



Pitt River Indians are not a tribe, band or other identifiable group of American Indians authorized to maintain an action before the Commission; Second, the villages within the geographical area referred to as Pitt River country were aboriginally autonomous units, and there is no evidence of their amalgamation for other than temporary purposes or that there was ever a political association or unity between them; Third, that the nine Achomawi villages never acted collectively; and, Fourth, that the Achomawi and Atsugewi were two distinct dialectic groups, in no way politically related to each other. Defendant also moved for dismissal on the ground that there is no evidence that the defendant deprived the so-called Pitt River Indians of any land allegedly claimed by them prior to 1848.

Defendant's motion to dismiss thus presents the question of the petitioner's capacity to sue.

The petitioner is an organization of the descendants of eleven separate autonomous bands or groupings of Indians which were found by the white men during the forepart of the nineteenth century within the watershed of the Pitt river, and which had no history or mythology of having ever dwelt elsewhere. It is not organized under the Indian Reorganization Act of 1934, and neither it nor the original eleven bands or groups of which it is formed are parties to any treaty with the United States. The petitioner says that the aboriginal land owning, land using unit within the claimed area was the band; defendant asserts that the land claiming or land utilizing group was the village group. This distinction is, we

think, immaterial for the evidence is that while there were more than eleven villages, there were actually eleven autonomous groupings of village Indians dwelling within the claimed area when the white man arrived. Their country was geographically isolated, rough and difficult to penetrate; the Indians were relentlessly hostile. It was thought that they comprised but one tribe and because they used pits to capture wild game, the name "Pit" or "Pitt" was applied to the river along which they lived and to the Indians themselves, collectively, even after it was known that two distinct dialects of the Shastan language were spoken within the area.

The nine northernmost groups or bands spoke Achomawi, the two southern groups spoke Atsugewi. The Atsugewi learned and spoke Achomawi, thus establishing communication between them. They possessed a similar culture, habits and mythology, and exogamy produced strong ties of kinship. They were anthropometrically distinguishable from all of the surrounding tribes but the Yana to the southwest. Each band or group claimed a separate tract but they welcomed others within it for trading purposes or for restricted hunting and food gathering. They possessed a more or less economic cohesion, and an embryonic sense of overall unity evidenced particularly in united defensive movements. All of the Indians found within the claimed area in 1859 who could be compelled to, or persuaded to do so, went upon the Round Valley Reservation, where they remained until 1863. While some members of petitioner organization still reside upon this reservation, many of them are scattered throughout the claimed area, residing upon individual allotments or on tracts set aside by the defendant for their use.

The Indian Claims Commission Act (10 Stat. 1049) gives this Commission authority to hear actions instituted by any member of an Indian tribe, band or identifiable group of American Indians (Section 10) and to determine claims brought on behalf of any Indian tribe, band or group of American Indians (Section 2). We think the evidence discloses that while no political unity existed between the Pitt River Indians as a whole or within either of their two linguistic divisions, yet from the earliest penetration of the claimed area by white man, the geographic isolation, similarity of culture, economic life and united defensive action of the Pitt River Indians presented them as an identifiable unit and the defendant has so considered them even while recognizing a dialectic distinction between the northern and southern residents. The petitioner is composed of individual descendants of each of the eleven ancestral land-owning groups or bands within which these early people were divided. The Commission is of the opinion that, for jurisdictional purposes, the Pitt River Indians form an identifiable group, and that its authority extends to hearing and determining the claim here presented as a representative claim on behalf of the living descendants of the membership of each of the eleven aboriginal land-holding units. Northern Paiute vs. United States, Dkt, 87, 7 Ind. Clms. Comm. 388. The record discloses that the defendant has not been at a loss in the defense of this action to identify either the true parties in interest or the real estate involved, and there is at the present time no tribal organization in existence which has been recognized by the Secretary of Interior as having authority to represent all the autonomous bands or groups of Pitt River Indians. So

there exists no bar to the institution of this representative action.

The defendant's motion to dismiss for want of petitioner's capacity to sue is therefore denied, and the questions of what area the original groupings or bands occupied, together with the possible destruction or taking of their original Indian title thereto by the defendant, if such title existed, and the date of such taking if it be found to have occurred, are, therefore, for consideration by the Commission.

