

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 161
)	
THE UNITED STATES,)	
)	
Defendant.)	

THE CONFEDERATED TRIBES OF THE)	
COLVILLE RESERVATION as the)	
Representative of the Moses Band,)	
)	
Petitioner,)	
)	
v.)	Docket No. 224
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: July 28, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. In Docket No. 161 the petitioner is the Yakima Tribe, which is more fully described in its approved contracts employing counsel, dated July 20, 1948 and December 10, 1958, as the Yakima Tribe of Indians of the Yakima Indian Reservation in the State of Washington. The petitioner is a recognized tribe of American Indians residing within the territorial limits of the United States.

2. In Docket No. 224 the petition was originally filed by the Confederated Tribes of the Colville Reservation as the successor to the

claims of and as the representative of the Moses Band and by two named individuals as representatives of the Moses Band. The petition was subsequently amended to include the constituent tribes of the Moses Band, which tribes were alleged to be the Columbia, Chelan, Entiat, and Wenatchee. Without determining at this point the correctness of the petitioners' characterization of its relationship as successor to or representative of the Moses Band or of the alleged composition of the Moses Band, the Commission finds that the Confederated Tribes of the Colville Reservation is an identifiable group of American Indians residing within the territorial limits of the United States.

3. By order of the Commission dated May 23, 1957, the two Dockets Nos. 161 and 224 were consolidated for the purpose of trial, and it was therein ordered that a separate trial be had to first determine:

"(1) whether the petitioners, or any of them, have authority, under the Indian Claims Commission Act, to present claims for the taking of the area described in paragraph 8 of the petition in Docket No. 224, as amended;

(2) whether the petitioners, or any of them, held Indian title to the said area, or any part thereof;

(3) the date of the taking, if any, of the said area, or any part thereof by the defendants."

The area referred to in paragraph 8 of the petition in Docket No. 224 is a northern portion of the area ceded under the Treaty of June 9, 1855 (12 Stat. 951) (called the Yakima Treaty) which ceded area is described by Charles C. Royce in his compilation of Indian land cessions as Royce area 364, shown on Map 1 of the State of Washington.

At the conclusion of the hearings on the limited issues referred to above, the petitioner in Docket No. 161 filed a motion to dismiss

Docket No. 224 insofar as Docket No. 161 is concerned. Also pending in this matter is a motion filed by petitioners in Docket No. 224 to intervene as petitioner in Docket No. 161.

4. The area claimed in this proceeding was visited in 1853 by George Gibbs, a member of the staff of Captain George B. McClellan, Commander of the Western Division of the Northern Pacific Railroad Exploration Party, under the leadership of Isaac Stevens. On March 4, 1854, Gibbs submitted his report of his trip among the Indian tribes of the area. After describing the Klikatats and Yakimas, he reported:

"The country of the Pisuouse lies immediately north of that of the Yakimas, and we entered it next upon our route. Under this appellation are here included the Indians on the Columbia between the Priest's and Ross rapids, on the Pisuouse or Winatshapam river, the Ent-at-kwu, Chelan lake, and the Methow or Barrier river. The name of Pisuouse, however, properly refers to a single locality on the river, known to the Yakimas as Winatshapam.

"The Pisuouse themselves, as has before been remarked, are so much intermarried with the Yakimas that they have almost lost their nationality. These bands were formerly all united under one principal chief, Stal-koo-sum, who is said to have been a man of great note among them. He was killed a few years since in a fight with the Blackfeet, since when there has been no head of the tribe. Stal-koo-sum's son, Quil-tan-ei-nok, or Louis, was an aspirant for his father's throne, and came over to Ketetas to recommend himself to Captain McClellan's patronage, under the tuition of Ow-hai, who seemed to be interested in his promotion. It was considered desirable to unite the scattered fragments of the empire under one head, if possible, and he was therefore engaged as a guide, the better to ascertain his character. It should be remarked, that though the chiefdom of the petty bands, or villages, seems to be hereditary, it does not always follow that one who has placed himself at the head of the tribe, or confederacy, transmits his power. Quil-tan-ei-nok had, as we learned, used great efforts to succeed in this object of his ambition; having gone to the Sound, and even to the Willamette valley, to procure a paper from some agent recognizing his rights, on the strength of which he might silence

all cavillers. In this he had been hitherto unsuccessful, and he was doomed to further disappointment. On reaching the mouth of the Pisquouse, Captain McClellan informed the Indians that it would be well for them to choose, in concert with their neighbors, a head chief, who would represent them all, and who might talk for them with the chief of the whites; that if they would agree among themselves upon a proper person, the Governor would give him a great writing, signifying his consent. In the mean time some presents were distributed; that to Quiltan-ei-nok being the largest, that he might have honor among his own people at least. When the election came off, however, he was beaten, and by a candidate whose name had never previously been mentioned. * * * (Pet. Ex. 416, pp. 411-412)

5. On August 30, 1854, the Acting Commissioner of Indian Affairs gave written instructions to Governor Isaac I. Stevens of Washington Territory, directing him to negotiate treaties with the Indian tribes, bands and groups of Washington Territory for the extinguishment of their claim of title to lands within the territory. The instructions provided that:

"In concluding articles of agreement and convention with the Indian Tribes of Washington Territory, you will endeavor to unite the numerous bands and fragments of tribes into tribes, and provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes.

