

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

Appearances:

Paul M. Niebell,  
Attorney for Petitioner in  
Docket No. 161

I. S. Weissbrodt, with whom  
were David Cobb, Abe W. Weissbrodt,  
Rella R. Shwartz and Lyle Keith,  
Attorneys for Petitioners in  
Docket No. 224.

John D. Sullivan, with whom was  
Mr. Assistant Attorney General,  
Perry W. Morton,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The cause of action in Docket No. 161 has been brought by the Yakima Tribe, which is more fully described in its approved contracts employing counsel, dated July 20, 1958 and December 10, 1958, as the Yakima Tribe of Indians of the Yakima Indian Reservation in the State of Washington. The cause of action in Docket No. 224 was originally filed by the confederated tribes of the Colville Reservation as the successor to the claims of and as representatives 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.

Both petitioner in Docket No. 161 and petitioners in Docket No. 224 asserted that they were entitled to represent the bands or tribes of Indians which aboriginally possessed a certain area located in the northern portion of the territory ceded to the United States by the Treaty of June 9, 1855 (12 Stat. 951) (hereinafter 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.

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 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."

Hearings were conducted in conformance with the order at which time petitioners in Docket No. 224 filed a motion for leave to intervene as petitioners in the claim presented by the Yakima Tribe of Indians, Docket No. 161. At the conclusion of the hearing petitioner in Docket No. 161 filed a motion to dismiss Docket No. 224 insofar as Docket No. 161 is concerned.

Petitioner in Docket No. 161 maintains that it is the full successor in interest of the aboriginal bands which comprised the Yakima Nation which aboriginal bands, it alleges, included the Wenatchee, Entiat, Chelan and Columbia Indians. It also contends that the Moses Band was not an aboriginal tribe or band holding Indian title to any definable area and that the Moses Band was not composed of nor the successor of the Wenatchee, Entiat, Chelan, and Columbia tribes or bands. Therefore, petitioner in Docket No. 161 maintains that it has the paramount right to prosecute the claim, and it seeks to have the petition in Docket No. 224 dismissed insofar as Docket No. 161 is concerned.

The petitioners in Docket No. 224 contend that they, in a representative capacity, are entitled to maintain the action on behalf of all members of the Columbia, Chelan, Entiat, and Wenatchee, a majority of the members of which tribes, it is alleged, moved onto the Colville Reservation. The petitioners maintain that the Moses Band was comprised

of the Columbia, Chelan, Entiat and Wenatchee bands or tribes each of which was a separate and distinct aboriginal land using entity and that those four groups did not become a constituent part of the Yakima Nation. The petitioners contend that the Columbia, Chelan, Entiat and Wenatchee Indians refused to move onto the Yakima Reservation, did not receive any benefits from the treaty, and refused to associate themselves with the Yakima Nation.

It is the defendant's position that the Yakima Tribe, petitioner in Docket No. 161, is not entitled to represent the Chelan, Entiat and Columbia Indians because, it alleges, those tribes were not parties to the Yakima Treaty and have never been a part of the petitioning Yakima Tribe. Defendant further contends that the Chelan, Entiat, Wenatchee and Columbia Indians are not members of the Moses Band and that therefore petitioners in Docket No. 224 are not entitled to represent the Chelan, Entiat, Wenatchee and Columbia Indians.

Based on the evidence of record, as detailed in our Findings of Fact, the Commission has found that the Columbia, Wenatchee, Entiat and Chelan Indians were represented at the Yakima Treaty council, consented to the treaty, and were included among those Indians which formed the confederation of tribes or bands into the Yakima Nation. Mr. George Gibbs, who later was to write the Yakima Treaty, visited the claimed area in 1853, and his subsequent report, which is quoted in pertinent part in Finding of Fact No. 4, described the term Pisquouse as including the Indians on the Columbia between the Priest's and Ross rapids, on the Pisquouse or Winatshapam river, the En-te-at-kwu, Chelan lake, and the

Methow or Barrier river. This description includes the claimed aboriginal lands of the Columbia, Wenatchee, Entiat and Chelan Tribes. Mr. Gibbs described the country of the Pisuouse as lying immediately north of that of the Yakima's. Although, he noted that they had so much inter-married with the Yakimas that they had almost lost their nationality.

Thereafter, in 1854, the acting commissioner of Indian Affairs instructed Governor Isaac I. Stevens of Washington Territory to negotiate treaties with the Indian tribes, bands and groups of Washington Territory for the extinguishment of their claim of title for lands within the territory. Governor Stevens was instructed to unite the numerous bands and fragments of tribes into tribes to be concentrated upon reservations to be set apart. The various Indian tribes and bands from the general area, including the area in the northern part of Royce Area 364 which was under consideration at the consolidated hearing, were invited to a treaty council at Walla Walla, Washington.

The official proceedings of the treaty council record that there were delegates from various Indian groups including the Pisuouse and Wenatshappam Indians. The record reported that Chief Kamaiakun described the Indian tribes or bands who consider him as their head chief to include the Pisuouse and that during the council several headmen of the Pisuouse were present and unanimously assented to Kamaiakun's decision.

The record reports that:

"Kamaikun 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 Kamaikun as being under his jurisdiction."

Both Quiltaneinok and his younger brother Moses attended the treaty council as members of the Columbia band and, it is reported, Quiltaneinok spoke favorably for the treaty. The treaty was signed by Te-cole-kun and La-hoom, both chiefs from the Pisuouse area. The preamble of the Yakima Treaty recited the tribes and bands of Indians which were to constitute the Yakima Nation and included the Pisuouse and Wenatshapam. The area which was ceded by the Yakima Treaty as described in Finding of Fact 7(b) included substantially the same area as that claimed by the Columbia, Wenatchee, Entiat and Chelan Indians as their aboriginal lands and that area was clearly included in the map prepared by Governor Stevens to depict the ceded area, which map was included with his letter transmitting the treaty to the Commissioner of Indian Affairs.