While the evidence does not show an exclusive use of the claimed area by any one of the aboriginal units, it is shown that said units were situated along the Pit river and its tributaries in such manner as to form an inner core of occupancy, usage and control so that we have for determination the question of the outer limits of the area held by said units and, secondarily, the inner divisions between said units or groups within the outer perimeter of what we find comprised Pitt River country.

The claimed area is markedly volcanic in origin. It lies between the Warner Range on the east and the Sierra Nevada Mountains on the west. In the northwest corner Mt. Shasta rises above the timberline. East of it are a large lava flow and broken lava beds. Lassen's Peak in the southwest corner is surrounded by cinder-cones. In the southeast corner is Eagle Lake with a lava flow to the west and a barren mesa known as the Madeline Plains to the northeast, adjacent to a smaller region called Grasshopper Valley, which lies west of the Plains. The North Fork of the Pit rises near the south side of Goose Lake. The South Fork of the Pit drains the west slope of the Warner range in the south. From the junction of its

forks the Pitt river winds westward about midway between Lassen's Peak and Mt. Shasta. It has cut deep, twisting canyons along its route, but there are several overflow and swamp areas along it and its tributary streams. The Pitt River Indians wintered in these valley areas but seasonally traveled to other sections of their country for fish, fowl, game and vegetables.

White traffic through the region ran through the more fertile sections, began in the 1830s, and was quite heavy during the 1850s. By excluding the Indians from many of their food areas, and by driving the wild game into the least accessible regions, this traffic seriously disrupted the life-pattern of the Indians who were so exceedingly and continuously hostile to the whites that little was learned about them by the early traders, trappers, explorers, or emigrants passing through this country. It was not until 1876 that it was known there were two separate dialects spoken by these Indians. All of the data subsequently obtained by the numerous ethnologists, anthropologists and others who have worked with them and their neighbors since then should make our task of determining the area to which they may have held original Indian title a relatively simple one in comparison to the usual cases involving such title, but unfortunately that is not so. There is not one single geographical feature along the outer boundary of the claimed area which is accepted by each one of these researchers as a boundary point for the territory belonging to the Pitt River Indians.

Little archeological work has been done in this region and the various reports in evidence rest primarily upon oral accountings of tradition and

history obtained from the Indians. Human memory can, however, be defective, and we do not disparage recent or present-day research when we say that while religious beliefs and practices, languages, ancestral dances and like arts may be kept fresh in mind by practice and by repetition accurately passed from one generation to another, yet when there has been such a disruption of land usage and the hunting and gathering pattern of a people as occurred among the Pitt River Indians within a span of some three decades in the middle of the 19th century, we think the most dependable accounts of the areas used and the extent of such use and control prior to that disruption are those which<sup>are</sup> obtained from Indians in being at the time and before time may have dulled their memory. For this reason we think greater weight must be given to the earliest reports concerning land usage. We have, however, given careful consideration to all the evidence before us in arriving at our final conclusions.

The existence of a separate division of the Shastan linguistic family known as the Okwanuchu is clearly evidenced by the record. It was extant in 1857, occupying the upper McCloud river drainage and the slopes of Mt. Shasta. There is nothing suggesting its subsequent assimilation with petitioner. The Pitt River Indians occasionally visited Mt. Shasta as a "power" place, and hunted elk upon its slopes, but access was possible east of the headwaters of McCloud river, and we think it a matter of common knowledge that Indians marked their territorial limits by natural calls, but did not ordinarily cut across drainages. We believe the Okwanuchu held the McCloud river drainage, and that the petitioners have not shown an exclusive use of that area.

We do not think the evidence supports a boundary line as far north as is claimed by petitioner, or that Mt. Shasta can be said to be their north-west limits. Many students of Indian life in this region have stated boundaries that are arrived at without consideration to the elements of exclusive use and occupancy with which we are here concerned. Kroeber thought it only "likely" that Pitt River Indians went to Mt. Shasta and said their northern limits were "particularly vague and confusing." Kniffen considered Mt. Shasta beyond the limits of their utilization and said part of the area he gave them was "never reached". Merriam's informants made allowance for the Okwanuchu on the McCloud river drainage and claimed their northern country was east of a divide extending north and south between Bartle, California, and a peak immediately east of it called Bear Mountain and south of a point 16 miles north-northeast of Bartle.