* * *

"It is desirable also that the stipulations to be fulfilled annually on the part of the United States, be few in number, and that the Department retain the authority to apply the funds to a variety of objects, such as the circumstances of the Indians as the time of payment may require.

"This suggestion you will regard, particularly if you are unable to effect the combination of all the Bands into six or eight Tribes, or to arrange half a dozen treaties or less, so that every one of the tribes shall be a party to one of them.

* * *

"You will at your early convenience, furnish to this Office a skeleton map of Washington Territory, showing the location of the different tribes and bands, and the boundaries of the regions respectively claimed by each; and as treaties are concluded from time to time, in your reports accompanying them, furnish a description of the reservation provided for the occupation of the Indians, with such precision, that it may be marked on the map here."
(Pet. Ex. 474)

6. James Doty, Secretary to the treaties in Washington Territory, visited, among others, the "Piquose and Yakima Tribes of Indians" and secured their agreement to meet Governor Stevens in council in Walla Walla Valley. On May 21, 1855, Governor Stevens and General Palmer, United States Treaty Commissioners, arrived at the council grounds at Walla Walla. Also present at the council was Mr. George Gibbs, who actually wrote the treaty.

7. The official proceedings of the treaty council recorded that Yakima Chiefs Kamaiakun, Owhi and Skloom came to the treaty council grounds and that the "Yakimas were also accompanied by delegates from the Pshawnwappam, Pisuouse, Wenatshappam, and Palouse Indians--all Tribes and Bands acknowledging Kamaikun as their Head Chief, and there were present representatives from the Bands living on the Columbia River down to the White Salmon River." (Pet. Ex. 475, p. 4) The record further reported on Chief Kamaiakun's statement "of the Indian Tribes and Bands who considered him their head Chief, viz--the Yakamas proper, the Palouses, Pisuouse, Okinakanes, and Methows, the Pshawnwappam and all the Bands on the Columbia below Umatilla as far as the White Salmon River and them he would undertake to govern." The report continued:

"During the interview several Headmen of the Palouse, Pisuouse, and Methows were present and unanimously assented to Kamaiakuns decision.

"Kamaiakun was present at the General Council during the day but did not speak; and in the evening immediately after the Council he called upon Gov. Stevens for the Treaty and signed it: Owhi and Skloom did the same, as also the Palouse Chief Kahlatoose, and all Chiefs present, named by Kamaiakun as being under his jurisdiction."
(Def. Ex. 475, pp. 6-7)

(a) The preamble of the Yakima Treaty of June 9, 1855, stated in part:

"the undersigned head chiefs, chiefs, head-men and delegates of the Yakama, Palouse, Pisuouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of 'Yakama,' with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them." (2 Kapp. 698)

(b) The lands which the confederated tribes and bands ceded, relinquished and conveyed to the United States were:

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, ($119^{\circ} 10'$), which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47°) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same; thence in a southeasterly direction,

to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Perce tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks" below the Priest's Rapids; thence westerly to a lake called "La Lac;" thence southerly to a point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning. (2 Kapp. 698)

(c) Article II of the Treaty "reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land" therein described and provided that the tract "shall be set apart and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty."

8. The lands thus ceded included the territory allegedly occupied in aboriginal days by the Columbia, Wenatchee, Entiat and Chelan Tribes. Although these four tribes were not named as such in the preamble to the Yakima Treaty, the evidence clearly indicates that the four tribes were represented at the treaty council and included among those tribes which formed the confederation of tribes and bands into the Yakima Nation.

The Wenatshapam named in the preamble to the Yakima Treaty were synonymous with the Wenatchee. The Pisuouse named in the preamble

to the treaty was a general term which was used to include the Wenatchee, Entiat, Chelan and Columbia. As Gibbs stated the Pisuouse included "the Indians on the Columbia between Priest's and Ross rapids, on the Pisuouse or Winatshapam river, the En-te-at-kwu, Chelan lake, and the Methow or Barrier River." (Pet. Ex. 416, p. 411). It was Gibbs who actually wrote the Yakima Treaty. Further, Governor Stevens used the term Pisuouse in the same collective sense as did Gibbs, and with his letter transmitting the treaty to the Commissioner of Indian Affairs, Stevens included a map depicting the ceded area and clearly including the claimed territory of the Entiat, Chelan and Columbia.