In view of the evidence, as summarized above, the Commission has concluded that the term Pisuouse was a general name which included the Wenatchee, Entiat, Chelan and Columbia. Further, the Wenatchee were included in the confederation under the name Wenatshapam.

Accordingly, by the terms of the Yakima Treaty, which was ratified on March 8, 1859, the confederated tribes or bands named in the preamble to the treaty became merged into the newly formed Yakima Nation. Thus the confederated Yakima Nation 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. Since 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, 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.

The Commission has further found that many of the Indians whose tribes or bands were included in the Yakima Nation confederation refused to move onto the Yakima Reservation which had been created under Article II of the Yakima Treaty. Neither the Chelan, Entiat, Wenatchee nor Columbia moved onto the Yakima Reservation as a tribe, although individual members of each of the four tribes did remove to that reservation. In fact Chief Kamaiakun also refused to move onto the Yakima Reservation or accept any of the treaty benefits.

In about 1862 Moses became a leader of the Columbia Indians and in succeeding years grew in influence among the Indians of the area until his followers included members of the Chelan, Entiat, Wenatchee and Columbia Indians as well as individual Indians from other neighboring tribes. Thereafter, on April 18, 1879, and on July 7, 1883, Chief Moses entered into agreements relinquishing all right, title and interest of his people in and to any and all of the lands claimed by them and agreeing first to remove to the Columbia Reservation and then, by the later agreement, to the Colville Reservation. Chief Moses and his followers did, in fact, move onto the Colville Reservation and the members of his band or the descendants thereof have continued to reside on that reservation until the present date.

While the Commission has not and does not consider it necessary to find that the Moses Band was the successor of the Columbia, Chelan,

Entiat and Wenatchee Indians, it does find that the so-called Moses Band included certain members and descendants of members of the Columbia, Chelan, Entiat and Wenatchee Indians which bands or tribes had been merged by the Yakima Treaty into the Yakima Nation.

In conclusion, therefore, it appears that while a majority of the members of the constituent bands or tribes of the Yakima Nation did eventually 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, it is true that there were certain members or descendants of members of the constituent bands or tribes of the Yakima Nation who did not move onto the Yakima Reservation and are not represented by the Yakima Tribe, petitioner in Docket No. 161. In this regard it is clear that the petitioner in Docket No. 161 does not represent the members or descendants of members of the original Yakima Nation who followed Moses and did not move onto the Yakima Reservation. As petitioner in Docket No. 161 states on page 39 of its brief in support of its motion to dismiss, filed June 18, 1958:

"Thus Moses and that portion of his people who formerly had rights under the Yakima Treaty of June 9, 1855, twice voluntarily relinquished those rights under the so-called Moses Agreements of 1879 and 1883, and can no longer claim any rights as Yakima Indians under the Yakima Treaty.

\* \* \*

\* \* \* they cannot now also claim rights as members of the Yakima Nation entitled to any interest in the claim of the Yakima Tribe in Docket No. 161."

The Commission does not agree with petitioner in Docket No. 161 in this regard. The Indian title in the Columbia, Wenatchee, Entiat

and Chelan Tribes was extinguished by the Yakima Treaty and by the terms of the treaty those Indians became a constituent part of the Yakima Nation. Any award for injuries inflicted on the Yakima Nation by the actions of the United States in taking the Indians' aboriginal lands for an alleged unconscionable consideration should be for the benefit of all members or descendants of members of all the constituent tribes or bands of the Yakima Nation as such nation was created and existed by the Yakima Treaty, and such rights were not relinquished under the so-called Moses Agreements. Since petitioner in Docket No. 161 cannot be called the full successor to the Yakima Nation as it was created and existed pursuant to the Yakima Treaty and since both petitioners in Dockets Nos. 161 and 224 include members or descendants of members of the bands or tribes comprising the Yakima Nation, both petitioner in Docket No. 161 and petitioners in Docket No. 224 are entitled to present claims for the taking of Royce Area 364. See McGhee (Creek Nation east) v. The Creek Nation and the United States, 122 C. Cls. 380; Delaware v. United States, 2 Ind. Cl. Comm. 253; Aff'd 130 C. Cls. 782, 794-796, reversed and remanded on other grounds.

The motion to dismiss Docket No. 224 insofar as Docket No. 161 is concerned is denied.

In view of the facts of this case it is clear that petitioner in Docket No. 224 has an interest in Royce Area 364 which neither petitioner in Docket No. 161 nor the defendant is interested in protecting. In fact petitioner in Docket No. 161 seeks to exclude from possible recovery all parties, who, though originally members of the Yakima Nation,

supposedly relinquished their rights under the Yakima Treaty and accepted other lands or who voluntarily enrolled and affiliated with other Indian tribes on other Indian reservations. Accordingly, the Commission concludes that petitioner in Docket No. 224 should be allowed to intervene in the action brought by petitioner in Docket No. 161, and it will be so ordered.

In view of the decision made with respect to representation, the Commission will not at this time proceed with determinations concerning the limited area described in paragraph 8 of Docket No. 224, as amended. The parties are instructed to proceed with the trial concerning the remaining portion of Royce Area 364, presenting evidence as to the aboriginal holdings of each of the remaining separate aboriginal entities which became merged into the Yakima Nation.

Wm. M. Holt  

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Associate Commissioner

I concur:

Edgar E. Witt  

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Chief Commissioner