Except for Merriam's boundaries, the evidence respecting user of the Mt. Shasta area by Pitt Rivers is rather indefinite while there is much support for Okwanuchu usage of land south and southeast of that peak. So it must follow that petitioner has failed to carry the burden of proof with respect to this area.

Wintu and Shasta Indians of the regions west and southwest of Mt. Shasta, Klamath and Modoc tribes from Oregon, as well as Pitt River Indians visited Medicine Lake and obtained obsidian at the Glass Mountain. The Wintu believed the Modoc owned the country there which argues for Modoc dominance of the region, and Powers (1877), Dixon (1905), Powell (1907), Kroeber (1925), each ethnologists or anthropologists who had studied Indians in the vicinity,



as well as Calvin Hall, who as a soldier and Indian fighter at Fort Crook, would have acquired some knowledge of the tribes, each suggest the Modoc came south of the Medicine Lake. Their cession of 1864 in which they were joined by the Klamath and the Yahooskin band of Snake Indians ceded area below the lake and Curtis, who wrote after having traveled among the California and Oregon tribes, that Pitt River country did not extend north of the southern rim of the lava deposits, favors the Modoc. We note that the record shows no attempt on the part of Pitt River Indians to enforce any rights to this section in which their ancient enemy, the Modoc, seem to have had a more dominant influence. In any event, the evidence suggests only a joint user with antagonistic Indians at most, and lends no support to petitioner's claim of original title to the Glass Mountain-Medicine lake area, which would require proof of exclusive possession.

Turning next to the Goose Lake country, only the more recent writers, Kelly (1932), Stewart (1937), Driver (1953), and Stewart, (1941-1946), extend Pitt River country beyond the south end of the lake, clearly out of deference to Kelly's statement that Sugar Hill, which lies east of the south end of the lake, was "indisputably Achomawi," and to Kniffen's and Merriam's village sites about the lake. None of these sites are dated. It is questionable if those on the east could have existed while emigration and trapping parties were passing east of the lake, going south through Pitt River country or turning northwest into Oregon, without some mention of them being found in journals, correspondence, and other data of the period. It is also questionable whether the Pitt Rivers would have maintained village sites on the west side of the lake in outlying and rather exposed

positions when Modoc parties were going south each spring to raid more distant villages. In any event, early writers give the Pitt Rivers a more southern limit. We are of the opinion the 20 mile limitation north of Alturas fixed by Curtis is fairly representative of the understanding of the Indians and draw our line accordingly.

Much of the disagreement existing in the location of the eastern Pitt River boundary undoubtedly results from confusion as to the path of the Warner range summit. Most references to Paiutes around Goose Lake do not locate them with further definiteness. Other references are confusing due to the similarity in pronunciation of the name "Paiute" and that of a Pitt River village near Bieber in Big Valley. Although Powell's line follows the west base of the range there is evidence the Pitt Rivers hunted and gathered on the slopes and in the foothills. The range is visible from afar and Kroeber explained his adoption of its summit as a divide by saying "it could hardly have been other than a recognized limit," while Kniffen said the range was "a climatic and cultural line and a convenient boundary," which statement is adopted by petitioner's witness, Dr. Stewart. It is also supported by Dr. Kroeber and there is evidence of usage of its slopes by the Pitt Rivers. We conclude that the summit is a reasonable boundary for the eastern limits of Pitt River country.

