

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."