Both Quiltaneinok and his younger brother, Moses, then members of the Columbia band, attended the treaty council. As Edward S. Curtis wrote, Quiltaneinok "attended the treaty council in the Walla Walla valley in 1855, and spoke favorably for the treaties although he did not sign, at least not under this name. His people, and all other Salishan tribes as far up the Columbia as the Okanagan, were to be placed on the Yakima reservation." (Pet. Ex. 415, p. 67) Quiltaneinok's wife was a member of the Wenatchees (Pet. Ex. 415, p. 67).

The Yakima Treaty was signed by Te-cole-kun (Tkolukn), a Wenatchee chief (Pet. Ex. 415, p. 69). Also signing the treaty was La-hoom, a chief from the Pisuouse area (R. 407, 409, 417, 418, 423, 424; Pet. Ex. 462).

9. The Yakima Treaty was ratified on March 8, 1859. Thereby the confederated tribes or bands as named in the preamble to the treaty became merged into the newly formed Yakima Nation. The confederated

Yakima Nation thus became the successor in interest to the formerly separate tribal entities and all of the rights of the former separate tribal entities were merged as of March 8, 1859.

10. By the terms of the Yakima Treaty the confederated tribes and bands ceded, relinquished and conveyed to the United States all their right, title, and interest in and to the lands occupied and claimed by them as described in Article I (see Finding of Fact No. 7(b)). Thus the United States on March 8, 1859, the effective date of the Yakima Treaty, extinguished the Indian title of all the tribes, bands, or groups within the area described.

11. Following the ratification of the Yakima Treaty the United States commenced its efforts to locate the Indians within the ceded area upon the Yakima reservation. However, the government officials had no great success with their efforts as many of the Indians remained off the reservation.

There was no movement as a tribe by either the Chelan, Entiat, Wenatchee or Columbia on to the Yakima Reservation although individual members of each of the four tribes did remove to that reservation. Many of the members of the four tribes continued to live uninterrupted on their ancestral lands. In fact Chief Kamaiakun refused to move onto the Yakima Reservation or accept any of the treaty benefits.

12. In about 1862 Moses became a leader of the Columbia Indians, and in the succeeding years he grew in influence among the Indians of the area. His followers included members of various bands or tribes within the area ceded by the Yakima Treaty including the Chelan, Entiat, and Wenatchee as well as individual Indians from other neighboring tribes.

13. On April 18, 1879, Chief Moses entered into an agreement by which, in consideration of the establishment of a reservation in Washington Territory, he and his people "relinquished to the United States all right, title, and interest, possessory or otherwise, in and to any and all lands now or heretofore claimed by himself or people in Washington Territory" (Pet. Ex. 349). By Executive Order, dated August 9, 1879, a tract, known as the Columbia Reservation, was "withdrawn from sale and set apart as a reservation for the permanent use and occupancy of Chief Moses and his people, and such other friendly Indians as may elect to settle thereon with his consent and that of the Secretary of the Interior." (Pet. Ex. 485, p. 450)

14. However, Moses remained dissatisfied and refused to go on the Columbia Reservation although some 144 Methow and Chelan Indians were living there in 1882. To settle the claims of the Indians on the Columbia reservation, Moses and Sar-sarp-kin together with Tonasket and Lot were invited to Washington, D. C. On July 7, 1883, a memorandum of agreement was signed by Chiefs Moses and Sar-sarp-kin for the Indians living on or assigned to the Columbia Reservation and by Chief Tonasket, an Okanogan Chief living on the Colville Reservation, and by the Secretary of the Interior and the Commissioner of Indian Affairs. The agreement was ratified by the Act of July 4, 1884 (23 Stat. 76, 79-80).

15. The Columbia Reservation, excepting allotments selected by the Indians, was restored to the public domain by Executive Order of May 1, 1886. Moses moved onto the Colville Reservation where he continued to reside until his death on March 25, 1899.

16. The Commission finds that the so-called Moses Band was comprised of certain members and descendants of members of the bands or tribes which were merged by the Yakima Treaty into the Yakima Nation. The members or descendants of members of the constituent bands of the Yakima Nation who refused to move onto the Yakima Reservation, but instead followed Moses, finally were located on the Colville Reservation where they or their descendants presently reside as a part of the Confederated Tribes of the Colville Reservation.

17. A majority of the members or descendants of members of the constituent bands or tribes of the Yakima Nation did remove to the Yakima Reservation and are included in the organization known as the Yakima Tribe of Indians of the Yakima Indian Reservation in the State of Washington.

18. Neither the petitioner in Docket No. 161 nor the petitioners in Docket No. 224 is the full successor to the Yakima Nation as it was created and existed pursuant to the Yakima Treaty. Both petitioning organizations contain members or descendants of members of the bands or tribes comprising the Yakima Nation and are, therefore, entitled to present claims for the taking of Royce Area 364.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner