

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED SALISH AND KOOTENAI)
TRIBES OF THE FLATHEAD RESERVATION,)
MONTANA,)

Petitioner,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 61

Decided: August 3, 1959

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, petitioner herein, is an identifiable group of American Indians, duly organized under the Wheeler-Howard Act of June 18, 1934 (48 Stat. 984, as amended) and is recognized by the Secretary of the Interior as being authorized to represent the Indian tribes on said reservation and petitioner is therefore authorized to maintain this action under Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

2. Under authority of the Indian Claims Commission Act of August 13, 1946, c. 949, 69 Stat. 1049, 25 U. S. C. Sec. 70(a) petitioner timely filed this claim for the recovery of additional compensation for 14,062,000 acres of land ceded to the defendant by the petitioner for an alleged grossly inadequate and unconscionable consideration which cession was the

result of dealings on the part of the defendant which petitioner claims were not fair and honorable with respect to the petitioner. Petitioner claims the lands, until so ceded, were used, occupied, held, possessed and owned continuously from time immemorial by petitioner or its predecessor in interest.

3. Petitioner herein includes descendants of the Confederated Flathead, Upper Pend d'Oreille and Kootenai tribes which negotiated a treaty with the United States on July 16, 1855, (12 Stat. 975, II Kapp. 722), at Hell Gate, Montana, whereby the tribes ceded to the Government the lands described in Article 1 of said treaty as follows:

(Royce Cession No. 373)

Commencing on the main ridge of the Rocky Mountains at the forty-ninth parallel of latitude, thence westwardly on that parallel to the divide between the Flathead or Kootenay River and Clarke's Fork, thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude (115°), thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to the divide between the head-waters of the Koos-koos-kee River, and of the southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

From the lands so ceded the following tract (Royce No. 374) was reserved by Article 2 of the treaty for the use and occupation of the confederated tribes and other friendly tribes or bands which might agree to consolidate with the tribes parties to the treaty under the common designation of the Flathead Nation, with Victor, the head chief of the Flathead tribe, as the head chief of the said nation:

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

4. By Article 4 of the Treaty of July 16, 1855, supra, the United States agreed to pay the confederated tribes of Indians in addition to the goods and provisions distributed to them at the time of signing the treaty the sum of \$120,000.00, to be expended under the direction of the President over a number of years. By Article 5 the United States agreed to establish on the reservation an agricultural and industrial school; blacksmith, carpenter and wagon and ploughmaker's shops; to erect one saw-mill and one flouring-mill; to erect a hospital; to maintain and furnish these facilities and to provide employees to service them for twenty years. The United States also agreed by Article 5 to pay to each of the Flathead, Kootenai and Upper Pend d'Oreilles tribe \$500.00 per year for twenty years as a salary to the elected head chiefs of said tribes and to build houses and plow and fence 10 acres for each of them.

5. Linguistically the Flathead and the Upper Pend d'Oreille Tribes are Salish, a language characteristic of many groups of Indians between Montana on the east, and Puget Sound on the Pacific coast. The Kootenai Indians on the other hand constitute a "linguistical island" speaking a

language which has not been related to any other stock.^{1/} The three tribes belonged to the Plateau culture area and being the most eastern of the tribes of that area and in close proximity to the Plains tribes east of the Rocky Mountains they acquired many traits characteristic of the Plains Indians after acquiring the horse in the 18th century.^{2/} The acquisition of the horse resulted in these tribes making buffalo hunting a major activity in their subsistence pattern and their bi-annual hunts east of the Rockies brought them into direct contact with the Blackfoot tribes who contested their right to hunt in such territory.^{3/}

6. Authorities, such as Turney-High, Teit and Claude Schaeffer, who conducted early studies of the Flathead, Pend d'Oreille and Kootenai place these Indians in what is now western Montana even in pre-white times.^{4/} The Flathead according to some authorities in pre-white times consisted of several loosely related bands which upon the acquisition of the horse and plains traits consolidated into a single tribal political entity that later joined forces with the Pend d'Oreille and Kootenai to the north in defensive action against the Plains Indians.^{5/} Little is known of the pre-white organization of the Pend d'Oreille but it