That the Pitt River Indians hunted in the western portion of the Madeline Plains southwest of the Warner range, and had a village there during the 19th century seems certain. They also made annual excursions to Eagle Lake to fish, and at some time had a village at the mouth of Pine Creek on its western shore. However, Dixon's research among the Maidu and Pitt River

Indians prior to 1905 disclosed that Maidu hunting parties continually ranged Pine Creek and about Eagle Lake and that the Maidu made doubtful claim on the east as far north as Willow creek, beyond which they did not go. Powell excluded the entire area and Merriam excluded Horse Lake; Kroeber thought the country about Eagle Lake was "probably" Pitt River country. Kniffen located undated village sites on Willow creek on the claimed boundary line. Garth, who made a special study of the Atsuge about 1953, ran the eastern boundary almost due north and south through Horse Lake.

Voegelin thought that Eagle Lake and Horse Lake were in a transition area, with Paiute, Maidu and Pitt River Indians all using it about 1850. Documentary evidence originated by travelers through that region and official reports indicate the Paiute claimed and controlled Willow creek valley.

Willow creek rises about two miles east of Eagle Lake and flows southeast.

The evidence is not convincing that any one of these groups controlled Eagle Lake to the exclusion of the others.

It seems certain that the Pitt River Indians went as far south as Lassens Peak and that they shared with the Yana a common boundary extending northwest from that Peak along the drainage divide between the Pit and Sacramento rivers as far north as the headwaters of Montgomery creek.

It is fairly well agreed among students of Indian relations in this vicinity that Pitt River country ran west along the drainage divide north of Montgomery creek and extended across the Pit river to the drainage divide between the Pit river and Squaw creek. With due regard to the Okwanuchu upon the headwaters of the McCloud river, the Pitt River country extended northward

east of that drainage.

While the evidence respecting their outer limits is far from definite in all areas, it is evident that the Pitt Rivers occupied and controlled a compact area radiating out from the more heavily settled areas along Fall river, Pit river and its forks, Hat and Burney creeks. It is true that by fixing an outer boundary for the area so held by them there is included within it small sections which by reason of their barren, sterile nature or inaccessibility, were of little if any use, but such use as their economy and culture permitted and certainly complete control over such areas were exercised by the various separate units into which the Pitt Rivers were divided. Only Merriam, Kniffen and petitioner's witness, Stewart, gives us information respecting the boundaries between these units, while Garth has bounded the Atsuge and Aporige who comprise the southern linguistic division. These interior lines are of no particular interest to defendant but are essential in view of the fact that the autonomous units were the land-owning, land-holding entities, rather than the Pitt River Indians as a whole. In bounding the tracts which these separate units appear to have held under exclusive control, as in bounding the outer limits of the Pitt River country, we have drawn the lines in detail from one topographical point to another as the same appears upon the Petitioners' Exhibit No. P-9-A, to enclose the areas to which we believe petitioners have shown satisfactory proof of original title and to avoid difficulty in identification of the intended territorial limits we have had to resort when necessary to modern lines of survey.

The date of taking of Indian title to all land in California was discussed by this Commission in *Mohave Indians v. United States*, 7 Ind. Clms. Comm. 219, Dkt. 295, and we deem it unnecessary to again set out our reasoning in that respect. It was not until the Battle of the Infernal Caverns on September 26-28, 1867, when petitioner Indians were decisively overcome and their power to resist white domination was broken. While this probably as accurately as any date marks the physical taking of petitioners' title, the expiration of the period for registration of land titles in California under the Private Land Claims Act, 9 Stat. 631, on March 3, 1853, and the passage on that date of an "Act to Provide for the Survey of the Public Lands of California and the Granting of Preemption Rights to Settlers" legally terminated petitioners' right to assert land claims, effectively classed the land here involved as part of the public domain and thus constitutes the date of taking of Indian title to the land described in our Finding of Fact No. 25.

It is admitted that the Pitt River Indians have never been compensated for the taking of their original title to the land held by said several groups and bands, nor is there evidence before the Commission permitting a determination of the acreage held by said several separate units comprising the Pitt River Indians. Further evidence will therefore be next received respecting the acreages held by each of said <sup>separate</sup> several/groups or bands, and the values thereof on the dates of their acquisition by the defendant, together with the amount of offsets, if

any, to which the defendant may be entitled under the Indian Claims Commission Act.

/s/ EDGAR E. WITT  
Chief Commissioner

I concur:

/s/ WM. M. HOLT  
Associate Commissioner