place of beginning.

EVIDENCE SUPPORTING ULTIMATE FINDING OF FACT NO. 10

(See also evidence under Fdg. 2)

(a) Contiguous Tribes and Areas

Miss Sally Snyder testified that she had determined what tribes bordered upon the area of the Kikiallus, as follows:

"To the east of the Kikiallus is the Nookachamps; to the south on the mainland is the Stilliguamish. To the south on Camano Island is the Snohomish. To the west on

the mainland about a mile or so south and west of Mount Vernon is Lower Skagit, and at the northern tip of the Kikiallus territory just south of Mt. Vernon to the west is Nuwaha, and that is also north. I believe that covers the contiguous area."

(b) Subsistence and Areas of Kikiallus

The Kikiallus used camps along the north shore of Camano Island for clam digging, smelt fishing, duck hunting, and land game hunting seasonally (2 Tr. pp. 12, 14). Kikiallus fished for salmon on Dry Slough, speared salmon and also took sturgeon from the South Fork of the Skagit River (2 Tr. p. 18). Herring was taken from the west shore of Camano and was used by all Indians in this area. Smelt was one of the staples of Kikiallus (2 Tr. p. 19).

Deer were corraled by a fence leading to the water and hunters shot them from their canoes on the South Fork near Kikiallus-ala, also black bear and elk were hunted in this area. Seal were taken on small islands nearby as well as racoon, pheasant, wild crabapples and loon, a large fish-eating bird, supplemented their diet (2 Tr. p. 24, 25).

The Kikiallus seasonally burned their berry patches to increase the yield. The Kikiallus traded trout to the Nookachamps for mountain goat hair (2 Tr. p. 27, 28). Salmon berries were gathered on the northern end of Camano Island (2 Tr. p. 35). The Kikiallus gathered drift wood for firewood (2 Tr. p. 42).

(c) Dr. Carroll L. Riley, defendant's ethnologist, testified upon the location of Kikiallus, as follows:

He (Dr. Marion Smith) lists two villages: one at -- on the south, in the Conway Bay area, south of the Skagit River; and the other at a village in Utsalady on Camano Island.

The present report has one village listed on the old Kikiallus area, in the Kikiallus River, in the south fork of the Skagit River, and with the population estimate it seems quite likely that there was one village, the Kikiallus village; and there is an implication that the Kikiallus used the area in the mouth of the Skagit River, and also ranged as far as Camano Island and Whidbey Island. (Underscoring supplied; 3 Tr. p. 5)

(d) Also petitioner's ethnologist, Miss Sally Snyder, prepared a map of Kikiallus Territory (Ptr. Ex. 2) and estimated the number of acres in same as 32,000 acres (2 Tr. pp. 38-39). Sally Snyder mentioned Kikiallus locations as follows:

Yulkeb - to the south on Camano Island

Xuytkub

Hwigsup

Tx wiwiaixqw (the aforementioned all clam-digging, smelt fishing, and duck hunting, land game hunting areas located on Petitioner's Map, Ex. No. 4; 2 Tr. pp. 11-12)

Shidokshib - fish drying location (2 Tr. p. 14)

Utsiladdy

Birch Bay

Kwasalad

O-o-walus (2 Tr. p. 23)

11. The lands described in Finding 10 were part of the lands ceded to the United States by the terms of the Treaty of Point Elliott by the Kikiallus Indians. The date of signing this treaty by the respective parties was January 22, 1855. This treaty was not ratified, however, until some four years later on March 8, 1859, and the date of such ratification by the United States Senate constitutes the date of taking (12

Stat. 927; II Kapp. 669).

12. Any rights which petitioner, their ancestors and predecessors in interest may have retained or acquired to any lands within the boundaries as set forth in Finding 10 may be made the subject of inquiry at the further hearing of this claim respecting the credits of the defendant and consideration paid to petitioner or its ancestors and predecessors in interest, and as to the value of said lands as of the effective date of the treaty, March 8, 1859.

/s/ EDGAR E. WITT
Chief Commissioner

/s/ WM. M. HOLT
Associate Commissioner