^{1/} Pet. Ex. 5, p. 6; Def. Ex. 24, p. 5

^{2/} Def. Ex. 24, pp. 3 and 4; Pet. Ex. 5, p. 8

^{3/} Def. Ex. 24, pp. 43, 54; Pet. Ex. 5, p. 29

^{4/} Def. Ex. 24, pp. 6, 9, 10

^{5/} Def. Ex. 24, pp. 29, 30

would seem that they at one time formed a single tribe with the Kalispel (Lower Pend d'Oreille) until they gained the horse and became closely allied with the Flathead and Kootenai.^{6/} In historic times they have always been known as a separate tribe, identified as Pend d'Oreille.

7. The so-called Kootenai Tribe consisted in reality of separate, autonomous and independent bands or tribes. Schaeffer and Turney-High separate the Kootenai culturally into two large divisions - the Upper Kootenai who were more under the plains influence and the Lower Kootenai, who were located farther to the west and depended more on fishing than they did on the bison hunt. Each of these divisions in turn consisted of independent bands. Schaeffer states that aboriginally there were seven bands of Upper Kootenai and three bands of Lower Kootenai. Schaeffer's Agiyinik (or Jennings) Band, which he states numbered probably not more than 700 moved at some period before 1850 from Jennings eastward to Kalispel and then south to Elmo, Montana. It is this Agiyinik, or Jennings Band, to which the ancestors of the Kootenai Indians now on the Flathead Reservation belonged.^{7/} Other Upper Kootenai were the Tobacco Plains Band, now on a reservation in Canada, and the Tweed-Warland Band, once located on the Kootenay River between Tweed and Warland, Montana, but which became extinct in early times, and a band once near Libby, Montana, many of whom moved to Fort Steele some years ago. Of the

^{6/} Id. at p. 16

^{7/} Schaeffer, Def. Ex. 40, p. 78; See also Def. Exhibits 37-41; Def. Ex. 29, 42; Pet. Ex. 33

Lower Kootenai, Schaeffer identifies two bands, the Bonners Ferry in Idaho (petitioner in Docket No. 154) and a band which lived west of Nelson, British Columbia, which is extinct.^{8/} The Bonners Ferry Band was not a party to the Treaty of July 16, 1855, and was not represented at said treaty which ceded to the United States certain lands in northern Idaho and northwestern Montana which were aboriginally exclusively used and occupied by said independent band of Kootenai Indians. Petitioner's counsel herein and counsel for petitioner in Docket No. 154 have stipulated that the Bonners Ferry Band at the time of the treaty was a separate and distinct tribe of Kootenai Indians and that it owned or occupied a portion of the area of land ceded by the 1855 treaty separate from the lands owned or occupied by petitioner herein. In Docket No. 154, decided August 9, 1957, this Commission (5 Ind. Cl. Comm. 456) has also so found the Bonners Ferry Band to be separate and distinct and that it exclusively used and occupied the area of land described in Finding 8 in that case.

8. Within historic times the Flathead, Pend d'Orcille and Kootenai Indians were first contacted in western Montana. The first recorded meeting with any of these tribes occurred when Lewis and Clark on their famous expedition to the west coast entered the Bitterroot valley in 1805 and came upon forty lodges of Flatheads, whom they identified as "Tushepaws" on Camp Creek near Ross' hole.^{9/} The name Pend d'Orcille, meaning Ear-bobs, was applied to several Salishan tribes. David Thompson, a fur trader with the Northwest Company in the period 1807-

^{8/} Def. Ex. 39, p. III 44
^{9/} Pet. Ex. 1, p. 10; Def. Ex. 24, p. 35

